

Lee County Board of County Commissioners
Agenda Item Summary

Blue Sheet No. 20040525

1. REQUESTED MOTION:

ACTION REQUESTED: Conduct a Public Hearing to enact a Reviser's Ordinance Repealing Lee County Ordinance 96-10, captioned Court Filing Fees for Legal Aid, for the reason that it is obsolete.

WHY ACTION IS NECESSARY: Board must formally adopt an Ordinance at a scheduled, advertised Public Hearing. Amends, by Resolution, AC 3-10 External Fee Number 6-2*.

WHAT ACTION ACCOMPLISHES: Will repeal Lee County Ordinance 96-10 providing for consistency and updatedness and amends the Administrative Code and removes External Fee Number 6-2*.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT #

5:00 #3

3. MEETING DATE:

05-11-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION General Services
- BY: [Signature]
Kristie L. Kroslack
Assistant County Attorney

7. BACKGROUND: On June 19, 1996, the Board of County Commissioners (BOCC) enacted Lee County Ordinance No. 96-10 providing for the collection of an additional filing fee on civil actions to fund indigent legal aid services.

In 2003, the legislature amended Fla. Stat. § 34.041 (Constitutional Revision 7 to Article V), making the collection of the service charge in Lee County unauthorized. Effective July 1, 2004, Lee County can not impose a filing fee to cover the cost of legal aid.

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8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	[Signature]	OA	OM	RISK	GC	[Signature]
				4/22/04	RK/4/21	[Signature]	4/22/04	[Signature]	4/22/04

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

ATTY. GENERAL
FORWARDED
TO CO. ADMIN.
4/22/04

RECEIVED BY
COUNTY ADMIN:
4/22/04
3:00 pm
COUNTY ADMIN
FORWARDED TO:
4/22/04
4:50 pm

RK

BLUESHEET #: 20040525

PAGE #: 2

SUBJECT: Conduct Public Hearing

Constitutional Revision 7, approved by the voters in November 1998 “allocates state court system funding among state, counties, and users of courts.”

Under Revision 7, clerks of the circuit and county courts will be funded from their share of filing fees, service charges and certain criminal fine and forfeiture revenues that they collect.

Revision 7, Article V transfers authority to impose additional circuit civil and county court filing fees from the board of county commissioners to the clerk of court. Therefore, court clerks may impose filing fees in an amount clerks deem necessary to fund their costs within a cap. Charges imposed by county commissioners pursuant to Revision 7 to Article V will stand repealed July 1, 2004.

Local governments are now required to fund the cost of legal aid as a local requirement.

ATTACHMENTS: Memorandum dated 11/12/03 from County Attorney to Public Resources
Proposed Repealing Ordinance
Resolution
Financial & Administrative Impact Statement
Notice of Intent To Enact A County Ordinance

LEE COUNTY ORDINANCE NO. _____

**A REVISER'S ORDINANCE REPEALING LEE COUNTY
ORDINANCE 96-10, RELATING TO THE COLLECTION OF
FILING FEES IMPOSED ON CIVIL ACTIONS TO FUND
INDIGENT LEGAL SERVICES, PROVIDING FOR FINDINGS,
INTENT, CODIFICATION AND SCRIVENER'S ERRORS AND
AN EFFECTIVE DATE OF JULY 1, 2004.**

WHEREAS, Lee County Ordinance 96-10, adopted on June 19, 1996, is obsolete, after the legislature amended Fla. Stat. § 34.041 (Chapter 2003-402, Laws of Florida); and

WHEREAS, the Board of Lee County Commissioners directed that Ordinances not needed or enforceable be repealed; and

WHEREAS, a repeal of Lee County Ordinance 96-10 serves a public purpose and is to the public's benefit.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS of Lee County, Florida, that:

SECTION ONE: FINDINGS

The above referenced statements in the preamble are hereby confirmed and incorporated herein as if set out in this Section at length. There is a need to repeal Lee County Ordinance 96-10 identified herein as being unenforceable, out-dated, and/or not needed at this time as local law.

