

- IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.
 IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

- DIVISION
 CIVIL
 DISTRICTS
 FAMILY
 OTHER

CIVIL COVER SHEET

CASE NUMBER

11-28255 CA 11

PLAINTIFF

Miguel A. Exposito

VS. DEFENDANT

Wifredo Cortez and
Francis Suarez

CLOCK IN

2011 SEP 5 11:00 AM
CLERK OF COURT

The civil cover sheet and the information contained here does not replace the filing and service of pleadings or other papers as required by law. This form is required by the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. See instructions and definitions on reverse of this form.

TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- | | |
|---|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> 001 - Eminent Domain <input type="checkbox"/> 003 - Contracts and Indebtedness <input type="checkbox"/> 010 - Auto Negligence <input type="checkbox"/> 022 - Products Liability <input type="checkbox"/> 023 - Condominium <input type="checkbox"/> Negligence - Other <ul style="list-style-type: none"> <input type="checkbox"/> 097 - Business Governance <input type="checkbox"/> 098 - Business Torts <input type="checkbox"/> 099 - Environmental/Toxin Tort <input type="checkbox"/> 100 - Third Party Indemnification <input type="checkbox"/> 101 - Construction Defect <input type="checkbox"/> 102 - Mass Tort <input type="checkbox"/> 103 - Negligent Security <input type="checkbox"/> 104 - Nursing Home Negligence <input type="checkbox"/> 105 - Premises Liability - Commercial <input type="checkbox"/> 106 - Premises Liability - Residential <input type="checkbox"/> 107 - Negligence - Other <input type="checkbox"/> Real Property/Mortgage Foreclosure <ul style="list-style-type: none"> <input type="checkbox"/> 108 - Commercial Foreclosure \$0 - \$50,000 <input type="checkbox"/> 109 - Commercial Foreclosure \$50,001 - \$249,999 <input type="checkbox"/> 110 - Commercial Foreclosure \$250,000 - or more <input type="checkbox"/> 111 - Homestead Residential Foreclosure \$0 - \$50,000 <input type="checkbox"/> 112 - Homestead Residential Foreclosure \$50,001 - \$249,999 <input type="checkbox"/> 113 - Homestead Residential Foreclosure \$250,000 or more <input type="checkbox"/> 114 - Non-Homestead Residential Foreclosure \$0 - \$50,000 <input type="checkbox"/> 115 - Non-Homestead Residential Foreclosure \$50,001 - \$249,999 <input type="checkbox"/> 116 - Non-Homestead Residential Foreclosure \$250,000 or more <input type="checkbox"/> 117 - Other Real Property Actions \$0 - \$50,000 <input type="checkbox"/> 118 - Other Real Property Actions \$50,001 - \$249,999 | <ul style="list-style-type: none"> <input type="checkbox"/> 119 - Other Real Property Actions \$250,000 or more <input type="checkbox"/> Professional Malpractice <ul style="list-style-type: none"> <input type="checkbox"/> 094 - Malpractice - Business <input type="checkbox"/> 095 - Malpractice - Medical <input type="checkbox"/> 096 - Malpractice - Other professional <input type="checkbox"/> Other <ul style="list-style-type: none"> <input type="checkbox"/> 120 - Antitrust/Trade Regulation <input type="checkbox"/> 121 - Business Transactions <input type="checkbox"/> 122 - Constitutional Challenge - Statute or Ordinance <input type="checkbox"/> 123 - Constitutional Challenge - Proposed amendment <input type="checkbox"/> 124 - Corporate Trust <input type="checkbox"/> 125 - Discrimination - Employment or Other <input type="checkbox"/> 126 - Insurance Claims <input type="checkbox"/> 127 - Intellectual Property <input type="checkbox"/> 128 - Libel/Slander <input type="checkbox"/> 129 - Shareholder Derivative Action <input type="checkbox"/> 130 - Securities Litigation <input type="checkbox"/> 131 - Trade Secrets <input type="checkbox"/> 132 - Trust Litigation <input checked="" type="checkbox"/> 133 - Other Civil Complaint <ul style="list-style-type: none"> <input type="checkbox"/> 009 - Bond Estreature <input type="checkbox"/> 014 - Replevin <input type="checkbox"/> 024 - Witness Protection <input type="checkbox"/> 080 - Declaratory Judgment <input checked="" type="checkbox"/> 081 - Injunctive Relief <input type="checkbox"/> 082 - Equitable Relief <input type="checkbox"/> 083 - Construction Lien <input type="checkbox"/> 084 - Petition for Adversary Preliminary Hearing <input type="checkbox"/> 085 - Civil Forfeiture <input type="checkbox"/> 086 - Voluntary Binding Arbitration <input type="checkbox"/> 087 - Personal Injury Protection (PIP) |
|---|--|

