

STATE OF FLORIDA  
ADMINISTRATION COMMISSION

AC Case No.:

DAVID MORGAN,  
Sheriff of Escambia County

Petitioner,

v.

THE BOARD OF COUNTY COMMISSIONERS OF  
ESCAMBIA COUNTY, FLORIDA,

Respondent.

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ESCAMBIA COUNTY, FLORIDA'S RESPONSE  
\_\_\_\_\_

**ESCAMBIA COUNTY'S RESPONSE TO THE PETITION  
OF DAVID MORGAN, SHERIFF OF ESCAMBIA COUNTY, FLORIDA  
PURSUANT TO SECTION 30.49, FLORIDA STATUTES**

COMES NOW, the Respondent, Board of County Commissioners of Escambia County, Florida (hereinafter referred to as "Board" or "County"), by and through the undersigned attorney, and hereby files this Response to the Petition of David Morgan, Sheriff of Escambia County, Florida (hereinafter referred to as "Sheriff" or "ECSO") to appeal the Sheriff's budget for Fiscal Year 2018.

**INTRODUCTION**

In a submittal dated April 27, 2017, Sheriff David Morgan requested a total budget of \$59,882,340, which he broke down into \$56,646,721 for law enforcement and \$3,235,619 for court security functions. *Resp. App. Ex. A.*<sup>1</sup> Subsequently, the Sheriff decided to terminate his agreement with the First Judicial Circuit related to some court security functions effective November 1, 2017. As a result, the Sheriff's court security budget was voluntarily reduced by the equivalent of eleven months, or \$497,785.

On September 26, 2017, following a lengthy budget adoption process that included several budget workshops on July 11-13, 18, and 27, and the statutorily required budget hearings on September 12 and 26, the Board adopted its final budget in the total amount of \$455,840,072. The Board of County Commissioners' staff worked tirelessly leading into the final budget hearing and identified \$3,744,070.41 to fund a 3% raise for all employees, to include the Sheriff's Office (which represents \$1,246,031 of the total), all other Constitutional Officers, and all County departments. *Resp. App. Ex. B.*

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<sup>1</sup> References to the Respondent's Appendix shall be referred to as "Resp. App. Ex. Pg."

Of the total final budget, the Board adopted a budget for the Sheriff that totaled \$56,739,867. *Resp. App. Ex. C.* This number represented the voluntary reduction in his original budget request for court security and acknowledged his request for what he referred to as a 3% “merit increase” for all employees but excluded an allocation to fund six new cadet positions and did not fully fund his requested per employee health insurance contribution. *Resp. App. Ex. D.* It is important to note that the Sheriff was provided an amount equal to a 3% pay raise for all ECSO employees in his budget, but the Sheriff is not required to utilize those funds for a pay raise and may use those funds for any personnel related expenditures.

The approved budget represented a 2.35% increase over the Sheriff’s prior Fiscal Year 2016-2017 budget, and was the fifth consecutive year in which the Sheriff’s budget increased. *Resp. App. Ex. E.* In prior years, the Sheriff’s budgetary increase has consistently outpaced the growth in the County’s general fund.

Despite the 2.35% increase in the Sheriff’s budget from the previous fiscal year, the Sheriff initiated this appeal. In the Petition, the Sheriff has cited three primary objections to the Sheriff’s budget as adopted by the Board: (1) denial of the Sheriff’s request for \$2,083,523.81 to fund the Sheriff’s Retention/Compression Plan - Phase I (hereinafter referred to as “Pay Plan”); (2) denial of the Sheriff’s request for \$319,154.28 to fund 6 new cadet positions; and (3) denial of the Sheriff’s request for an additional \$400 per ECSO employee to fund health insurance benefits. The County submits the following legal grounds as the basis to deny this appeal.

## **ARGUMENT**

### **A. THE COUNTY'S DECISION TO REJECT THE SHERIFF'S PAY PLAN WAS BASED UPON LOGIC AND REASON.**

The Sheriff asserts that his Pay Plan was rejected by the County in an arbitrary and capricious manner. In order to prevail on this issue, he must show that the rejection of his Pay Plan was not supported by logic or the necessary facts and, as a result, was rendered without reason or rationality. See Department of Health v. Bayfront Medical Center, Inc., 134 So.3d 1017, 1018 (Fla. 1<sup>st</sup> DCA 2012). As the County will show, the Sheriff cannot sustain his burden to demonstrate that the County disregarded logic and reason when deciding to reject the Sheriff's Pay Plan and modify the Sheriff's budget request.

#### **1) THE SHERIFF MAINTAINS FISCAL AUTONOMY OVER HIS PERSONNEL COSTS AND HAS NOT ALLOCATED FUNDS FROM HIS BUDGET TO ADDRESS COMPRESSION AND ATTRITION CONCERNS.**

The Sheriff has the judicially recognized autonomy to operate his office as he sees fit within six categories of allocated funds, including personnel expenditures. See, e.g., Weitzenfeld v. Dierks, 312 So. 2d 194, 196 (Fla. 1975); § 30.49(2)(c), Fla. Stat. (2017); Op. Att'y Gen. Fla. 93-92 (1993); Op. Att'y Gen. Fla. 93-14 (1993); Op. Att'y Gen. Fla. 75-52 (1979); Op. Att'y Gen. Fla. 79-49 (1979). With these funds, the Sheriff's independence is legislatively mandated to purchase supplies and equipment, hire and fire personnel, and to set salaries of such personnel. Section 30.53, Fla. Stat. (2017). Within this statutory framework, the Sheriff retains the discretion to allocate funds within each category, including personnel expenditures. The Sheriff asserts, however, his office has experienced unacceptable pay compression and employee attrition rates for a number of years and further contends he is unable to fund pay raises for sworn deputies.

As shown in the table below, only 62% of the Sheriff's personnel are sworn deputies; leaving almost 40% of the workforce as administrative staff. By comparison, the Sheriffs of Leon County and Santa Rosa County employ 78% and 71% as sworn deputies respectively.

