

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

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

Case No.: 2018-005155-CA-01 (08)

v.

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

**CITY OF NORTH MIAMI BEACH'S MOTION FOR ORDER TO SHOW CAUSE**

Defendant, CITY OF NORTH MIAMI BEACH (hereinafter referred to as the "City"), by and through its undersigned counsel and pursuant to Florida Rules of Civil Procedure hereby moves this Honorable Court for entry of an order directing Plaintiff to show cause why he should not be held in contempt for disrupting City business and refusing to return City records and things in violation of this Court's Order dated February 22, 2018, and states:

1) This is an action arising out of Plaintiff's challenge of his vacation of his seat as a City Commissioner and his resulting termination as an employee of the City.

2) On February 22, 2018, Plaintiff filed his Complaint seeking declaratory and injunctive relief and equitable estoppel to prohibit the City from exercising its powers to appoint a replacement commissioner pursuant to the Charter ("Charter") approved by the electorate of the City of North Miami. *See* Compl. ¶¶ 2, 14.

3) On February 22, 2018, Plaintiff sought and was granted an injunction preventing the City from naming a replacement to the vacant seat.

4) The facts, as set forth in his Complaint are as follows. Plaintiff was an elected Commissioner for the City, charged with fulfilling all of the duties and obligations of his office required by the Charter. *See Id.* at ¶ 7, 53. Notably, the terms and conditions of Plaintiff's office as set forth in Charter Section 2.5 provides:

... 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.

*See Id.*

5) A meeting of the Commission was duly noticed and scheduled for February 22, 2018.

6) With knowledge of this fact, Plaintiff filed an Emergency Motion for Injunction.

7) The Motion stated "Absent temporary injunctive relief, the City will appoint a replacement Commissioner in place of the duly elected Commissioner Pierre, whose term does not expire until 2020."

8) It requested in its final paragraph, "The public interest favors the granting of a temporary injunction **prohibiting the City from appointing a replacement Commissioner.**" This Court granted the Motion, stating simply: "GRANTED. **The City is enjoined from naming a replacement Commissioner until further order of the Court.**"

9) The Motion never sought to restore Pierre to the vacant Commission seat.

10) The City Clerk, in keeping with her duties, sent Pierre a letter in order to obtain any City records in his possession. In recognition of the pending suit, this was done both

pursuant to an elected official's specific duty to return public records upon removal, as well as the general responsibilities that Pierre had when he was a Commissioner. Specifically, the City stated by letter:

The City of North Miami Beach thus makes this formal demand for your delivery forthwith to the City of the subject public records, pursuant to your generalized duty under section 119.07 to respond to this public records request as well as your specific duty under section 119.021 to deliver such records to the City.

11) Plaintiff, through his attorney, refused the return of the public records.

12) Subsequent to his refusal, on March 19, 2018 Plaintiff filed an Amended Motion for Temporary Injunctive Relief.

13) The Amended Motion states in its final paragraph:

The public interest favors the granting of a temporary injunction prohibiting the City from appointing a replacement Commissioner, ousting Commissioner Pierre from office, and declaring a vacancy in his office prior to the expiration of his term in November 2020.

14) The Amended Motion acknowledges that Plaintiff was, and is, aware that this Court never restored Plaintiff to the vacant seat.

15) Notwithstanding his knowledge of that fact, on Tuesday, March 20th, 2018, Plaintiff Frantz Pierre disrupted a duly noticed Commission Meeting of the City of North Miami Beach Commission.

16) While the meeting was in session, Plaintiff Pierre entered Commission Chambers during the meeting, and without right, invaded the dais, and sat in his former seat. In abundance of caution, the City was forced to recess the meeting, leaving its business incomplete.

17) North Miami Beach Police politely asked Plaintiff Pierre to remove himself from the dais during the recess, inviting him to sit in the area reserved for the public. Plaintiff Pierre

adamantly refused. Amazingly, Plaintiff told the Police that his attorney told him to disrupt the Commission meeting in this way.

18) Pierre's disruption was purposeful, in that Pierre knew that the City could not continue to conduct business while he remained on the dais, as any action taken while an improperly seated Commissioner is present is subject to being improper or illegal. "[T]he City faces an even greater dilemma, regardless of who is seated: "Depending on the outcome of the appeal, the city may take official action with an improperly elected city official." *Fouts v. Bolay*, 769 So. 2d 504, 505 (Fla. 5th DCA 2000).

19) The City expends approximately \$3,000-\$4,000 to publically notice and reconvene each meeting so disrupted. Additionally, the City was forced to delay consideration of time sensitive matters, including a federal court litigation settlement and a land use matter involving a large development project Pierre's actions also deprived members of the public from the opportunity to address those matters.

20) While the City and Plaintiff Pierre are involved in litigation presently, Plaintiff Pierre cannot occupy the dais, absent a determination of a Court of competent jurisdiction that the City has misinterpreted its Charter provision. Further, while the City and Pierre are involved in litigation, Pierre cannot retain public records requested and demanded by the City, nor be afforded the rights and privileges of a Commissioner. .

21) The irrefutable inference is that Plaintiff is deliberately attempting to disrupt the operation of the City and in engaging in improper self-help. To do so is a violation of this Court's February 22, 2018 Order and a violation of Florida Statutes Chapter 119 and his knowing actions, facilitated and encouraged by his attorney are cause to be held in contempt.

**WHEREFORE**, Defendant, the CITY OF NORTH MIAMI BEACH, respectfully requests that this Honorable Court enter an order compelling Plaintiff to show cause as to why Plaintiff and his Counsel should not be held in contempt for violation with the order of this Court issue any and all such further relief that this Court deems fair and just.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing was provided via electronic mail on this **21st day of March, 2018**, to: Benedict P. Kuehne, Esq. and Michael T. Davis Esq., Counsel for Plaintiff, Frantz Pierre, 100 S.E. 2nd St., Suite 3550, Miami, Florida 33131; ([mdavis@kuehnelaw.com](mailto:mdavis@kuehnelaw.com); [efiling@kuehnelaw.com](mailto:efiling@kuehnelaw.com)).

Respectfully submitted,

LYDECKER | DIAZ  
*Attorneys for the City of North  
Miami Beach*  
1221 Brickell Avenue, 19th Floor  
Miami, Florida 33131  
Tel.: (305) 416-3180  
Fax: (305) 416-3190

By:       /s/ Stephen H. Johnson  
Stephen Hunter Johnson  
shj@lydeckerdiaz.com  
FBN: 12362