



PRELIMINARY STATEMENT

On or about April 12, 2003, Petitioner filed a Charge of Discrimination based solely on race with the Florida Commission on Human Relations. On April 21, 2004, the Commission entered a "Determination: No Cause." Petitioner timely filed her Petition for Relief, and the case was referred to the Division of Administrative Hearings on or about May 13, 2004.

The cause was continued several times to accommodate the parties and due to the sequential hurricanes of 2004.

At the disputed-fact hearing on January 14, 2005, the Prehearing Stipulation was admitted as Joint Exhibit A. Petitioner testified on her own behalf and presented the oral testimony of Ernie Magaha, Jean Kassab, Janice Kilgore, Cheryl Lively, George Touart, and Wanda McBrearty. Petitioner's Exhibits P-1, P-2, and P-4 through P-15, were admitted in evidence. Respondent called no additional witnesses. Respondent's Exhibits R-A through R-S were admitted in evidence.

A Transcript was filed on February 22, 2005. Respondent filed a Proposed Recommended Order on March 28, 2005, which has been considered. Petitioner indicated she would not file a proposal.

FINDINGS OF FACT

1. Petitioner is an African-American female.

2. Petitioner was first associated with Escambia County as an employee of a firm of certified public accountants, to which firm Escambia County had outsourced an internal audit of a specific County project for January 1999 through February 2000. In that capacity, Petitioner had been a regular employee of an independent contractor working for the County.

3. Thereafter, Petitioner was hired as an internal audit consultant to work directly for the Clerk of the Circuit Court in and for Escambia County from February 2000 through April 2001. This was a regular employee position with the County. Petitioner apparently resigned this position because of what she perceived to be a hostile supervisor, Jean Kassab, Acting Director of Administrative Services for the County, or due to what Petitioner perceived as a hostile work environment, unrelated to race.

4. Petitioner was hired by Respondent Escambia County Board of County Commissioners (BCC) as an unclassified, at-will employee for the specially-created position of Inspector General (IG), with a start date of October 8, 2001. It is with regard to this position that she seeks relief in this case.

5. On August 2, 2001, Commissioner Banjanin had expressed his desire to create the position of IG to act as a liaison to

the BCC in office at that time. Apparently, there was some mistrust by Banjanin and other Commissioners of the way money was being utilized throughout County government, including expenditures by the Clerk's Office. Also, there was mistrust by Commission members of each other, and some Commissioners had a desire to use an IG who reported only to the BCC to "go behind" each other's financial actions.

6. On September 20, 2001, the BCC then in office voted unanimously to create the IG position. That BCC was composed of four Caucasian males and one African-American male.

7. Prior to the September 20, 2001, BCC vote, there was no discussion or at least no significant discussion, about whether creating an IG position would amount to duplicating internal audits and services already provided by the Clerk's Office.

8. At the BCC's request, Wanda McBrearty, Deputy Finance Director of the Clerk of the Court, prepared a description of the duties of the IG. She did not recall any discussions at that time concerning whether the Clerk's Office could provide the same services as the IG.

9. Upon the testimony of Ernie Lee Magaha, Clerk of the Court, and George Touart, who was hired as County Administrator in late April 2002, it is found that the IG's job description duplicated services that the Clerk of the Circuit Court is

required to provide, pursuant to Article VIII of the Florida Constitution.

10. Petitioner entered into her at-will job as IG on or about October 8, 2001, at a salary of approximately \$75,000.00 per year.

11. Petitioner testified that she immediately met with resistance and unfriendliness on behalf of members of the Clerk's Office, but she described nothing that was overtly racial. Most of the behavior she described was, if anything, motivated by resentment of Petitioner's high salary and position or motivated by apprehension of which projects and whom she might audit.

12. Petitioner also related that she suffered emotionally due to written and oral opposition by Board staff, local media, the general public, and eventually County Commissioners. On the whole, these oral and written attacks appear to overwhelmingly fall in the category of opposition to paying an IG such a high salary for duplicative efforts, or opposition simply to paying any County employee such a high salary.

13. Some attacks on Petitioner clearly involved attacking the Commissioners who had voted for creation of the IG position. Some critics also attacked Petitioner's personal integrity and competence on the past out-sourced audit she presented while she had been employed by the firm of certified public accountants,

or on other grounds. However, petty politics, rather than race, seems to have been the motive, as well as the expression, of these personal attacks.

14. On May 10, 2002, the BCC's make-up changed. Without belaboring the history of the gubernatorial removal for cause of some old BCC members and appointment of some new BCC members, it is enough to point out that the "new BCC" retained only Commissioner Banjanin. The "new" BCC was then composed of one African-American female, three Caucasian males, and one Caucasian female.

15. One of the last acts of the "old BCC" had been to hire George Touart as its full-time, professionally qualified County Administrator. Mr. Touart is Caucasian. He was highly qualified by education, training, and experience for the position of County Administrator.

16. Mr. Touart never attended a meeting of the old BCC and never discussed the position of IG with any of its members.

17. Mr. Touart's practical administrative experience led him to perform the equivalent of a process and position inventory of all Escambia County positions and functions. That inventory revealed, and Mr. Touart recognized, that there was a duplication of services assigned to Petitioner as IG, and those services assigned by law to the Clerk of the Court. He also determined that the County's Office of Economic Development was

duplicative of the marketing services provided by the local Chamber of Commerce.

18. He further discovered that many man-hours were being wasted by each County Division replying to citizens and media about the same subjects and, even so, correct information was not always being provided. He felt that both problems could be eliminated and that eliminating those problems would also reduce much of the local political wrangling and media frenzy. Therefore, Mr. Touart created a Public Information Office and conducted a nationwide search for a Public Information Officer. He then hired the best applicant. There was no evidence that Petitioner was qualified in that field or that she applied.