<b>County</b>	<b>All Law Enforcement</b>	<b>Sworn</b>	<b>% Sworn</b>	<b>Jail</b>	<b>City Police Personnel</b>
Leon	312	243	78%	297	422
Escambia	710	442	62%	N/A	150
Santa Rosa	278	196	71%	110	N/A

(Data obtained from 2016/17 adopted budgets for Leon and Santa Rosa County Sheriffs, Sheriff Morgan's 2017/18 budget submittal, and the City of Tallahassee and City of Pensacola websites.)

The Sheriff currently employs more administrative staff in his Public Information Office than in Robbery/Homicide; more in Human Resources than in Major Crimes; more in Finance than in Special Victims. With almost half the workforce performing administrative functions, the Sheriff retains ample time and resources to produce promotional videos. Examples can be seen at <https://youtu.be/BHllru631Qs> and <https://www.facebook.com/OfficialECSO/videos/1652538961485729/>.

This raises a question for this Commission. If only 62% of the Sheriff's personnel are sworn (law enforcement) and the Sheriff asserts that sworn law enforcement are underpaid, how much of the \$2 million Pay Plan requested by the Sheriff would be distributed between sworn versus non-sworn personnel?

Furthermore, in prior years, the Sheriff has not exercised his budgetary discretion to address the pay disparities that he says are now urgent. For example, the Sheriff has not reallocated funds from lapsed salaries for unfilled deputy positions to pay his incumbent deputies, but rather uses these budgeted funds to pay sick leave balances.

*Resp. App. Ex. D.* In addition, the Sheriff's budget included an amount equal to the equivalent of a 3% pay raise for all ECSO employees, and the Sheriff retains the discretion to utilize these funds as he deems appropriate. *Id.* Yet, the Sheriff has argued that he is not free to reallocate these funds for starting deputy salary and to mid-range deputies (5-14 years of service) who are not keeping pace with salaries from other sheriff's offices.

Moreover, in previous fiscal years, the Sheriff has not been short-changed in his budget requests as to personnel expenditures. The following table shows the historic budget increases in personnel costs that have been granted to the Sheriff from 2013 through the 2018 requested budget:

<u>Fiscal Year</u>	<u>Personnel Budget</u>	<u>2012-2018 Change</u>	<u>Percentage Increase</u>
2012-13	\$ 41,225,419		
2013-14	\$ 42,306,897	\$ 1,081,478	+ 2.62%
2014-15	\$ 44,991,388	\$ 2,684,491	+ 6.35%
2015-16	\$ 47,726,815	\$ 2,735,427	+ 6.08%
2016-17	\$ 49,190,615	\$ 1,463,800	+ 3.07%
2017-18	\$ 50,491,848	\$ 1,301,233	+ 2.60%

See <https://myescambia.com/our-services/budget/information-and-related-documents>.

Despite a growing personnel budget coupled with the Sheriff's authority to determine salaries, establish pay grades, provide pay increases, or reduce the number of administrative positions, he has made no attempt to address pay compression and attrition by reallocating funds in his budget for personnel related expenditures.

Another example of the Sheriff's apparent disregard for compression and attrition concerns is the Sheriff's frivolous use of the Law Enforcement Trust Fund (LETF). The LETF is a fund established with proceeds from forfeitures pursuant to §§ 932.701-7062,

Fla. Stat. (2017). The Sheriff recommends expenditures from the fund, and pursuant to § 932.7055(5)(a), Fla. Stat. (2017), the allowable uses of proceeds in this fund are as follows:

For school resource officer, crime prevention, safe neighborhood, drug abuse education and prevention programs, or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for use in law enforcement vehicles, and providing matching funds to obtain federal grants. The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.

The County has given the Sheriff wide latitude to use the LETF in accordance with the requirements of the statute as he has deemed appropriate, and the County has never rejected his recommendations for expenditures from the trust fund. In fact, the Board recently requested an Attorney General's Opinion concerning the process by which the Sheriff has been using the LETF. *Resp. App. Ex. F.*

Historically, a very small percentage of the LETF was used for promotional materials or event sponsorships. However, over the last three years, the vast majority of the LETF has been utilized by the Sheriff for promotional materials or events. From 2008-2017, the Sheriff's LETF expenditures for promotional materials and events rose from 4% to 96% with notable increases in 2012 and 2016, which were election years. *Resp. App. Ex. G.*

Prior to filing this appeal, the Sheriff publicly announced a drastic and unilateral reduction in school resource officers, citing "budgetary concerns." His willingness to remove officers from their post of protecting school children is difficult to justify when one considers the almost \$1,500,000 the Sheriff has spent over the past three years on promotional activities and payments to outside agencies that have little or no relation to

law enforcement or crime prevention. The Sheriff's LETF expenditures included the following:

- American Heart Association – The Sheriff contributed **\$5,000** for 8 people to attend the “Dance Your Heart Out” gala ball.
- ARC Gateway – The Sheriff contributed **\$20,000** for 20 people to attend their “Wreaths of Joy” Gala.
- Council on Aging – The Sheriff contributed **\$10,000** for 20 tickets to attend the “Rat Pack Reunion Ball” and dinner at which *the Sheriff was a member* of the featured “Rat Pack.” Eight of the 20 invitations were designated for the “High Roller Sponsor Party.”
- Greater Pensacola Junior Golf Association – The Sheriff contributed **\$5,000** for 8 people to attend a banquet.
- Hadji Temple Association - The Sheriff contributed **\$5,000** for 8 people to participate in the “Hadji Shrine” annual golf tournament with free beer, food, door prizes and giveaways.
- Independence for the Blind – The Sheriff contributed **\$2,500** for 8 people to attend the annual “Eye Ball” with complimentary wine.
- King Richard Foundation – The Sheriff contributed **\$1,000** for 20 people to attend the “Beauty By the Bay” fashion show and dinner event.
- Panhandle Charitable Open – The Sheriff contributed **\$20,000** for ten people to attend the “Fore Charity Tee-Off Par-Tee” event.
- Pensacola Little Theater – The Sheriff contributed **\$2,500** for 20 people to attend their annual gala.
- Pensacola Opera – The Sheriff contributed **\$5,000** for 10 people to attend the annual “Jukebox Gala” event.
- Studer Community Institute – The Sheriff contributed **\$5,000** for a sponsorship package for 8 people to attend the “Light Up Learning” dinner event with special guest Josh Sitton of the Chicago Bears and 4 VIP ticket to a private sponsor meet and greet with current and former professional athletes.
- Teen Challenge – The Sheriff contributed **\$2,000** for 8 people to participate in a golf tournament.



