



# MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229  
Box 46

100667

TO: Mayor and City Commissioners

DATE: February 17, 2011

FROM: City Attorney

## CONSENT


SUBJECT: RALPH PELTON, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ERIN E. PELTON, ON BEHALF OF THE ESTATE AND ON BEHALF OF SURVIVORS RALPH PELTON AND ELAINE C. PELTON, INDIVIDUALLY VS. SHAKIA N. HARRIS, INDIVIDUALLY, AND CITY OF GAINESVILLE, A POLITICAL SUBDIVISION; EIGHTH JUDICIAL CIRCUIT, CASE NO. 2011-CA-44

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Recommendation: The City Commission authorize the City Attorney to represent the City of Gainesville in the case styled Ralph Pelton, as Personal Representative of the Estate of Erin E. Pelton, on behalf of the Estate and on behalf of survivors Ralph Pelton and Elaine C. Pelton, individually vs. Shakia N. Harris, individually, and City of Gainesville, a political subdivision; Eighth Judicial Circuit, Case No. 2011-CA-44.

On January 25, 2011, the City was served with a Summons and Complaint filed by Ralph Pelton, as personal representative of the estate of Erin E. Pelton. On November 2, 2009, Erin E. Pelton was a passenger on an RTS Bus. Ms. Pelton exited the bus at the bus stop near the 2800 block of SW Archer Road and attempted to cross Archer Road. Ms. Pelton was struck by a vehicle driven by Shakia N. Harris. Ms. Pelton was pronounced dead at the scene from sustained injuries. The Complaint alleges negligence on the part of the City due to the location of the bus stop. The estate seeks money damages from the City.

Prepared by:

  
Daniel M. Nee,  
Litigation Attorney

Submitted by:

  
Marion J. Radson  
City Attorney

CITY OF GAINESVILLE  
CITY COMMISSION  
IN THE CIRCUIT/COUNTY COURT OF THE EIGHTH JUDICIAL CIRCUIT,  
IN AND FOR ALACHUA COUNTY, FLORIDA  
CIVIL DIVISION, ALACHUA COUNTY COURTHOUSE  
201 East University Avenue - Post Office Box 600  
Gainesville Florida 32602  
PHONE (352) 374-3636 • FAX (352) 338-3207

JAN 25 AM 10:08

J. Smith  
01/25/11  
9:35AM

Ralph Pelton, as Personal Representative of the  
Estate of Erin Pelton, on behalf of the Estate  
and on behalf of survivors Ralph Pelton and  
Elaine C. Pelton, individually

PLAINTIFF

-vs-

Shakia M. Harris, individually, and  
City of Gainesville, a political subdivision

DEFENDANT

Case No.: 01-2011-CA-44  
Division: 1

**COPY**

SUMMONS

THE STATE OF FLORIDA

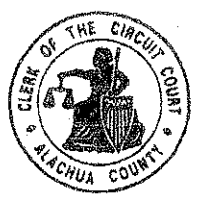
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant CITY OF GAINESVILLE  
200 E. University Ave.  
Gainesville, FL 32601

Each defendant is required to serve written defenses to the complaint or petition on plaintiff's attorney whose name and address is Danielle A. Cohen, Esquire  
The Chestnut Firm, LLC  
500 E. University Ave., Suite C  
Gainesville, FL 32601

within 30 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and the seal of said Court on Jan. 25, 2011



J.K. "Buddy Irby  
Clerk of Circuit Court

By D. Thomas  
Deputy Clerk

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Persons with a disability who need any accommodation in order to participate should call Jan Phillips, ADA Coordinator, Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601 at (352) 337-6237 within two (2) working days of your receipt of this notice; if you are hearing impaired call (800) 955-8771; if you are voice impaired, call (800) 955-8770."

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA

RALPH PELTON,  
as Personal Representative of the Estate of  
ERIN E. PELTON, on behalf of  
the Estate and on behalf of survivors  
RALPH PELTON and ELAINE C.  
PELTON,  
individually,

CASE NO.:

Plaintiff,

vs.

SHAKIA N. HARRIS, individually, and  
CITY OF GAINESVILLE, a political  
subdivision,

Defendants.

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**COMPLAINT FOR WRONGFUL DEATH DAMAGES AND  
DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, RALPH PELTON, as Personal Representative of the Estate of ERIN E. PELTON, on behalf of the Estate and survivors ELAINE C. PELTON, and RALPH PELTON individually, by and through the undersigned attorney, and hereby sues the Defendants, SHAKIA N. HARRIS and CITY OF GAINESVILLE, and alleges:

**PARTIES AND JURISDICTION**

1. This is an action for damages in excess of Fifteen Thousand (\$15,000.00) dollars.
2. Venue for this action lies in Gainesville, Alachua County, Florida.
3. Plaintiff, RALPH PELTON is the duly appointed, qualified, and acting Personal Representative of the Estate of ERIN E. PELTON (hereafter the "Decedent"). (Letters of Appointment attached hereto as *Exhibit "A"*).