Yvonne Lopez

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

REMEDIES SOUGHT (check all that apply):

- monetary;
- non-monetary declaratory or injunctive relief;
- punitive

NUMBER OF CAUSES OF ACTION: []

(specify) Disqualified on 2 Commissioners, Post and Sundry, from voting @ Cause hearing

IS THIS CASE A CLASS ACTION LAWSUIT?

- Yes
- No

HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- No
- Yes If "Yes", list all related cases by name, case number, and court.

IS JURY TRIAL DEMANDED IN COMPLAINT?

- Yes
- No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature [Signature] Florida Bar # 148822
Attorney or party (Bar # if attorney)

Steven Chavez 9/6/2011
(type or print name) Date

IN THE CIRCUIT COURT IN AND FOR THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO.:

11A88255 CA 11

MIGUEL A. EXPOSITO, individually and in his
official capacity as Chief of the City of
Miami Police Department,

Petitioner,

vs.

THE CITY OF MIAMI COMMISSIONERS,
WIFREDO "WILLY" GORT, in his Official
capacity as Commissioner of District 1 for the
City of Miami, and FRANCIS SUAREZ, in his
Official capacity as Commissioner of District 4
for the City of Miami

Respondent.

40/
15me-02/50D37
ACB

FILED
CLERK OF COURT
MIGUEL A. EXPOSITO

2011 SEP 25 PM 2:30

Yvonne Lopez

**VERIFIED EMERGENCY PETITION FOR TEMPORARY
INJUNCTION WITHOUT NOTICE**

For his Verified Emergency Motion for Temporary Injunction without Notice pursuant to Florida Rule of Civil Procedure 1.610, Petitioner, MIGUEL A. EXPOSITO, individually and in his official capacity as Chief of the City of Miami Police Department (hereinafter referred to as CHIEF EXPOSITO), files the instant Emergency Motion for Temporary Injunction to enjoin COMMISSIONERS WIFREDO "WILLY" GORT and FRANCIS SUAREZ (hereinafter referred to as COMMISSIONER GORT and COMMISSIONER SUAREZ respectively) from sitting in

judgment or otherwise disqualify same from voting on the issue related to the discharge of CHIEF EXPOSITO, and further states as follows:

1. On September 6, 2011, City manager, Johnny Martinez suspended CHIEF EXPOSITO, pending a vote by the City Commission on whether to formally discharge the Chief, thereby terminating his employment. See attached memorandum from City of Miami City Manager, Johnny Martinez as Composite Exhibit A.

2. More specifically, the City Manager is authorized to suspend the chief of police for certain enumerated reasons and must “forthwith certify the fact, together with the cause of the suspension, to the commission who within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final.” *Miami City Charter* Part 1 Sub. A-§26.

3. Given the aforementioned, the City Commission will sit as a quasi-judicial body in judgment of CHIEF EXPOSITO in determination of the charge(s) as alleged by City Manager, Johnny Martinez. To that end, specific basis/charges set forth for suspension and discharge under the City Charter §26 by the City Manager, Johnny Martinez are:

- a) Alleged insubordination for rerouting the departmental authority of three staff members under CHIEF EXPOSITO’S STAFF; and
- b) Alleged disregard of a request to reduce overtime expenses by organizational restructuring.