- Veterans Memorial Park Foundation - The Sheriff donated **\$5,000** to the Foundation.
- WSRE Public Television– The Sheriff contributed **\$2,500** for 8 people to attend the “Milestones and Memories” annual Wine and Food Classic event.

*See Resp. App. Ex. H.*

While these are worthwhile charities, the County is charged with accounting for every penny of taxpayer dollars. Citizens have the right to expect that their tax dollars will be spent in a manner that supports the charge of the public office those dollars are funding. The Sheriff's questionable use of LETF dollars does not support the Sheriff's core mission of law enforcement and crime prevention activities, and belies the Sheriff's claim that he does not have the financial resources to adequately address personnel issues or otherwise fulfill his core mission.

In addition, while LETF funds are specifically authorized for school resource officers, the Sheriff has chosen not to utilize the LETF for this purpose during any of the last five years. Instead, the Sheriff has funded school resource officers from his personnel budget. The Sheriff recently announced to the School Board that he no longer had the financial resources to provide this service ostensibly due to the County's failure to meet his budget request. Had the Sheriff funded the school resource officers from the LETF, he would have more funds available in his personnel budget to address retention and attrition concerns and implement his Pay Plan. The Sheriff knew or should have known he could utilize LETF funds for school resource officers, but he chose not to do so. This was a seemingly illogical decision at best.

Likewise, the Sheriff reported 49 vacant positions in his Fiscal Year 2018 budget submittal, and pursuant to previous submittals, his office has averaged 38.25 vacancies between 2015 and 2018, which results in significant lapsed salary dollars available for

expenditures on other personnel matters. While it was within his discretion to do so, the Sheriff chose not to eliminate vacant positions and use the funds for pay increases or to otherwise address pay compression and attrition concerns.

It is relevant to note that attrition is not a situation unique to the Sheriff as the County's correctional officers demonstrate a similar attrition rate, as do our public safety dispatchers. *Resp. App. Ex. I*. Attrition is caused by many factors other than pay, as is clear from the Sheriff's exit interview information. (See Sheriff's Petition, Attachment 36, pg. 221.) Law enforcement has faced particularly daunting societal factors that influence attrition and retention. Law enforcement is seen as a more dangerous profession than previously. The media has covered many instances of street riots, police ambushes and sniper attacks that have all created an image of a very dangerous profession where one's life is on the line. This makes for a less than appealing career choice for some. Changes to the Florida Retirement System, health issues and dissatisfaction all play into attrition and pay increases may not be able to address these concerns.

As acknowledged by Chief Deputy Eric Haines, attrition cannot be solved solely with money. He describes two types of deputies who are being attrited. One group is the fledgling deputy. In Chief Deputy Haines' words, ". . . and then they hit the road for the first night, and they're, like, hey, this is a scary thing, I don't want to do this, and they're walking out the door." *Resp. App. Ex. J, pg. 25*. He recounted that four deputies quit the weekend of the Dallas sniper shooting in which several Dallas law enforcement officers were killed. He stated, "we had four officers quit that weekend that were in, like, phase one of their road training." *Id.* Chief Deputy Haines admitted that even when candidates are in the academy, he only has a 75% retention rate. "People do stupid things at the

academy or physical – you know, characteristics come out, moral character issues and things like that where we don't want them and we get rid of them there too. So, that is an issue." *Resp. App. Ex. J, pp. 26-27*. Further, the Chief Deputy acknowledges that all police agencies are in the same situation as the Sheriff in trying to keep deputies on the street after getting them through training. He admits that his deputy-to-population ratio would increase to 1.71 if all deputies made it through the required training. *Resp. App. Ex. J, pp. 33-34*.

National commentators and police experts have studied attrition and have documented a variety of factors for persons leaving law enforcement. It is not a simple pay issue as the Sheriff wants this Commission to believe. Police work is not an 8-5 p.m. job, but requires weekends and night work. As admitted by Chief Deputy Haines above, risks of injury or death have increased. Police officers are held in less esteem by the public than in years past. See Safia Samee Ali, *Police Shortage Hits Cities and Small Towns Across the Country*, NBC News (Mar. 18, 2017, 12:06 PM), <https://www.nbcnews.com/news/us-news/police-shortage-hit-cities-small-towns-across-country-n734721>; Timothy Roufa, *Why Police Departments are Facing Recruitment Problems*, the balance (June 4, 2017), <https://www.thebalance.com/why-police-departments-are-facing-recruitment-problems-974771>; *Police departments struggle to recruit enough officers*, The Economist (Jan. 5, 2017), <https://www.economist.com/news/united-states/21713898-stronger-economy-partly-blame-police-departments-struggle-recruit-enough>.

The Sheriff also has not prioritized his salaries and has created his own stagnant pay scales by curiously decreasing the ECSO's starting pay rate over the last few years.