SECTION TWO: INTENT

It is the intent of the Lee County Board of County Commissioners to repeal such Ordinance and a favorable vote to adopt this Ordinance will be considered a favorable vote to repeal Lee County Ordinance 96-10 stated hereafter, and such Ordinance shall be deemed repealed, effective on July 1, 2004, and of no further force or effect thereafter.

SECTION THREE:

Lee County Ordinance Number 96-10 relating to imposing an excess service charge for the filing of probate and civil proceedings to fund legal aid in Lee County is hereby repealed effective July 1, 2004. (A copy of Lee Co. Ord. 96-10 is attached as "Exhibit A").

SECTION FOUR: **CODIFICATION AND SCRIVENER'S ERRORS**

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County Code; and that Sections of this Ordinance may be renumbered or relettered and that the word "Ordinance" may be changed to "Section", "Article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the Code is accomplished, Sections of this Ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the County Administrator, or his designee, without need of public hearing, by filing a corrected or recodified copy of same with the Clerk of Circuit Court.

SECTION FIVE: **EFFECTIVE DATE**

This Ordinance shall take effect on July 1, 2004 and upon receipt of official acknowledgment from the Secretary of State of Florida that it has been filed with that Office.

The foregoing Ordinance was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and, being put to vote, the vote was as follows:

BOB JANES _____
DOUGLAS ST. CERNY _____
RAY JUDAH _____
ANDREW W. COY _____
JOHN E. ALBION _____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2004.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

LEE COUNTY RESOLUTION NO. _____

A RESOLUTION OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS RELATING TO AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE AS ADOPTED BY LEE COUNTY ORDINANCE NO. 97-23; PROVIDING FOR APPROVAL OF CERTAIN AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 96-01, creating a charter form of government for Lee County pursuant to Section 125.80 and ff., Florida Statutes, and which was approved and ratified by the Electorate of Lee County on November 5, 1996; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 97-23, which adopted the Lee County Administrative Code pursuant to Section 2.2.E. of Ordinance No. 96-01, the Lee County Charter; and,

WHEREAS, Lee County Ordinance No. 97-23 at Section III allows and provides for amendments to the Lee County Administrative Code to be made by Resolution of the Board of County Commissioners at a regularly scheduled Board of County Commissioners' meeting; and,

WHEREAS, certain amendments to the Lee County Administrative Code are now being proposed, and the Board of County Commissioners finds that such proposed amendments are acceptable, serve a public purpose and are consistent with the terms and conditions of Lee County Ordinance No. 96-01, the Lee County Charter.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that:

1. The above preamble is hereby accepted and approved as being true and accurate, and is adopted and incorporated herein as if set out further at length.
2. The amendments proposed by the Repealer Ordinance require amending 3-10 Lee County Administrative Code and will remove External Fee Number 6-2* from the External Fees Manual (attached hereto as Exhibit "A") is approved, and is hereby directed to be incorporated into the Lee County Administrative Code as indicated.
3. The provisions of this Resolution are severable, and it is the intention to confer to the whole or any part of this Resolution, the powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions of this Resolution. It is hereby declared to be the Board's legislative intent that this Resolution would have been adopted had such an unconstitutional provision not been included herein.
4. This Resolution shall become effective immediately upon its adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner _____,
who moved its adoption. The motion was seconded by Commissioner _____
and, being put to vote, the vote was as follows:

BOB JANES	_____
DOUGLAS ST. CERNY	_____
RAY JUDAH	_____
ANDREW W. COY	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2004.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

B.S. 20040525

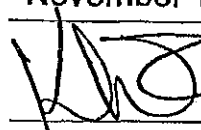
FILE COPY

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: November 12, 2003

To: Georgia Sekulski
Public Resources

FROM:



Kristie Kroslack
Assistant County Attorney

**RE: Repeal of Lee County Ordinance 96-10
Legal Assistance for the Indigent in Lee County**

Per your request dated November 6, 2003, I have reviewed the memorandum to you dated October 20, 2003 from Clerk of the Court, Donna G. Harn, that requested deletion of External Fee Number: EX6-2.

