

**IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2025-063470-CC-26

SECTION: CG04

JUDGE: Jacqueline Woodward

**Stephen Cody**

Plaintiff(s) / Petitioner(s)

vs.

**Mark Merwitzer et al**

Defendant(s) / Respondent(s)

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**ORDER GRANTING MOTION TO DISMISS WITH PREJUDICE**

Index #	32
Date Filed	06/13/2025
Motion Titled	VILLAGE OF PALMETTO BAY'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT WITH PREJUDICE
<i>Required Notation in Compliance with Admin Rule 22-2</i>	
Index #	33
Date Filed	06/13/2025
Motion Titled	DEFENDANT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT
<i>Required Notation in Compliance with Admin Rule 22-2</i>	

THIS CAUSE came before the Court for hearing on Both Defendant's Motion to Dismiss, conducted via Zoom on July 15, 2025. The Court, having reviewed both Motions to Dismiss and Plaintiff Stephen Cody's Response to the Motions to Dismiss the Amended Complaint ¶ 37, the pleadings, the record, having heard argument of the parties, and being otherwise fully advised in the premises, finds as follows:

**I. INTRODUCTION**

This action seeks declaratory relief based on a purported controversy that exists only in Plaintiff's own mind and not in law or fact. Plaintiff asserts that the constitutional Oath of Office must be recited out loud and then signed before a notary public, despite no such requirement existing under either the Florida Constitution or Florida Statutes. Because Plaintiff fails to allege a bona fide, actual, and present controversy, dismissal with prejudice is required.

## **II. LEGAL STANDARD**

A motion to dismiss a complaint for declaratory judgment is not a motion addressing the merits of the underlying dispute. Rather, it tests only whether the plaintiff is entitled to a declaration of rights—not whether the declaration should be in the plaintiff's favor. See Romo v. Amedex Ins. Co., 930 So. 2d 643, 648 (Fla. 3d DCA 2006).

To survive a motion to dismiss, a complaint for declaratory relief must allege ultimate facts showing:

1. A bona fide, actual, present practical need for the declaration;
2. A present, ascertained, or ascertainable state of facts or controversy;
3. That some immunity, power, privilege, or right of the plaintiff depends upon the facts or law applicable to those facts;
4. The existence of an actual, present, adverse and antagonistic interest;
5. That all adverse interests are before the court; and
6. That the relief sought is not merely legal advice or the answer to a hypothetical or abstract question.

Although the threshold for dismissal of a declaratory judgment action is low, a plaintiff may not manufacture a controversy unsupported by law or fact.

## **III. NO BONA FIDE CONTROVERSY EXISTS**

Plaintiff's demand for declaratory relief is premised entirely on a requirement of Plaintiff's own creation—namely, that the Oath of Office must be notarized based on Plaintiff's personal interpretation of the phrase “sworn to,” as alleged in paragraph 34 of the Amended Complaint.

Paragraph 34 alleges:

“The Form uses the term “Sworn to (or affirmed)” which means the declarant must recite the oath out loud or affirmatively agree to it after the oath has first been stated out loud by the notary public.”

(Amended Complaint, ¶ 34, Filed 06/03/2025).

Plaintiff relies on the Village Charter provision stating that the term of office for a Village Commissioner ends “upon the swearing in of his/her successor.” Plaintiff does not allege—and the Charter does not require—any special or unique swearing-in procedure.

The requirement that an official be sworn into office arises from the Florida Constitution, not from the Village Charter. Article II, section 5(b) of the Florida Constitution provides, in relevant part:

“Each state and county officer, before entering upon the duties of the office, shall swear or affirm...”

Article II, section 5(b) requires only that an officer *swear or affirm* the prescribed oath before entering upon the duties of office. It does not require that the oath be in writing, notarized, or administered by any particular official.