Pursuant to FDLE statistics, from 2013-2016, the Sheriff reported a starting salary of \$31,726. However, in 2011, he reported a starting salary of \$32,895 and, in 2012, a starting salary of \$33,882. *Resp. App. Ex. K.* While the Sheriff asserts a lower starting pay makes recruitment and retention more difficult, he retains absolute authority to determine starting salaries for his personnel. By actually lowering beginning pay in spite of the annual increases budgeted to him, the Sheriff is, again, acting as a bystander while his deputies flee the scene.

Other discrepancies are evident when evaluating the Sheriff's proposed Pay Plan. The Sheriff reports to the FDLE a trainee's starting salary of \$31,726 as the starting salary. In actuality, the trainee will become a deputy after one year. The starting salary of a deputy is \$34,892. By reporting the trainee's salary as the starting salary, the Sheriff is creating a perceived pay disparity between the ECSO and other agencies where one does not exist. This could obviously affect recruitment. In fact, had the Sheriff continued the practice of adding annual 3% pay increases to the starting salary for his deputies, the starting salary would now be more than \$40,000.00. *Resp. App. Ex. L.*

Further, the Sheriff's starting salary compares much more favorably than he admits. Section 30.49(3), Fla. Stat. (2017), requires the Sheriff to submit any budget request with all relevant and pertinent information necessary for the Board of County Commissioners. The Sheriff's website lists the starting salary for a cadet, a position that is paid as a full-time employee while attending a law enforcement academy, at \$28,600. The Sheriff has reported to the FDLE that the starting salary for a deputy is \$31,726; however, in his budget request, his minimum starting salary for both cadets and deputies was submitted and funded at \$35,036.64.

A review of Exhibit 13 of the Sheriff's Petition shows there is a discrepancy between what he submits as his starting salaries in his budget request to the County and what he is reporting to FDLE as his starting salaries. The difference is \$6,436.64 per cadet, and \$3,310.64 per deputy. Clearly, the County supports paying law enforcement at a competitive rate, but the Sheriff appears to be creating a pay disparity where one does not exist. In addition to funding at a higher level than was reported to the FDLE, the County provided funding for a 3% pay raise. By the Sheriff's own budget submission, this would raise the starting salary to \$36,087.74.

Despite the Sheriff's argument that the County fund his Pay Plan for starting and mid-level deputies, the Sheriff's budget request includes more than \$70,000 for "assignment pays" for employees ranked lieutenant and higher, *and even includes a \$2,000 "assignment pay" request for the Sheriff himself.* Additionally, the Sheriff has agreed by contract with his law enforcement collective bargaining group, the PBA, to a healthy set of automatic pay raises for his employees based on years of service. *Resp. App. Ex. M.* The Sheriff's actual pay scale compares quite favorably to other agencies, including the County's Corrections Department. The Board pays its correctional officer trainees \$31,500 and its beginning correctional officers \$34,590. *Resp. App. Ex. N.* Contrary to the Sheriff's contention, these are not higher salaries than his, and unlike most deputies, correctional officers are typically not provided with vehicles and fuel at taxpayer expense. Other state agencies and local law enforcement have comparable salaries. *Resp. App. Ex. O.*

The Sheriff claims he cannot work with the resources at his disposal and engages in unseemly advertising campaigns to proclaim that the County has not provided support

and funding towards protecting its own citizens. To the contrary, the facts clearly show that the Sheriff has failed to utilize the funds as budgeted to further his core mission to perform law enforcement and crime prevention functions.

**2) THE COUNTY HAS EXPERIENCED ADDITIONAL INMATE HOUSING COSTS IN THE WAKE OF A FLOOD AND CATASTROPHIC EXPLOSION THAT DESTROYED THE CENTRAL BOOKING AND DETENTION FACILITY.**

The Board continues to shoulder significant budgetary pressures which must be carefully weighed in making its determination that the Fiscal Year 2018 budget fairly met the needs of its departments and its Constitutional Officers. One significant budgetary factor is the ever increasing arrest rate which, in turn, results in more inmates to be housed at the County's expense.

On October 1, 2013, the Board assumed responsibility for corrections from the Sheriff. Since then, the cost of operating and staffing the jail has been the Board's budgetary responsibility. Soon after, in April 2014, the County suffered an apocalyptic flood event that led to a tragic explosion, destroying one of the two primary county correctional facilities utilized for inmate housing. Until a new multi-million dollar jail facility is constructed, hundreds of inmates are currently being housed in neighboring counties at significant expense to the County. In addition to the \$37.3 million required to annually operate the remaining correctional facilities in Escambia County, the County also spends \$4,106,250 per year to house inmates in other counties.

This extreme financial pressure of housing inmates in other counties and the pending construction of a new jail facility, funded in part by a bond issuance of \$87,163,448, means that the County must be judicious in budgeting funds this fiscal year. Although the County's general fund grew \$5,563,439 this fiscal year due to an

extraordinary transfer from the Emergency Medical Services reserve fund, the cost of housing inmates plus the increase provided to the Sheriff's budget equaled 97% of the increase to the general fund.

**3) THE FOX LAWSON STUDY AND THE PRELIMINARY EVERGREEN STUDY ARE MERELY GUIDANCE NOT ORDINANCES COMMANDING PAYMENT OF COMPENSATION.**

The Sheriff hinges much of his argument of the County's arbitrary and capricious disregard of his Pay Plan on two compensation studies: the Fox Lawson Study and the Evergreen Study. However, these compensation studies are not ordinances commanding adherence under penalty by law. The Sheriff is free to follow the recommendations in those studies or reject them. The Evergreen Study is in its preliminary phase and has not even been accepted by the County. The Sheriff glosses over this untidy fact. The Sheriff's Chief Deputy Haines now pines for the days when there was a Civil Service Board which governed pay increases and disciplinary actions. This Board was abolished by the Legislature in 2007. Both the County and the Sheriff's predecessor, Sheriff McNesby, were in favor of its sunseting. Even with its abolition, the Sheriff presumably made decisions to compensate his deputies on the basis of what he deemed was fair. The Sheriff does not explain how his budget request for fiscal year 2018 would have fared much better with the existence of a Civil Service Board.

