

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT OF FLORIDA, IN AND FOR MIAMI-DADE COUNTY
CIVIL DIVISION
CASE NO. 2018-**

**FRANTZ PIERRE, individually and
in his official capacity as North Miami
Beach Commissioner,
Plaintiff,**

versus

**CITY OF NORTH MIAMI
BEACH, FLORIDA, a municipal
Corporation, and
PAMELA LATIMORE, solely in
her official capacity as North
Miami Beach City Clerk,
Defendants.**

**EMERGENCY VERIFIED COMPLANT FOR DECLARATORY
AND INJUNCTIVE RELIEF, AND TO PROHIBIT REMOVAL OF
AND/OR TO REINSTATE FRANTZ PIERRE AS A DULY
ELECTED NORTH MAIMI BEACH COMMISSIONER**

Plaintiff Commissioner Frantz Pierre seeks emergency declaratory and injunctive relief to prevent the City of North Miami Beach, Florida and its officials from naming a replacement for his Commission position at a City Commission Meeting scheduled February 22, 2018. The action by the City of North Miami Beach to remove him from office and appoint a replacement is illegal, ultra vires, and done without due process of law.

Commissioner Pierre was duly elected by a vote of the citizens of North Miami Beach to a four-year term expiring in November 2020. He complied in all respects with his obligations as a North Miami Beach Commissioner as set forth in Florida law and the North Miami Beach Charter. The City's actions to remove and replace him for an alleged failure to physically attend Commission meetings in person due to exceptional and extraordinary circumstances arising from his recovery from serious medical conditions – he attended meetings by telephone in compliance with the specific instructions of the City Attorney and the City Clerk – are contrary to the requirements of Charter and Florida law.

Commissioner Pierre's election to the City Commission to a term expiring in 2020 created a valuable and constitutionally protected property right that cannot be diminished, rescinded, or vacated without due process of law, as guaranteed by the United States and Florida Constitutions. He has not received that due process.

Because the City intends to name a replacement on February 22, 2018, emergency relief is required.

INTRODUCTION.

- 1) This action is initiated pursuant to §86.021, Florida Statutes

and pursuant to the general equity jurisdiction of the court as set forth in §26.012, Florida Statutes.

2) Commissioner Frantz Pierre asks for a declaration that he is a duly elected Commissioner of the City of North Miami Beach and is entitled to serve out his four-year term expiring in November 2020, and that he has not vacated his elected position.

3) Commissioner Pierre also asks for a declaration that the City of North Miami Beach is not authorized to name a replacement for his elected Commission position that he has not vacated.

4) Commissioner Frantz Pierre further asks this Court to enjoin and prohibit the City of North Miami Beach from appointing his replacement at a meeting on February 22, 2018, or any time thereafter as may be set by the City.

5) Because the City is scheduled to name a replacement on February 22, 2018, to a position Commissioner Pierre has not vacated, prompt emergency relief is required to prevent that illegal action from occurring. Not only is this requested relief consistent with the public interest, but Commissioner Pierre and the citizens of North Miami Beach will be irreparably harmed by not having the duly elected Commissioner

Pierre exercise the duties of office to which he was elected by the citizens of North Miami Beach.

6) It is sovereign right of the people to elect their own public officials. Therefore, the City's effort to declare the removal of a duly elected official from office and appoint a replacement is contrary to the fundamental right of citizens to determine their elected representatives. Florida law confirms that the right to hold office is a valuable one that cannot be abridged except for unusual reason or by plain provision of law. *Perez v. Marti*, 770 So. 2d 176 (Fla. 3d DCA 2000) (quoting *Ervin v. Collins*, 85 So. 2d 852, 858 (Fla. 1956)).

7) Commissioner Frantz Pierre has a property right in his elected office that cannot be diminished, removed, or rescinded without due process of law, as guaranteed by the United States and Florida Constitutions.