4. Although more fully discussed below, neither COMMISSIONERS GORT nor SUAREZ should be permitted to consider the aforementioned charges against CHIEF EXPOSITO insofar as it appears that they are unable to sit as objective and impartial triers of the allegations in question.

5. For this reason, there is a substantial likelihood that CHIEF EXPOSITO will suffer irreparable harm consequent to a violation of his right to procedural due process as set forth under the Charter for the City of Miami; specifically, Part 1 Sub. A-§26. See also *Bryan v. Landis*, 142 So. 650 (Supreme Court of Florida Division B 1932).

6. The injunction sought is to ensure a fair hearing on the matter at hand due to the inability of COMMISSIONER'S GORT and SUAREZ to render a fair and impartial judgment, thereby guaranteeing a fair and impartial hearing as required by procedural due process.

MEMORANDUM OF LAW

A trial court may grant a temporary injunction if the complainant proves "(1) the likelihood of irreparable harm, (2) the unavailability of an adequate remedy at law, (3) a substantial likelihood of success on the merits, and (4) that a temporary injunction will serve the public interest." *Hilb Rogal & Hobbs of Florida, Inc. v. Grimmel*, 48 So.3d 957, 959 (Fla. 4th DCA 2010); *Envtl. Servs., Inc. v. Carter*, 9 So.3d 1258, 1261 (Fla. 5th DCA 2009); *Reliance Wholesale, Inc. v. Godfrey*, 51 So.3d 561 (Fla. 3d DCA 2010).

Further, in order to allow the Court to grant a temporary injunction *ex parte*, the following must be shown in the verified pleading:

(a) Temporary Injunction.

(1) A temporary injunction may be granted without written or oral notice to the adverse party only if:

(A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.

Fla. R. Civ. P. 1.610. Although more fully set forth under Section IV below, the following basis support the entry of an order granting the relief requested insofar as there is: (1) a strong likelihood of irreparable harm, (2) no adequate remedy at law, (3) a substantial likelihood of success on the merits, and (4) the temporary injunction will serve the public interest.

I. GORT MAY HAVE VIOLATED THE CITY CHARTER PROHIBITION WHEN HE APPARENTLY INTERCEDED IN SIMILAR ISSUE INVOLVING SAME INDIVIDUAL.

In the instant case, the Charter for the City of Miami provides in pertinent part as follows:

Neither the mayor nor the City Commission, nor any committees nor members thereof shall direct, request, take part in or dictate the appointment or removal of any person in the office or employment by the city manager or subordinates or in any manner interfere with the city manager or prevent the city manager from exercising his/her own judgment in the appointment of officers and employees in the administrative service.

Miami City Charter Part 1 Sub. A-§4(d). The Charter for the City of Miami further states the following:

No member shall be excused from voting except in matters involving the consideration of his or her own official conduct, or where his or her financial conduct are involved.

Miami City Charter Part 1 Sub. A-§4(f). COMMISSIONER GORT's personal conduct is intertwined with the issues to be resolved by the commission, not to mention the fact that he may have taken part in or otherwise interfered in the City Manager's own judgment. As such, it cannot be reasonably said that he will be fair and impartial when judging the allegations raised by the City Manager's suspension letter.

At the heart of the matter is the fact that CHIEF EXPOSITO reorganized the departmental reporting structure when the proposed roll-backs were denied on or about August

4th, 2011; namely, those of Ricardo Roque, Jose Perez and Roy Brown. According to Jose Perez's complaint to the Civilian Investigative Panel (CIP), COMMISSIONER GORT apparently took part in such a discussion on or about December 2010. To that end, the complaint initiated by Jose Perez states in pertinent part as follows:

In December/2010, Chief Exposito approached Carlos Migoya attempting to have me demoted without cause. Commissioner Willy Gort and Mayor Regalado were opposed to the demotion **and spoke to Mr. Migoya.**

See Complaint to the Civilian Investigative Panel dated August 29, 2011, attached hereto as Composite Exhibit B (*emphasis added*). Insofar as COMMISSIONER GORT may have interceded to protect Mr. Perez from "demotion" sometime in December of 2010, he violated the *Miami City Charter* Part 1 Sub. A-§4(d) renders his impartiality suspect, and as such, must be enjoined from serving as a quasi-juror in any proceeding involving the allegation at issue against CHIEF EXPOSITO.