More importantly, the Sheriff disregards economic reality in asserting the need for his Pay Plan. As pointed out by Commissioner Barry during the July 11, 2017 Committee of the Whole (COW) meeting in questioning Chief Deputy Haines, deputy positions funded, but not yet filled (lapsed), could have been used to pay deputies currently on the street to raise their salaries. *Resp. App. Ex. J, pp. 15-18*. Chief Deputy Haines does not

explain why this was not considered by the Sheriff, but only alleges that public safety would be at risk if this strategy were followed. *Resp. App. Ex. J, pg. 18*. As Commissioner Robinson observed, the compression issue was brought about in large part because of the significant downturn in the economy from 2008 through 2011. *Resp. App. Ex. J, pg. 19*. The Sheriff does not show in his Petition how he remedied this “compression” once the economy rebounded.

**4) THE COUNTY MADE A GOOD FAITH EFFORT TO ENGAGE THE SHERIFF IN DISCUSSIONS TO REACH AN AGREEMENT ON THE BUDGET.**

As described earlier, after submitting his budget request, the Sheriff commenced a months-long media campaign to garner public support for his requested budget, to include advertising on television networks, billboards, radio stations, and websites such as YouTube. Examples of these media spots included a commercial that aired on the ABC television affiliate and other networks that referenced deputies shot in the line of duty and asked citizens to call their commissioners to request support for his budget, with the commercial showing the pictures and office phone numbers of each commissioner. The Sheriff also ran a 27-minute YouTube video explaining his budget request. In this promotional campaign, the Sheriff touted he would take his budget to the Governor’s Office if he were not granted what he requested. *Resp. App. Ex. P*. The overarching theme in all of the Sheriff’s publicity ploys, including statements from the Sheriff to the Press, was that unless his Pay Plan was funded in its entirety, he was “going to Tallahassee” with an appeal. While the Sheriff has argued his deputies are under paid, the County’s efforts to obtain his employee’s W-2 forms through a public records request have yet to be satisfied.



Despite these subversive tactics, the Board attempted in good faith to determine the Sheriff's budgetary needs and how they could be balanced with the County's other budgetary requirements and obligations. For example, on July 11, 2017, the Chief Deputy presented a PowerPoint to the Board at a Committee of the Whole. *Resp. App. Ex. Q.* Commissioners attempted to meet with the Sheriff, as did the County Administrator. *Resp. App. Ex. R.* The message relayed from the Sheriff's Office was that there was no need for discussion concerning his budget submittal.

Further, at least one Board member proposed a compromise during the final budget hearing on September 26, 2017. At that hearing, Commissioner Grover Robinson tried to find middle ground that would satisfy the Sheriff and made a motion that would allow an across the board 2% pay raise for all employees, including the Sheriff's, then take an additional \$1.25 million that would be allocated only to the Sheriff to use to address pay issues as he saw appropriate. *Resp. App. Ex. S*, pp. 20-22. Although the Sheriff and other representatives of the Sheriff were present, they declined to speak in support of this proposal. *Id.* Following significant deliberation, it was determined by the Board this was not a satisfactory allocation of funds. *Id.*

The Sheriff's statement that the County has refused to negotiate is a blatant misrepresentation of fact. Beginning in July, Commissioner Bergosh attempted to meet with the Sheriff to discuss the budget but was rebuked. As recently as October 9, 2017, the County Administrator, Jack Brown, Assistant County Administrator, Amy Lovoy and Chief Deputy, Eric Haines discussed issues relating to this appeal to include discussion concerning accommodating the Sheriff's healthcare requests. Mr. Brown did not state at the meeting, or any other time, "let the appeal go forward," or similar statements

concerning the Sheriff's budget request. The County remains willing to negotiate in good faith with the Sheriff to resolve this issue. *Resp. App. Ex. T.*

**5) PAY COMPRESSION IS A RESULT OF THE ECONOMIC RECESSION.**

The Sheriff is not using the term "pay compression" in the appropriate context. Pay compression occurs when starting salaries become closer to the level of those deputies who have been employed for more than five years. Pay compression does not mean the gap from an economic downturn between deputies' salaries who were employed during that economic downturn and those salaries when economic prosperity returns. The latter is an economic situation which affects all employers, whether public or private. The County has no control over the revenues that it generates from its tax base when the economy suffers a downturn. However, the Sheriff is not helpless and can exercise his discretion in several ways.

The Sheriff's plan to address pay compression will not solve the multi-year financial impact of a recession. Those mid-level deputies whose salaries have not kept pace with the economy can be remedied by the Sheriff through judicious use of available resources. Instead, the Sheriff has made paramount charitable donations, public relations and media campaigns, and pay raises to his non-sworn personnel.

Escambia County and many Florida counties are still experiencing the effects of the economic recession. Due to several years of decreased valuations and lost ad valorem tax revenues and other economic impacts, the total budget of the County today is less than it was ten years ago. In 2007, the Board oversaw a total budget of \$458,839,188 compared to the total budget overseen by the Board during the fiscal year 2018 budget hearings, which was \$455,840,072. There simply is less money available

than there used to be. In 2007, 2009, 2010 and 2012, it was not financially feasible to provide raises, and that has impacted not just the Sheriff, but most of the County's departments and Constitutional Officers. The Sheriff's "Timeline of ECSO Raises" clearly shows the Sheriff's deputies received pay increases in all but the four years cited above. (See Sheriff's Petition, Attachment 13, Pg. 138.) The recession was not the fault of the Board but, instead, was a national phenomenon.

