

## **Press Release**

### **Appeals Court Reaffirms Brock's Role as Auditor and Custodian of All County Funds**

The Florida Second District Court of Appeals (DCA) issued its [opinion](#) in the Dwight E. Brock vs. Board of County Commissioners case on Wednesday, September 23<sup>th</sup> 2009.

The court concluded that the trial court's ruling prohibiting the Clerk from investigating county funds that have not been placed in his custody unduly limits the Clerk's ability to carry out his responsibilities as custodian of all county funds. In its opinion the court wrote "to the extent that the Clerk is the custodian of all county funds, he necessarily can only be the custodian of those funds to which he has been given custody, which would presumably encompass all County funds."

The opinion stated "A public officer with the right and responsibility to maintain custody of public funds necessarily has the authority both to investigate circumstances in which public funds have wrongfully been withheld from the officer's custody and seek to obtain custody of the withheld funds. Restricting the Clerk's authority to do so is inconsistent with the goal of protecting public funds from misappropriation, and it is inconsistent with the effectual and complete exercise of the Clerk's authority as custodian of all county funds."

The decision also concluded that the trial court's ruling prohibiting post payment audits is inconsistent with the Clerk's statutory power to inspect and examine all county accounts at all times and with the Clerk's statutory duty to ensure all payments of county funds comply with applicable legal requirements. Post-payment audits to verify the legality of payments that have been made are necessary to effectively carry out the Clerk's duty to ensure that county funds are expended only as authorized by law. Verification of the legality of payments already made – a process which tests the soundness of existing internal controls – is directly related to ensuring that future payments are legal. To deny the Clerk the ability to conduct such postpayment audits would compromise the Clerk's duty and power to guard against the illegal use of county funds."

The DCA stated that "prior to signing any warrant for the payment of any claim, bill or indebtedness from county funds, the Clerk is required to insure that the payment is lawful. Consequently, any auditing necessary to insure the legality of the expenditure prior to payment is proper."

The court upheld the trial court's ruling that the Clerk does not have independent authority to prepare the county's financial statements.

To read the complete DCA opinion visit CollierClerk.com in the “Notices” section.

**For more information contact:**

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**September 24, 2009**