Moreover, COMMISSIONER GORT has made very public comments expressing a bias that is pre-determinative of the issue at hand. See Charles Rabin and Patricia Mazzei, Article: *Drumbeat grows for exit of Miami police chief*, Miami Herald, Feb. 2, 2011, attached hereto as Composite Exhibit C. In the afore-cited article, COMMISSIONER GORT states that it is time for the chief to step aside. *Id.* In other words, COMMISSIONER GORT's public bias against CHIEF EXPOSITO will cause him to resolve the issue before him on grounds separate and apart from the issue to be resolved before the commission, i.e., whether CHIEF EXPOSITO'S actions constitute insubordination.

This is of particular importance because the City Commission will sit as a quasi-judicial body in determination of the charges to be levied against CHIEF EXPOSITO. In fact, the city charter provides:

The city manager shall have the exclusive right to suspend the chief of police and fire for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other reasonable and just cause. If either of such chiefs is so suspended the city manager shall forthwith certify the fact, together with the cause of suspension, to the commission who within five (5) days from the date of receipt of such notice, shall proceed to hear the charges and render judgment thereon, which judgment shall be final.

Miami City Charter Part 1 Sub. A-§26. Needless to say, the City Commission will act as a quasi-judicial body insofar as it “will hear” and render “judgment” on the allegations raised by the city manager, much like jurors in a civil or criminal trial. See generally *Miami City Charter* Part 1 Sub. A-§4.

Given the allegation contained in Mr. Perez’ CIP complaint that COMMISSIONER GORT was opposed to his being “demoted” and that he intervened in this regard clearly creates doubt as to his impartiality. This is of particular concern, since Mr. Perez is one of the three individuals who CHIEF EXPOSITO is attempting to roll-back to his civil service rank. As such, COMMISSIONER GORT’s impartiality concerning the subject matter at issue is clearly compromised and reasonably in doubt.

Accordingly, COMMISSIONER GORT must be precluded and/or dismissed as a “juror/trier” when the commission performs its quasi-judicial function and proceeds to hear the charges at issue and render judgment thereon, pursuant to the charter. See generally *Henry v. State*, 756 So. 2d 170 (Fla. 4th DCA 200); *Reid v. State*, 972 So. 2d 298 (Fla. 4th DCA 2008)(a juror is not impartial when one side must overcome a preconceived opinion in order to prevail).

Consequently, COMMISSIONER GORT's suspected involvement as alleged in the CIP complaint referenced above creates a reasonable doubt as to whether he can be an impartial juror on the issue of "insubordination" surrounding the roll-back of Mr. Perez to his civil service rank. *Reid v. State*, 972 So. 2d 298 (Fla. 4th DCA 2008)(It is well established that a juror should be excused for cause if there is a reasonable doubt about his ability to render an impartial verdict)(citing: *Singleton v. State*, 783 So. 2d 970 973 (Fla. 2001); *Juede v. State*, 837 So. 1114 (Fla. 4th DCA 1114)).

In short, COMMISSIONER GORT must be excused under *Miami City Charter* Part 1 Sub. A-§4(f), given that his personal conduct is at issue in this regard as well as his impartiality compromised. To allow otherwise violates CHIEF EXPOSITO's right to procedural and substantive due process.

II. COMMISSIONER GORT'S OFFICE PREPARED DRAFT DISCHARGE LETTER FOR EXECUTION BY FORMER CITY MANAGER TONY CRAPP

Upon the appointment of Tony Crapp as City Manager, a draft discharge letter to be presented to CHIEF EXPOSITO was prepared for Mr. Crapp's execution by Placido Diaz, with the assistance of Wilbur Jackson. See undated draft letter Attached hereto as Exhibit D. To that end, it is of particular importance to point out that Mr. Diaz is the Executive Assistant to COMMISSIONER GORT. Suffice it to say, the appearance of impropriety associated with the fact that COMMISSIONER GORT's Executive Assistant prepared such a dismissal letter attaches to COMMISSIONER GORT directly.