**B. THE SHERIFF FAILS TO IDENTIFY ANY CONSTITUTIONAL OR STATUTORY DUTIES WHICH WOULD BE IMPAIRED BY THE COUNTY REJECTING THE SHERIFF'S PLAN TO ADDRESS COMPRESSION AND RETENTION.**

Sheriffs do not have any constitutionally mandated duties; their duties are solely established by statute. Cf. Art. VIII, § 1(d), Fla. Const.; § 30.15, Fla. Stat. (2017). A Sheriff's statutory duties include: executing all forms or writs, warrants and other forms of legal process; attending court sessions (court security officers); conserving the peace in their counties; serving as county timber agents; and, if appointed by their county's board of county commissioners, operating the county jail. See §§ 30.15, 951.061, Fla. Stat. (2017).

**1) THE BOARD'S ACTION OF INCREASING THE SHERIFF'S BUDGET BY LESS THAN THE TOTAL AMOUNT HE REQUESTED DID NOT UNREASONABLY IMPAIR THE SHERIFF'S ABILITY TO FULFILL HIS STATUTORY OBLIGATIONS.**

The Sheriff does not operate the jail, and the Sheriff has not shown how he has been unable to satisfactorily meet any of the other statutory duties he is required to perform. In fact, his appeal does not cite to any statutory obligation that he has been unable to meet, even prior to this budget increase. Likewise, in the Chief Deputy's budget presentation to the Board on July 11, 2017, there was no mention of any duty or obligation the Sheriff has been unable to provide. *Resp. App. Ex. Q.*

Additionally, in the media campaign waged by the Sheriff over several months leading up to the budget hearings, the drumbeat of advertisements, radio interviews, billboards, and YouTube videos disseminated by the Sheriff advocated for increased pay for sworn deputies, and not that the Sheriff was facing difficulty meeting his duties. Had there been a concern by the Sheriff that he had difficulty in fulfilling those requirements, there were ample opportunities to raise these concerns before the Board. Even after the Chief Deputy's budget presentation, there were several regular meetings held by the Board prior to the final budget hearing. The Sheriff and his representatives were legally entitled to speak at any of those meetings. Section 286.0114, Fla. Stat. (2017).

To the contrary, the Sheriff has trumpeted the fact that he has been more than able to perform his statutory obligations, even prior to this year's budget request. According to FDLE statistics, the Sheriff has increased his arrest rate over each of the last two years, although the crime rate declined in each of those years. The same data for the City of Pensacola, the largest incorporated area within Escambia County, shows that the City's police force had a decrease in its arrest rate during the same timeframe, reflecting an arrest rate that closely parallels the decrease in the crime rate. In fact, the Sheriff brags in this appeal that the "ECSO deputies make more arrests per deputy than any Sheriff's Office in the State and twice the rate of state average." (Sheriff's Petition, pg. 22.) A graph is included to illustrate that he is more than capable of meeting his statutory obligations by his arrest rate. *Resp. App. Ex. U.*

Additionally, the Sheriff has been able to perform several functions that he is not obligated to perform by Florida law. This elevated level of service includes functions cited in his appeal, and includes school resource officers, front door screeners at the

courthouse, funeral escorts, clean sweeps of neighborhoods and the parking enforcement specialist program (Sheriff's Petition, pg. 22), as well as participation by sworn deputies in parades, providing escorts at celebratory events and participation in television shows related to law enforcement. The Sheriff concedes that these are supplemental functions when he threatens to eliminate or curtail them, in addition to reducing patrols in areas of certain commissioners districts. *Resp. App. Ex. V*. In fact, the Sheriff targets popular programs that have emotional impact if eliminated. Even then, he decided to eliminate them the last day of the fiscal year, showing he was able to provide those services until that specific date. As the Sheriff has met his statutory obligations at an elevated level of service and also provides supplemental services even before receiving the Fiscal Year 2018 budget increase, this shows the Board has not impaired his ability to meet his statutory obligations.

**2) THE SHERIFF ARGUES ERRONEOUSLY THAT IT IS NECESSARY FOR HIM TO IMPROVE HIS RATIO OF LAW ENFORCEMENT OFFICERS TO THE POPULATION.**

The Sheriff argues that he needs his requested funds in order to improve his ratio of law enforcement officers to the general population. According to the 2016 Criminal Justice Agency Profile Report (CJAP), the actual statewide ratio for Sheriff's law enforcement is 1.72 officers per 1,000 persons, not 1.91 as depicted in the Sheriff's budget presentation. This report can be found at the FDLE website at <https://www.fdle.fl.us/cms/home.aspx>. Municipalities often have higher ratios of law enforcement officers yet higher crime rates. For example, police departments, which are typically in urban areas with substantially higher crime rates, report a ratio of 2.61 officers per 1,000 persons.

Regardless, there does not appear to be a correlation between crime and the ratio of Sheriff's law enforcement officers to the general population. If one compares the ratio to other counties having a ratio that is equal to, or less, it would appear there is not a correlation. The Sheriff's "Law Enforcement Officer Only Ratio" reported to the FDLE for the 2016 Criminal Justice Agency Profile Report is 1.43 officers. Below is a listing of the counties in the State of Florida with a ratio equal to or less than Escambia County, plus their respective crime rates per 100,000 and their population served directly by the sheriff of the county. <sup>2</sup>

**Ratio Compared to Crime Rate for Counties With an Equal Ratio of Law Enforcement Officers or Less**

<b><u>County:</u></b>	<b><u>Ratio:</u></b>	<b><u>Crime Rate Per 100,000:</u></b>	<b><u>Population Served by Sheriff:</u></b>
Charlotte	1.41	1,864.1	152,082
Collier	1.02	1,574.0	313,536
Dixie	1.06	2,713.5	15,073
<b>Escambia</b>	<b>1.43</b>	<b>3,801.5</b>	<b>256,296</b>
Flagler	1.41	1,953.1	95,592
Hernando	1.34	2,055.4	171,497
Hillsborough	1.30	1,697.4	924,013
Lake	1.28	1,961.3	161,012
Lee	1.01	1,772.5	427,366
Manatee	1.41	2,414.9	283,244
Marion	1.05	1,819.0	279,387
Pasco	1.05	2,453.8	455,463
Santa Rosa	1.10	1,172.3	151,153
Sarasota	1.32	1,993.2	254,863

