

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

SCOTT FLESH

Petitioner,

CASE NO.: 2012 12005 CIDL

vs.

DIVISION: 01 Judge Raul A. Zambrano

VOLUSIA COUNTY, FLORIDA,
Respondent.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before this Court upon the Petitioner's request for a writ of Certiorari¹ addressing the Respondent's decision to terminate his employment; and after review of the Petition, the argument of counsel, the contents of the Court file and the applicable law, the court finds as follows:

Petitioner Scott Flesh's employment with respondent was terminated by way of an administrative personnel action by the Personnel Board of Volusia County, and final determination of termination of employment by the County Manager. Petitioner raises several claims in his petition regarding the procedural nature of his employment termination. The court finds only one meritorious claim in his petition and rejects all other claims not discussed in this Order. The sole issue to be discussed is whether a

¹ This court has jurisdiction. The jurisdiction of the circuit courts to issue writs of certiorari is generally established by Article V Section 5(b) of the Florida Constitution. Section 5 (b) has been implemented by Rule 9.030(c)(2) which states that the certiorari jurisdiction of the circuit courts may be invoked to review unappealable nonfinal orders of lower tribunals. Rule 9.030(c)(2) is correct as far as it goes, but it should not be interpreted as an exclusive statement of circuit court jurisdiction to issue writs of certiorari. Despite the incomplete statement in the rule, the circuit courts also have jurisdiction to review final orders of local administrative tribunals that are not subject to the jurisdiction of the district court of appeal. P. Padovano, *2 App. Pract., Appellate Practice*, Section 30:5 Certiorari. (2015 edition).

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voting member of the personnel board that terminated petitioner's employment did so while in violation of the prohibition against dual office holding as set out in Section 86-40(f)(2) of the Merit System Rules and Regulations. This court finds in the affirmative.

The court considered the decision made by respondent's personnel board; and more specifically the status of board member Mr. Dwight Lewis. Mr. Lewis was a member of two entities during the relevant period of time. He was on the Personnel Board of Volusia County, as well as being on Volusia County's Growth Management Committee. Mr. Lewis' membership on both entities violated the prohibition against dual office holding as prohibited by section 86-40(f)(2) of the Merit System Rules and Regulations. That violated the petitioner's procedural due process rights and as such, petitioner is entitled to a new hearing before an impartial board.² THEREFORE, it is hereby

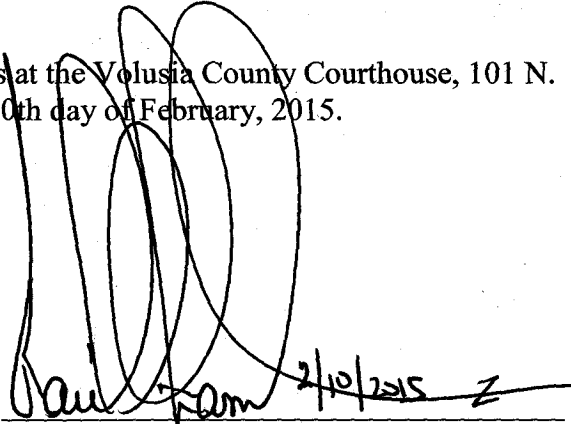
ORDERED AND ADJUDGED that the Petition for a Writ of Certiorari is partially granted and the court authorizes the Clerk of the Court to issue the writ consistently with the findings of this court, it is further

ORDERED AND ADJUDGED that the respondent's decision/recommendation of termination of employment is hereby QUASHED; it is further

² This court does not imply by its findings that the original decision was in any way flawed other than Mr. Lewis' dual role. It appears that there was ample evidence to support the recommendation of termination of employment.

ORDERED AND ADJUDGED that this matter is remanded to the respondent for further proceedings that will afford the petitioner's due process rights consistent with the regulations as set out within the Merit System Rules and Regulations.

DONE AND ORDERED in Chambers at the Volusia County Courthouse, 101 N. Alabama Ave., DeLand, Florida, 32724 this 10th day of February, 2015.

A large, stylized handwritten signature in black ink, appearing to read 'Raul Zambrano', with a date '2/10/2015' and a flourish to the right.

RAUL A. ZAMBRANO
CIRCUIT JUDGE

Copies To:

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