Indeed, these actions are directly contrary to the prohibition against any personal involvement with the City Manager on issues related to hiring and removal of city employees.

Not surprisingly, insubordination is also raised as a ground for suspension and dismissal, even though the alleged insubordinate acts would not occur for another eight (8) months.

For this reason, we do hereby incorporate the arguments raised above concerning COMMISSIONER GORT's predisposition as discussed under Section I herein.

III. MUCH LIKE COMMISSIONER GORT, COMMISSIONER SUAREZ HAS MADE PUBLIC COMMENTS EXPRESSING BIAS AGAINST THE CHIEF

Much like COMMISSIONER GORT, COMMISSIONER SUAREZ too has made public comments expressing a bias against CHIEF EXPOSITO. More specifically, COMMISSIONER SUAREZ stated: "If I were the chief, I think that I would strongly consider resigning at this point," See Charles Rabin and Patricia Mazzei, Article: *Drumbeat grows for exit of Miami police chief*, Miami Herald, Feb. 2, 2011, and corresponding Commission Meeting of June 23, 2011, wherein he confirms his press statement attached hereto as Composite Exhibit C. It is of particular importance to point out that subsequent thereto – in an open commission meeting – COMMISSIONER SUAREZ confirmed the accuracy of the quote.

For this reason, we do hereby incorporate the arguments raised above concerning COMMISSIONER GORT's predisposition as discussed under Section I herein.

IV. GIVEN THE AFOREMENTIONED, THE RELIEF SOUGHT IS JUST AND PROPER

As noted, the trial court may grant a temporary injunction if the complainant proves (1) the likelihood of irreparable harm, (2) the unavailability of an adequate remedy at law, (3) a substantial likelihood of success on the merits, and (4) that a temporary injunction will serve the public interest. See generally *Hilb Rogal & Hobbs of Florida, Inc. v. Grimmel*, 48 So.3d 957,

959 (Fla. 4th DCA 2010); *Envtl. Servs., Inc. v. Carter*, 9 So.3d 1258, 1261 (Fla. 5th DCA 2009); *Reliance Wholesale, Inc. v. Godfrey*, 51 So.3d 561 (Fla. 3d DCA 2010).

A. *There is a likelihood of irreparable harm to Petitioner*

As noted, CHIEF EXPOSITO is entitled to procedural due process insofar as he has a vested property right in continued employment in light of the safeguards provided by the Miami City Charter concerning the process for discharging the chiefs of police and fire.¹ The concept of a property interest has been defined by the United States Supreme Court as a legitimate expectation of continued employment. *McRae v. Douglas*, 644 So. 2d 1368, 1372 (Fla. 5th DCA 1994)(citing: *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709 (1972)).

To that end, the municipal action in this instance burdens that right for which same can only be deprived after a fair hearing subsequent to adequate notice and a reasonable opportunity to be heard. *City of Lauderhill v. Rhames*, 864 So. 2d 432, 440-441 (Fla. 4th DCA 2003). Suffice it to say, COMMISSIONERS GORT and SUAREZ' compromised objectivity raises questions as to the fairness of the hearing and the reasonableness of the opportunity to be heard before the commission in response to the charges of insubordination levied against CHIEF EXPOSITO.

B. *There is no other alternative adequate remedy at law*

In no uncertain terms, the city charter indicates that the decision of the commissioners shall be deemed final. As noted above the charter establishes that the commission shall proceed to hear the charges within (5) days subsequent to the chief's suspension "and render judgment thereon, which judgment shall be final." *Miami City Charter* Part 1 Sub. A-§26.