The Sheriff contends that not increasing this ratio could lead to higher crime in Escambia County. The table below provides a comparison of counties with a crime rate of 2,500 per 100,000 as listed in the "State of Florida 2017 Crime in Florida Report." As stated, all 67 counties are different, and the reasons for crime rates are complex and

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<sup>2</sup> This information can be found on the FDLE website by clicking on the QUICK LINKS tab, scroll down to the link titled Criminal Justice Agency Profile Report, the scrolling down to and clicking on the Sheriff's Office Link and the clicking on the link "SO-Ratios."

varied. Those counties with a crime rate of 2,500 per 100,000 as presented in the “State of Florida 2017 Crime in Florida Report” all reported a ratio higher than Escambia County.

**Ratio Compared to Crime Rate for Counties with a Crime Rate of 2,500 Per 100,000 or Greater**

<b><u>County:</u></b>	<b><u>Ratio:</u></b>	<b><u>Crime Rate Per 100,000:</u></b>	<b><u>Population Served by Sheriff According to 2017 Crime Report</u></b>
Bay	3.01	3,071.2	97,431
Broward	2.12	7,765.7	14,783
DeSoto	1.89	2,620.6	27,513
<b>Escambia</b>	<b>1.43</b>	<b>3,801.5</b>	<b>256,296</b>
Hendry	2.27	2,570.3	30,853
Jacksonville/Duval	2.16	4,210.0	879,848
Leon	2.35	2,848.1	97,996
Miami-Dade	2.18	3,619.9	1,176,731
Okaloosa	2.26	2,843.4	128,085
Okeechobee	2.07	3,077.7	35,254
Orange	1.83	3,761.6	813,458
Osceola	1.95	2,603.8	211,463
Taylor	1.93	2,896.0	15,504
Walton	2.85	2,585.8	57,467

It would seem reasonable to assume that a higher crime rate would require more sworn officers to handle the increased volume of incidents. However, it simply is not true that a better ratio equates to less crime.

**3) THE SHERIFF HAS NO LEGAL AUTHORITY TO QUESTION BOARD DECISIONS, PROGRAMS, OR PRIORITIES.**

The Sheriff criticizes the Board for not prioritizing his wants above other County programs and questions why the Board was willing to impose a special assessment to address needs other than those of the Sheriff. Florida law clearly establishes that the Sheriff has no authority to question the Board’s legislative priorities, programs or special assessments. Escambia County is a non-charter county. Pursuant to Article VIII, Section 1(e), of the Florida Constitution, “[e]xcept when otherwise provided by county charter, the

governing body of each county shall be a board of county commissioners ..." and pursuant to Article VIII, Section 1(f), of the Florida Constitution, those "[c]ounties not operating under county charters shall have such power of self-government as is provided by general or special law." The Board serves as the legislative body that not only can, but must weigh the needs of the community and determine how those needs can be met. Ch. 125, Fla. Stat. (2017).

The Board has total authority over special assessments, including the MSBU (municipal services benefit unit) for fire services, and has the power to decide the methodology of the special assessment in accordance with § 125.01(q) and (r), Florida Statutes (2017). There is no point of entry for the Sheriff to object to any special assessment. In this case, the Board determined that there was a dire need for increased fire services. The County suffered multiple fatal fire incidents, including the deaths of children, which led the Board to prioritize identified fire needs and fund them.

Likewise, establishment of the Board's intern program is a legislative decision the Sheriff has no point of entry to challenge. The Board, as the legislative decision makers, must address a panoply of community needs and, to that end, established the intern program as a means to expose youth to local government and employment opportunities. Youth employment has been identified as a legislative concern by the Board and the intern program is not the only initiative the Board has adopted to address it. Other programs and allocations include a broader youth employment program as well as economic development initiatives to help grow job opportunities within the county. The Sheriff does not have the obligation to address this issue and the Sheriff does not have the legal authority to challenge those expenditures.



**C. THE BOARD OF COUNTY COMMISSIONERS DID NOT ACT IN AN ARBITRARY AND CAPRICIOUS MANNER WHEN IT CUT AN INCREASE IN FUNDING FOR SIX NEW CADET POSITIONS.**

In the first instance, it is relevant to note that the Sheriff need not seek the approval of the Board in order to create new positions, cadets or otherwise. In fact, he already actively recruits new cadets with frequent advertisements.

As previously articulated, the Sheriff retains absolute authority to, not only create new positions, but to allocate funds within his budget for personnel expenditures. The Sheriff has simply failed to prioritize available funding for this purpose and, instead, would rather the County provide additional funds. Were the creation of these positions a true priority for the Sheriff, he could have used his budgeted funds more efficiently to establish the six cadet positions.

For example, he could have agreed to a less liberal sick leave payment policy. The Sheriff's current sick leave policy allows an employee who resigns or dies to be paid for half of all sick leave accumulated up to 940 hours; those who become disabled are to be paid for all accumulated sick leave. *Resp. App. Ex. W, pp. 14-15*. Additionally, the Sheriff contractually agreed to this policy in the collective bargaining agreement he holds with his unionized employees. *Resp. App. Ex. X, pg. 23*. By comparison, the County's sick leave payment policy does not allow an employee who resigns or dies to cash out any accumulated sick leave. *Resp. App. Ex. Y, pg. 16*. As seen in the attached spreadsheet, the Sheriff's liberal allowance for sick leave payments results in a substantial leave liability. *Resp. App. Ex. Z*.

A further example, the Sheriff has not chosen to reallocate funds from lapsed salaries for vacant positions in order to fund new cadet positions. Rather, the Sheriff utilizes these funds to pay the aforementioned sick leave payments.