I concur with Ms. Harn that effective July 1, 2004, the \$5.00 and \$10.00 service charges imposed pursuant to Lee County Ordinance 96-10 and expended for legal aid to the poor and indigent people of Lee County [Lee County Legal Aid Society, Inc. and Florida Rural Legal Services, Inc.] is no longer legally authorized, due to Constitutional Revision 7 to Article V. [Attached HB0113-A Staff Analysis].

Specifically, Fla. Stat. § 34.205 states "service charges and fees imposed by the governing authority of counties by ordinance and special law pursuant to authority granted in § 28.242-34.041 prior to June 30, 2004 are repealed and abolished effective July 1, 2004."

Prior to this amendment, Fla. Stat. § 34.041 allowed "service charges in excess of those herein fixed may be imposed by the governing authority of the county by ordinance or special law, and such excess shall be expended as provided by such ordinance or any special or local law...to provide and maintain facilities, including a law library...or a legal aid program."

As a result, effective July 1, 2004, Lee County can not impose a filing fee to cover the cost of legal aid. Local governments will be required to fund the cost of legal aid as a state imposed local requirement.

Lee County may continue to collect the \$5.00 and \$10.00 service charges until July 1, 2004. After that date, Lee County Ordinance 96-10 must be repealed by Resolution of the Board of County Commissioners, after public hearing. For your convenience, I have attached a copy of Lee

Georgia Sekulski
November 12, 2003
Page 2

Re: Repeal of Lee County Ordinance 96-10 Legal Assistance for the Indigent in Lee County

County Ordinance 96-10 and draft Resolution to be scheduled for Board of County Commissioner approval in April, 2004.

Should you require anything further, please do not hesitate to contact me.

xc: James G. Yaeger, County Attorney
Robert W. Gray, Deputy County Attorney
David M. Owen, Chief Assistant County Attorney
Donna Harn, Clerk of Court

LEE COUNTY
NOTICE OF INTENT TO ENACT A COUNTY ORDINANCE

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that on Tuesday, the 11th day of May, 2004, at 5:00 o'clock p.m., in the County Commissioners' Meeting Room, Old Lee County Courthouse, 2120 Main Street, Fort Myers, Florida, the Board of County Commissioners of Lee County, Florida, will consider the enactment of a County Ordinance pursuant to Article VIII, Section 1, of the Florida Constitution and Chapter 125, Florida Statutes. The title of the proposed County Ordinance is as follows:

**A REVISER'S ORDINANCE REPEALING LEE COUNTY
ORDINANCE 96-10, RELATING TO THE COLLECTION OF
FILING FEES IMPOSED ON CIVIL ACTIONS TO FUND
INDIGENT LEGAL SERVICES, PROVIDING FOR FINDINGS,
INTENT, CODIFICATION AND SCRIVENER'S ERRORS AND
AN EFFECTIVE DATE OF JULY 1, 2004.**

1. Copies of this Notice and the proposed Ordinance are on file in the Minutes Office of the Clerk of Courts of Lee County. The public may inspect or copy the proposed Ordinance during regular business hours at the Office of Public Resources. The Minutes Office and Public Resources are located in the Courthouse Administration Building, 2115 Second Street, Fort Myers, Florida. Public Resources is located on the first floor and the Minutes Office is located on the second floor of the Courthouse Administration Building.
2. Interested parties may appear at the meeting in person or through counsel, and be heard with respect to the adoption of the proposed Ordinance.
3. Anyone wishing to appeal the decision(s) made by the Board with respect

to any matter considered at this meeting, will need a record of the proceedings for such appeal, and may need a verbatim record, to include all testimony and evidence upon which the appeal is to be based.

4. The Ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State, or as may be otherwise prescribed in the Ordinance.

5. If you have a disability that will require special assistance or accommodations for your attendance at the public hearing, please call the Lee County Division of Public Resources at 335-2269 for information.

PLEASE GOVERN YOURSELF ACCORDINGLY.

The text of this Notice is in conformance with Section 125.66, Florida Statutes (2003), and other relevant sections of Florida law.

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Charlie Green, Ex-Officio Clerk
to the Board of County Commissioners
of Lee County, Florida

APPROVED AS TO FORM:

By:  _____
Office of the County Attorney

Ad Size: 2 x 5

Publishing Dates: **April 27, 2004 and May 4, 2004**