8) The City's actions irreparably risk disenfranchising the citizens of North Miami Beach by substituting an appointed official in place of the one elected by the people.

9) All conditions precedent to the bringing of this action have been met, waived, or would be futile.

JURISDICTION AND VENUE.

10) This court has jurisdiction over this action.

11) Venue is proper in Miami-Dade County as the place in which the causes of action accrued and where the defendants exist and reside. The City is headquartered, and transacts its business and governmental activity.

12) Plaintiff retained counsel and agreed to pay the lawyers a reasonable fee for professional services in connection with this action.

PARTIES.

13) Frantz Pierre is a duly elected North Miami Beach Commissioner whose four-year term expires in November 2020.

14) The City of North Miami Beach, Florida is a Florida municipal corporation in Miami-Dade County, organized and existing under Florida law.

15) Pamela Latimore is the Clerk of the City of North Miami Beach. She is named solely in her official capacity.

FACTUAL STATEMENT

A. Frantz Pierre is Reelected to a Four-Year Term Expiring in 2020.

16) Upon serving the people of North Miami Beach as an elected

Commissioner, Frantz Pierre was duly reelected in 2015 to another four-year term expiring in 2015.

B. Frantz Pierre Has Fulfilled his Duties and Obligations of Office.

17) Commissioner Pierre has complied with Florida law and the Charter of the City of North Miami Beach in fulfilling all the duties and obligations of his elected office.

18) Commissioner Pierre has not vacated his office of City Commissioner.

C. Frantz Pierre Attended City Commission Meetings Telephonically.

19) Commissioner Pierre has not failed to comply with the attendance requirements of the City Charter and Florida law. Even as he slowly recovers from extraordinary circumstances arising from a serious medical condition for which he has been under the care of a physician, he has attended to his duties and responsibilities as an elected public official. He serves the interests of the public and his constituents.

20) During his medical recovery, Commissioner Pierre attended Commission Meetings telephonically.

21) Commissioner Pierre's attendance and participation by

telephone was due to extraordinary circumstances resulting from illness.

22) Commissioner Pierre was present telephonically at Commission Meetings.

23) At all times relevant to this matter, a quorum was present at City Commission meetings as required by law.

D. The City of North Miami Beach Officially Recognized Frantz Pierre's Telephonic Attendance at Commission Meetings.

24) Commissioner Pierre's telephonic attendance was duly and officially recognized in the City Commission Minutes.

25) Commissioner Pierre cast votes during his telephonic attendance, and his votes have been deemed official votes and counted by the City of North Miami Beach.

26) At no time has either Commissioner Pierre's telephonic attendance or voting been questioned or made the subject of a formal or informal objection.

27) Commissioner Frantz attended and participated in the Commission Meeting on January 16, 2018, both online and by phone.

28) Commissioner Pierre's attendance and participation by telephone has been acceptable by the City of North Miami Beach for any

Commissioner unable to physically attend in person.

29) Commissioner Pierre's presence and attendance at all times was facilitated and approved by the City of North Miami Beach through the provision of telephonic access and by the City supplying the necessary equipment to participate telephonically.

30) The City never informed Commissioner Pierre that his attendance and participation by telephone did not satisfy the attendance requirement of the City Charter.

E. The City Attorney Provided Official Advice to Frantz Pierre Authorizing Telephonic Attendance at Commission Meetings.

31) Commissioner Pierre's telephonic attendance was based on the specific advice given to him by the North Miami Beach City Attorney, who informed Commissioner Pierre of the ability to attend Commission Meetings by telephone as he recuperated from his serious medical condition. Commissioner Pierre relied on the advice and counsel of the City Attorney, and scrupulously followed that advice.

32) The City Attorney's advice to Commissioner Pierre was done in the official capacity of the City Attorney, whose advice represents the official position of the City of North Miami Beach.

33) The City of North Miami Beach adopted, ratified, approved, and acted on the attendance advice provided by the City Attorney to Commissioner Pierre.