Another example of the Sheriff's disregard for funding new cadet positions is the aforementioned use of LETF funds. Rather than contributing to charitable organizations, the Sheriff could utilize LETF money for expenditures like school resource officers, and reserve funds in his personnel budget for new cadet positions, as well as providing pay increases for tenured officers in order to address his pay compression and attrition concerns.

Again, the Sheriff retains absolute authority to reallocate available funding within his budget to adequately address what he contends are critical funding deficits. The Sheriff's unwillingness to manage his budget more responsibly and prioritize funds for personnel costs does not justify a budget increase. Rather, as with the Sheriff's Pay Plan, the County made a well-reasoned and logical decision to reject the Sheriff's request for additional funding for six new cadet positions.

**D. THE BOARD OF COUNTY COMMISSIONERS DID NOT ACT IN AN ARBITRARY AND CAPRICIOUS MANNER WHEN IT CUT AN INCREASE IN FUNDING FOR EMPLOYEE HEALTHCARE.**

The Sheriff's appeal suggests that the Sheriff's Office is being treated unfairly because the County did not fund the requested amount for health insurance. The County has repeatedly requested documentation to support the Sheriff's request, but as of the writing of this response, it has not been provided. Again, § 30.49(3), Florida Statutes, requires the Sheriff to submit any budget request with all relevant and pertinent

information necessary for the Board of County Commissioners to make an informed decision.

Every County department and constitutional officer is budgeted \$9,500 for health/life/dental insurances for all full-time employees (FTE), even if an individual opts out of the insurance program. If the cost of these insurances exceeds \$9,500 per FTE, all departments and constitutional officers are expected to make up the difference. This amount is set in February of each year, and this information is distributed to all relevant agencies at that time.

The County uses an internal services fund (ISF) for the health/life/dental insurance program to account for all charges from every department and constitutional officer who participates in the health/life/dental insurance program. It is also used to pay the costs associated with these programs every year.

In contrast to the County, the Sheriff created an ISF as a means to reserve funds for sick leave payments every year. By reserving funds in the Sheriff's ISF, he has retained (rather than returned to the County, as required by law) more than \$6,500,000 in cash. The County discovered this fund and demanded the Sheriff return of these monies, but rather than return the money, the Sheriff opted to spend the majority on sick leave payments for certain employees who, in violation of the Sheriff's own policies, had been allowed to accrue sick leave in excess of their policy caps.

The Sheriff has chosen to keep employee contributions for health insurances low, so low that it is difficult to find comparable agencies. The chart below shows exactly how low the Sheriff keeps employee contributions as compared to the County:

Organization	Deductible	Co-insurance	Max out-of-pocket	Employee	Employee +Children	Employee +Spouse	Family
BOCC High Plan	\$500	20%	\$2,000	\$73.44	\$297.45	\$305.27	\$431.42
BOCC Low Plan	\$750	20%	\$3,000	\$31.49	\$186.98	\$209.05	\$258.57
Sheriff High Plan	\$500	10%	\$2,500	\$9.50	\$131.26	\$144.86	\$170.42
Sheriff Low Plan	\$750	20%	\$3,000	\$4.74	\$65.42	\$72.18	\$102.54

While the Board of County Commissioners' employees are contributing \$73.44 towards their insurance on the high plan, the Sheriff's employees are only contributing \$9.50; *yet each agency is allotted the same \$9,500 per FTE.* As such, the Sheriff has chosen to allow his employees to spend 673% (\$63.94) less on their health insurance than the Board's employees spend on their insurance.

In addition, the Sheriff contributes \$300/\$200 to a Health Reimbursement Account for the low and high plans respectively to "buy-down" employees' deductibles. Meanwhile, the Board has increased premiums 21% over the last 2 years to stay within budget. While the County isn't questioning the Sheriff's tactical decision to keep health insurance contributions from employees extremely low, it must take issue with the claim that salaries are insufficient compared to other entities whose health insurance contributions are substantially higher. Escambia County supports the Sheriff's Department by allotting them the same \$9,500 per FTE that it allows for all employees of the County. This decision has resulted in an additional benefit for his employees, and the Sheriff cannot in good faith blame the County for the consequences of his budgetary decisions and priorities.

### **CONCLUSION**

The County has the utmost respect for law enforcement and all first responders and wants to ensure the safety of its citizenry but cannot allow one constitutional officer to receive a disproportionate share of the County's tax dollars to the detriment of providing other vital services that are essential for the functioning of the County as a whole. Based upon the foregoing, the Escambia County Board of County Commissioners respectfully requests the Administration Commission deny the Sheriff's Petition and affirm the Board's adopted Fiscal Year 2018 budget.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of October, 2017.

ESCAMBIA COUNTY ATTORNEY'S OFFICE

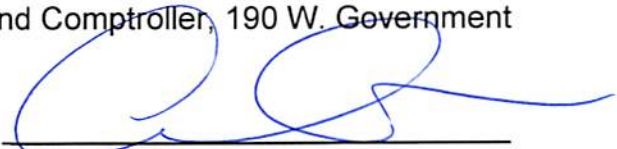


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Alison P. Rogers, County Attorney  
Florida Bar No. 011230  
Charles V. Pepler, Deputy County Attorney  
Florida Bar No. 239739  
Kristin D. Hual, Senior Assistant County Attorney  
Florida Bar No. 0594407  
221 Palafox Place, Suite 430  
Pensacola, FL 32502  
Attorneys for Respondent, Escambia County

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 24, 2017, I electronically filed the foregoing with the Clerk of the Administration Commission by using e-filing and hand-delivered 10 copies; a copy was hand-delivered to David Morgan the Escambia County Sheriff at 1700 West Leonard Street, Pensacola, Florida 32501; and a copy was hand-delivered to Pam Childers the Clerk of the Circuit Court and Comptroller, 190 W. Government Street, Pensacola, Florida 32502.



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Alison P. Rogers, County Attorney