¹ See generally *Miami City Charter* Part 1 Sub. A-§26 (If either of such chiefs is so suspended the city manager shall forthwith certify the fact, together with the cause of suspension, to the commission who within five (5) days from the date of receipt of such notice, shall proceed to hear the charges and render judgment thereon...).

C. *There is a substantial likelihood of success on the merits*

In this instance, there is a substantial likelihood of success on the merits because CHIEF EXPOSITO was in no way insubordinate to the directives set forth by the city manager. Generally, insubordination is defined as a refusal to follow orders and/or disobeying authority.

Accordingly, it is significant that CHIEF EXPOSITO never rolled-back the three individuals at issue nor did the chief reduce their salaries or benefits. In short, CHIEF EXPOSITO simply reorganized the information reporting structure within the police department once the actual roll-backs were denied by the city manager.²

D. *A temporary injunction will serve the public interest*

Undoubtedly, the requested relief serves the public interest by preserving the integrity of the process. This element centers on whether granting the injunction will cause the public greater harm than good.

In *Fredericks v. Blake*, 382 So.2d 368 (Fla. 3d DCA 1980), the Third District Court of Appeal reiterated that an injunction will not be granted where it is readily apparent that it will result in confusion and disorder and produce an injury to the public that outweighs the individual right of the complainant to have the relief sought. In the instant case, no such situation exists. In fact, the injunction in this case will do the opposite by preserving the public trust in its institutions and protections of due process provided under the law.

E. *This pleading is accompanied by verification by the movant as well as affidavits*

Pursuant to Rule 1.610, the issuance of temporary injunction *ex parte* cannot occur absent the verification of the pleading by the movant. In the instant case, the pleading is verified.

² See Generally *Miami City Charter* Part 1 Sub. A-§§20, 25 and 36.

As such, all elements to support the immediate issuance of a temporary injunction have been met. Petitioners request the Court enter the temporary injunction until such time that a hearing can be held on the issuance of a permanent injunction.

WHEREFORE MIGUEL A. EXPOSITO, individually and in his official capacity as Chief of Police for the City of Miami Police Department hereby respectfully requests this Honorable Court enter an *ex parte* Temporary Injunction enjoining Respondent, COMMISSIONER WIFREDO "WILLY" GORT and COMMISSIONER FRANCIS SUAREZ from the actions described herein. Petitioners request the temporary injunction stay in place until such time as is necessary and proper.

Verification of Attorney

There have not been any attempts to provide notice to the Respondents given the time constraints related to the discharge of CHIEF EXPOSITO in relation to the procedural hearing required under The City Charter § 26. The Court should enter the Order without notice based upon the statutes, case law and factual circumstances described herein.


RUBEN V. CHAVEZ, ESQ.

Verification of Petitioner

MIGUEL A. EXPOSITO verifies under oath the factual statements made in this motion.

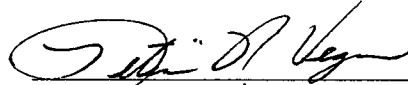
Dated: Sept. 6, , 2011



MIGUEL A. EXPOSITO Chief of Police

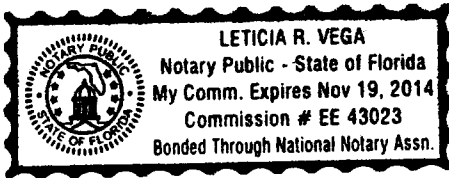
STATE OF FLORIDA)
 :SS
COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 6 day of September 2011 by Leticia R. Vega who is personally known to me or who has produced DL# E J 12 - 541-54-330-0 as identification, and who did take an oath, and says that he has read this Motion and the allegation contained herein are correct.



Notary Public, State of FLORIDA

My Commission Expires:



Respectfully submitted,

LAW OFFICES OF RUBEN V. CHAVEZ, P.A.

Attorneys for Plaintiffs
9100 S. Dadeland Blvd.
Suite 1500
Miami, FL 33156
Telephone: (305) 358-0070
Facsimile: (305) 397-2344



By: _____
Ruben V. Chavez, Esquire
Florida Bar No.: 0148822