F. Frantz Pierre's Telephonic Attendance Comports with Florida Law and the City Charter.

34) Commissioner Pierre believed the advice provided by the City Attorney was fully compliant with Florida law.

35) Commissioner Pierre relied on the advice of the City Attorney in connection with his fulfillment of Charter attendance requirements.

36) Commissioner Pierre's attendance by telephone is legally authorized under Florida law.

37) Commissioner Pierre's telephonic attendance and presence at the Commission Meetings satisfied his attendance obligation set forth in the North Miami Beach Charter.

38) Had the City Attorney or any City official informed Commissioner Pierre of an obligation to be "physically present" or "present in person" in order to comply with the Charter provision, Commissioner Pierre would have physically appeared at the Commission chambers for the meetings when he was physically able to do so. Instead,

his reliance on the City Attorney's advice and the specific Charter language that does not require "physical" presence comports with his Charter obligations and Florida law.

39) Commissioner Pierre has not "failed to attend a meeting of the City Commission for a period of one hundred twenty (120) days ..." as required by City Charter section 2.5.

40) Commissioner Pierre intends to complete the entire four-year term to which he was elected by the citizens of North Miami Beach, expiring in 2020.

41) As a result of Commissioner Pierre's attendance at City Commission meetings in compliance with the requirements of the City Charter, Commissioner Pierre has not automatically vacated his elected position.

42) Commissioner Pierre did not voluntarily vacate his position.

G. Frantz Pierre Objected to the City's Actions and Intended Actions.

43) Commissioner Pierre objected to the action of the City of North Miami Beach declaring a vacancy in his elected position.

44) Commissioner Pierre objected to the intended action of the

City of North Miami Beach to appoint a replacement to his elected Commission position, since no vacancy exists.

45) Commissioner Pierre, through this litigation, seeks enforcement of his status as an elected official in good standing, and disputes the ability of the Commission to declare a vacancy or act to fill the seat by appointment to which he was elected and still occupies by the affirmative vote of the citizens of North Miami Beach.

46) Commissioner Pierre was never notified in advance of the City's intention to declare a vacancy in his elected position.

47) Commissioner Pierre was not provided any advance notice that his authorized telephonic attendance did not comply with the requirements of the City Charter.

48) Commissioner Pierre was given no notice of an impending vacancy and an opportunity to cure any attendance deficiency deemed to exist by the City of North Miami Beach.

49) Had Commissioner Pierre been informed that his telephonic attendance did not comport with the requirements of the City Charter, he would have physically appeared at a sufficient number of Commission Meetings, despite his medical incapacity, to satisfy any other

interpretation of the Charter attendance requirements.

50) Throughout his medical incapacity, Commissioner Pierre continued to serve the interests of the people of North Miami Beach, and to satisfy and discharge all required duties of office in an effective and deliberate manner.

H. The City Is Preventing Frantz Pierre from Exercising and Fulfilling the Duties of Office to which He Was Elected for a Four-Year Term Expiring in 2020.

51) The City is preventing Commissioner Pierre from serving as Commissioner, exercising his duties as Commissioner, occupying his office, and fulfilling his obligations as a Commissioner.

I. City Intends to Appoint Replacement on February 22, 2018.

52) The City intends to appoint a replacement on February 22, 2018, despite Commissioner Pierre's objection.

J. City Charter Attendance Provision.

53) The North Miami Beach City Charter contains the following attendance requirement for Commissioners at Section 2.5:

... If any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.

54) The City Charter does not define attendance as requiring physical presence.

K. City's Official Records Document Commissioner Pierre's Attendance and Voting.

55) The official records of the City of North Miami Beach, maintained by the City Clerk as public records document the following attendance by Commissioner Pierre at City Commission Meetings:

- 01/17/2017 Regular Commission Meeting – attended.
- 02/21/ 17 Regular Commission Meeting – attended.
- 03/21/17 Regular Commission Meeting – attended.
- 04/03/17 Special Commission Meeting – attended.
- 04/18/17 Regular Commission Meeting – absent.
- 05/16/17 Regular Commission Meeting – absent.
- 06/08/17 Special Commission Meeting – participated and voted by telephone.
- 06/20/17 Regular Commission Meeting – participated and voted by telephone.
- 07/18/17 Regular Commission Meeting – participated and voted by telephone.