The constitutional Oath of Office is the same oath taken by judges in the State of Florida. The Florida Supreme Court has expressly adopted federal court reasoning holding that oral investiture oaths satisfy constitutional requirements. The Florida Bar v. Sibley, 995 So. 2d 346, 348 (Fla. 2008).

It is undisputed that Defendant orally recited the constitutional Oath of Office at a public swearing-in ceremony. This satisfies all constitutional requirements for a duly elected official to assume office. Plaintiff’s own sworn pleadings acknowledge that Defendant took the oath in the presence of the Village Commission, including Plaintiff. Plaintiff cannot repudiate those sworn factual admissions.

#### **IV. PLAINTIFF IMPROPERLY CONFLATES THREE DISTINCT OATHS**

Florida law recognizes three separate oaths, each with different purposes and requirements:

##### **A. Candidate Oath — § 99.021, Florida Statutes**

It is undisputed that Defendant orally recited the constitutional Oath of Office at a public swearing-in ceremony. This satisfies all constitutional requirements for a duly elected official to assume office. Plaintiff’s own sworn pleadings acknowledge that Defendant took the oath in the presence of the Village Commission, including Plaintiff. Plaintiff cannot repudiate those sworn factual admissions.

##### **B. Oath of Office — Article II, Section 5(b), Florida Constitution**

The constitutional Oath of Office is a prerequisite to assuming office. The Florida Constitution does not require that this oath be written or notarized. Oral administration at a public ceremony is legally sufficient.

The Florida Supreme Court has expressly adopted federal court reasoning holding that oral investiture oaths satisfy constitutional requirements. The Florida Bar v. Sibley, 995 So. 2d 346 (Fla. 2008).

##### **C. Public Employee Loyalty Oath — § 876.05, Florida Statutes**

The Public Employee Loyalty Oath must be in writing and filed, but solely for payroll and compensation purposes. Any failure to comply with section 876.05 does not affect qualification for office.

Plaintiff improperly merges these distinct oaths and invents requirements for the constitutional Oath of Office that do not exist. Plaintiff's declaratory action is therefore premised on a non-existent legal requirement that Defendant, Merwitzer, failed to comply with the non-existent notary requirements of the Constitutional Oath of Office.

#### **V. THE DE FACTO OFFICER DOCTRINE BARS RELIEF**

Even if a technical defect had existed—which it did not—the de facto officer doctrine independently bars Plaintiff's claims. The Florida Supreme Court has held that this doctrine cures any alleged irregularity in oath compliance. Sibley at 350–51.

#### **VI. DISMISSAL WITH PREJUDICE IS REQUIRED**

A declaratory judgment action must be predicated on an actual, justiciable controversy existing at the time the complaint is filed. Courts must dismiss such actions when the alleged controversy is hypothetical, speculative, moot, or lacking sufficient immediacy and reality.

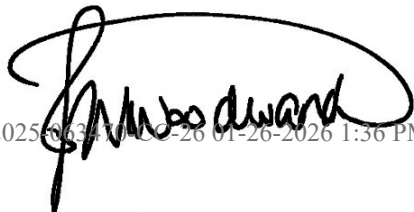
The Court recognizes that dismissal with prejudice is a severe remedy and does not impose it lightly. However, this is not a case in which the Court is weighing the likelihood of Plaintiff's ultimate success. Rather, this action is dismissed with prejudice at the pleading stage because it is based on a wholly fabricated controversy lacking any factual or legal foundation. Amendment would be futile.

#### **ORDER**

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss is **GRANTED**, and Plaintiff's Complaint for Declaratory Judgment is **DISMISSED WITH PREJUDICE**.

The Clerk of Court is directed to close this case.

**DONE** and **ORDERED** in Chambers at Miami-Dade County, Florida on this 26<sup>th</sup> day of January, 2026.



2025-063470-CC-26 01-26-2026 1:36 PM

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Hon. Jacqueline Woodward

**COUNTY COURT JUDGE**

Electronically Signed

Final Order as to All Parties SRS #: 12 (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

**Electronically Served:**

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