19. Dee Dee Ritchie was the County's Caucasian, female Director of Economic Development, a position of similar status and salary to Respondent's position as IG. That position also had been created by the old BCC. Petitioner identified Ms. Ritchie as an employee of the County who was similarly situated to herself.

20. Mr. Touart discussed with Ms. Ritchie his view that her job as Director of Economic Development was duplicative of the functions of the local Chamber of Commerce. He told her that he was going to seek the abolition of her \$75,000.00 per year position. He offered her a position with the County's Department of Environmental and Neighborhood Services, where she

could use her professional education, training and experience as an educator, but Ms. Ritchie declined and resigned. It was not shown that Petitioner was qualified for the position offered Ms. Ritchie or that it paid \$75,000.00 per year.

21. When, prior to May 10, 2002, the Governor of Florida had suspended some of the "old Commissioners," Mr. Touart had assisted some of those old Commissioners' aides in making lateral transfers to more secure similarly situated positions, but no aide was making \$75,000.00 per year, and none of them were moved to \$75,000.00 per year positions.

22. Mr. Touart discussed with Petitioner his view that her job was duplicative of duties constitutionally imposed on the Clerk's office. It is not clear if he told Petitioner he was going to seek to abolish her position, but clearly, she understood that was his intent.

23. There were no similarly situated \$75,000.00 per year jobs within the County to which Petitioner could be reassigned.

24. However, there is no dispute that Mr. Touart suggested that Petitioner check with the County's Human Resources Director for other employment. He also spoke with Ms. McBrearty about hiring Petitioner back in the Clerk's Office. However, Mr. Touart made no commitment of further employment to Petitioner, and she made no commitment to him to take a lesser County job if one were offered.



25. Petitioner agreed at hearing that Mr. Touart could have had budget considerations in mind in deciding to abolish her position.

26. Ms. McBrearty discussed with Mr. Magaha, Clerk of the Court, the possibility of hiring Petitioner. Due to the "political fallout" and Petitioner's connection with the suspended commissioners, Mr. Magaha did not think it appropriate for him to hire Petitioner.

27. Petitioner agreed that Ms. McBrearty's reluctance to recommend hiring her was due to "political fallout" from Petitioner's connection with the suspended commissioners and not because of racial prejudice.

28. Mr. Touart recommended to the new BCC that it abolish the IG position at the same time he recommended abolishing the Department of Economic Development.

29. On June 20, 2002, the new BCC voted unanimously to abolish the IG.

30. Petitioner was informed of the vote by a letter dated June 21, 2002, from Mr. Touart. The letter informed Petitioner that the termination of her position would take place at the end of 90 days. This was the County's standard practice for termination of unclassified service.

31. In an e-mail dated July 1, 2002, to Janice Kilgore, who had been Acting County Administrator prior to Mr. Touart's

appointment, Petitioner announced her intent to leave Escambia County immediately and to set up her own accounting practice in Fort Walton Beach, Florida. Indeed, Petitioner had hinted to Mr. Touart at their earlier interview (see Findings of Fact 22-24) that she wanted to leave the County and go back to Fort Walton Beach, to "hang up her shingle."

32. In response to Petitioner's e-mail, Mr. Touart informed Petitioner that under the circumstances, she would be given 90 days' severance pay instead of 90 days' notice and makeshift employment, and that her last day of employment would be July 2, 2002.

33. Petitioner established no damages as a result of unemployment.

#### CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Chapter 760, and Section 120.57(1), Florida Statutes.

35. Escambia County is an "employer" within the meaning of the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes.

36. Petitioner, as an "aggrieved person," under Chapter 760, Florida Statutes, has the duty to go forward and the burden of proof, by a preponderance of the evidence, to show that

Respondent Employer intentionally discriminated against her because of her race by abolishing the IG position and by not finding her a comparable position. She has not met that burden, nor has she proven that the "hostility," which she failed to adequately allege in her Petition, but which she encountered at various times, came from the Employer or that the hostility was racially motivated. The personal attacks she experienced may have been unjust, but no racial animus was demonstrated. The attacks by voters, co-employees, politicians, and the media were political, either in the public forum of citizen or media debate, or were due to interoffice fear or jealousy of her high salary and specially-created position. The opposition to her appointment or to the amount of her salary may have been hurtful, but it was not racially discriminatory. Proof that amounts to no more than mere speculation and self-serving belief on the part of the complainant concerning the motives of the employer are not sufficient, standing alone, to establish a prima facie case of intentional discrimination. See Little Republic v. Refining Co., Ltd., 924 F.2d 93 (5th Cir. 1991); Elliott v. Group Medical and Surgical Service, 714 F.2d 556 (5th Cir. 1983); and Shiflett v. GE Finance Automation, 960 F. Supp. 1022 (W.D. Va. 1997).

37. Petitioner has not shown by a preponderance of the evidence that racial discrimination was the motivating or determining factor in the abolition of her position as IG.

38. Petitioner alleged that other similarly situated Caucasian employees were provided alternative positions within the County and that this was a specific privilege denied to her because of her race, but she has not provided any proof to that effect. Rather, the evidence shows that no comparable position existed and that she was not hired for lesser positions for purely political, non-racial reasons.

39. Accordingly, Petitioner has not established a prima facie case under the test of McDonnell-Douglas Corporation v. Greene, 411 U.S. 792 (1973).

#### RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief and Charge of Discrimination herein.

DONE AND ENTERED this 8th day of June, 2005, in  
Tallahassee, Leon County, Florida.

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Filed with the Clerk of the  
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this 8th day of June, 2005.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.