- 08/15/17 Regular Commission Meeting – participated and voted by telephone.
- 08/24/17 Regular Commission Meeting after CRA Board Meeting – attended.
- 09/18/17 First Public Budget Hearing/Regular Commission Meeting – absent.
- 09/25/17 Second Public Budget Hearing – participated and voted by telephone.
- 10/17/17 Regular Commission Meeting – absent.
- 11/14/17 Regular Commission Meeting – absent.
- 12/19/17 Regular Commission Meeting – participated and voted by telephone.
- 01/16/18 Regular Commission Meeting – participated and voted by telephone.

L. Florida Law Permits and Authorizes Telephonic Attendance.

56) Florida law expressly authorizes and allows telephonic attendance at official government meetings. §286.011, Florida Statutes.

57) Opinions of the Florida Attorney General recognize and

authorize telephonic attendance and participation by government officials. Op. Att’y Gen. Fla. July 20, 2016: “... if a quorum of a local board is physically present, ‘the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;]’ ... if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting.” Op. Att’y Gen. Fla 03-41; Op. Att’y Gen. Fla 92-44 (participation and voting by ill county commissioner); Op. Att’y Gen. Fla 02-82 (physically-disabled city committee members participating and voting by electronic means).

COUNT 1 – DECLARATORY RELIEF

- 58) Plaintiff reaffirms and realleges all prior paragraphs.
- 59) Plaintiff comported and complied with the attendance requirements of the City Charter and Florida law.
- 60) The City Charter does not require physical attendance at

Commission Meetings when extraordinary circumstances occasioned by a Commissioner's illness prevents actual physical attendance.

61) Commissioner Pierre's attendance by telephone constitutes compliance with the requirements of the City Charter and Florida law.

62) A real dispute exists between the attendance requirements of the City Charter and the actions taken by the City of North Miami Beach to declare a vacancy and appoint a replacement to Commissioner Pierre's duly elected Commission position that does not expire until 2020. Despite Commissioner Pierre's attendance at City Commission Meetings and his compliance with the attendance requirements of the City Charter and Florida law, the City intends to appoint a replacement on February 22, 2018.

63) Commissioner Pierre is without an adequate remedy at law. Although duly elected for a term expiring in 2020, the City's actions to deprive him of his property right to his Commission position in violation of the City Charter, Florida law, and the due process protections of the United States and Florida Constitutions.

64) A declaratory judgment that Commissioner Pierre has not vacated his Commission position is consistent with the law and the public

interest.

65) Declaratory relief requested by Commissioner Pierre will not harm the interests of the City or the citizens of North Miami Beach.

66) Commissioner Pierre seeks declaratory relief in the form of a judicial determination that he has not vacated his Commission position, and further declaring that no vacancy exists in his Commission position.

COUNT 2 – INJUNCTIVE RELIEF

67) Plaintiff reaffirms and realleges all prior paragraphs.

68) Plaintiff comported and complied with the attendance requirements of the City Charter and Florida law.

69) The City Charter does not require physical attendance at Commission Meetings when extraordinary circumstances occasioned by a Commissioner's illness prevents actual physical attendance.

70) The City is not lawfully entitled to declare a vacancy in Commissioner Pierre's elected Commission position, and has no legal authority to appoint a replacement to his elected Commission position.

71) Commissioner Pierre is without an adequate remedy at law. Although duly elected for a term expiring in 2020, the City's actions to deprive him of his property right to his Commission position in violation

of the City Charter, Florida law, and the due process protections of the United States and Florida Constitutions.

72) Commissioner Pierre meets the standard for emergency temporary and permanent injunctive relief. The relief requested is consistent with the public interest. Commissioner Pierre's position is consistent with prevailing law, and he is likely to succeed on the merits. The appointment of a replacement to his duly elected Commission position will irreparably harm Commissioner Pierre and the citizens of the City of North Miami Beach, who are entitled to determine and select their public officials by the election process.

73) "The issuance of a preliminary injunction is an extraordinary remedy which should be granted sparingly, which must be based upon a showing of the following criteria: (1) The likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of the public interest." *City of Jacksonville v. Naegele Outdoor Advertising Co.*, 634 So. 2d 750 (Fla. 1st DCA 1994).

74) Temporary injunctive relief is required in the form of an order prohibiting the City from appointing a replacement for Commissioner

Pierre on February 22, 2018, or any date otherwise determined by the City, and to prohibit any replacement from occupying the office to which Commissioner Pierre was duly elected for a term expiring in 2020.

75) Permanent injunctive relief is required in the form of an order prohibiting the City from replacing Commissioner Pierre during his term of office expiring in 2020.

COUNT 3 – EQUITABLE ESTOPPEL

76) Plaintiff reaffirms and realleges all prior paragraphs.

77) Plaintiff comported and complied with the attendance requirements of the City Charter and Florida law.

78) Plaintiff received and reasonably relied on the official advice of the City Attorney that his telephonic attendance at Commission Meetings due to his illness comported with the City Charter and Florida law.

79) Plaintiff received and reasonably relied on the actions of the City in affirmatively arranging and facilitating his telephonic attendance at Commission Meetings due to his illness in compliance with the requirements of the City Charter and Florida law.

80) The City represented that Commissioner Pierre's telephonic

attendance comported with the City Charter and Florida law, but has now asserted a position that is directly to the contrary. Commissioner Pierre reasonably relied on the position represented by the City. The City's change in position, without notice and an opportunity to cure, is detrimental to Commissioner Pierre and the citizens of North Miami Beach, and is the direct result of the City's representation and Commissioner Pierre's reliance thereon.

81) Plaintiff has no adequate remedy at law.

82) Commissioner Pierre's position is consistent with the public interest, and does not injure or harm the interests of the City.

83) Plaintiff is irreparably harmed by the material change in the City's position.

84) The City and its officials are estopped from taking a position to the contrary in order to advance a determination of a vacancy and taking official action to fill that vacancy.

85) Commissioner Pierre is entitled to temporary and permanent injunctive relief, and an order of declaratory relief that the City is estopped from declaring a vacancy in the office to which Commissioner was elected through the expiration of his term in 2020, and further

estopped from appointing a replacement.

CONCLUSION,

86) Plaintiff Pierre is entitled to emergency declaratory and injunctive relief, bit temporary and permanent, to prohibit the City from appointing a replacement for Commissioner Pierre and to further prohibit the City from refusing to allow Commissioner Pierre to exercise and fulfill the duties of office to which he was elected through the 2020 expiration of his term. He seeks attorney's fees and costs.

87) Dated on February 22, 2018.

Respectfully submitted,

S/ Michael T. Davis

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VERIFICATION

I declare, under penalty of perjury, that the information contained in this Complaint is true and correct, and that emergency relief is needed, to the best of my knowledge and belief


FRANTZ PIERRE

State of Florida
County of Miami-Dade

Before me personally appeared Frantz Pierre, ~~who is known to me,~~ who was first placed under oath, and who stated that the information contained in this document is true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me on February 22, 2018, by Frantz Pierre, who is ~~personally known.~~ *PRODUCED FLORIDA DRIVER LICENSE.*


NOTARY PUBLIC, State of Florida



CERTIFICATE OF SERVICE

This document was filed using the State of Florida's ePortal Filing System and was served via email through the State of Florida's ePortal Filing System to the following counsel of record on February 22, 2018:

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