4. At all times material to this action, Decedent, ERIN E. PELTON, was a resident of Gainesville, Alachua County, Florida.

5. At all times material to this action, the Decedent ERIN E. PELTON was the natural daughter of the Plaintiff RALPH PELTON and the potential beneficiary ELAINE C. PELTON.

6. The potential beneficiaries of this action are:

- a. the Estate of ERIN E. PELTON;
- b. ELAINE C. PELTON, natural mother of Decedent;
- c. RALPH PELTON, natural father of the Decedent.

7. At all times material to this action, Defendant, SHAKIA N. HARRIS, hereafter (“HARRIS”), was a resident of Gainesville, Alachua County, Florida and was the driver, owner, and registrant of the 2001 Pontiac automobile involved in the motor vehicle accident made the basis of this action (VIN: 162NE12T9YM81297).

8. At all times material to this action, Defendant CITY OF GAINESVILLE was a Florida municipality organized under the laws of the State of Florida.

9. At all times material to this action, Defendant CITY OF GAINESVILLE owned and operated the GAINESVILLE REGIONAL TRANSIT SYSTEM, hereafter (“RTS”), an agency that provided bus service in and around the Gainesville, FL metropolitan area.

10. All conditions precedent to maintaining this action have been met, including timely service of written pre-suit notice to the Florida Department of Financial Services, City of Gainesville, Office of City Attorney and City of Gainesville Regional Transit System pursuant to

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500 East University Ave, Suite C  
Gainesville, FL 32601  
[P] 352-377-4444 [F] 352-377-2667

*Fla. Stat. §768.28(6). (See attached Exhibit "B").*

**ALLEGATIONS COMMON TO ALL COUNTS**

11. On or about November 2, 2009, ERIN E. PELTON (hereinafter "Decedent"), was a fare paying passenger on a bus operated by the RTS and travelling east on SR 24 (SW Archer Road) located in Gainesville, Alachua County, Florida.

12. At approximately 6:15 p.m. the RTS bus on which Decedent was riding stopped at a bus stop near the 2800 block of SW Archer Road. Decedent exited the RTS bus at the bus stop and attempted to cross SW Archer Road.

13. Defendant HARRIS was operating her vehicle eastbound on SW Archer in the outside lane. Defendant HARRIS made a sudden change to the center lane and struck Decedent at a speed of approximately 45 MPH, causing grievous bodily injuries to Decedent. Decedent was pronounced dead from her injuries caused by Defendant HARRIS at approximately 7:51PM.

**COUNT I**  
**WRONGFUL DEATH OF ERIN E. PELTON AS A RESULT OF NEGLIGENCE OF**  
**DEFENDANT SHAKIA N. HARRIS**

14. Plaintiff, RALPH PELTON, as Personal Representative of the Estate of ERIN E. PELTON, Deceased, reiterates and re-alleges all the allegations contained in paragraphs 1-13 of this Complaint as though fully stated herein.

15. Defendant HARRIS owed a duty to Decedent to comply with lawful regulations of the use of the highways.

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500 East University Ave, Suite C  
Gainesville, FL 32601  
[P] 352-377-4444 [F] 352-377-2667

16. Defendant HARRIS owed a duty to Decedent to use reasonable care in the operation of a motor vehicle for the safety of herself and others.

17. Defendant HARRIS breached those duties when she negligently left the lane in which she was traveling and entered the adjacent center lane.

18. The negligence of Defendant HARRIS was the actual and proximate cause of the foreseeable bodily injury, pain, suffering and death of Decedent.

19. As a direct and proximate result of Defendant HARRIS' breach of her duties, the Plaintiff suffered the following injuries and damages:

- a. Loss of support and services;
- b. Mental pain and suffering;
- c. Medical and funeral expenses;
- d. Loss of earnings and prospective net accumulations; and
- e. Any and all other damages allowable under the law.

**WHEREFORE**, Plaintiff RALPH PELTON, on behalf of the Estate and survivors, demands judgment against Defendant HARRIS for all damages allowable under the law, interest, costs of these proceedings, and requests this Court grant any relief it deems just and equitable, and requests a trial by jury of all issues so triable.

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[P] 352-377-4444 [F] 352-377-2667

**COUNT II**  
**WRONGFUL DEATH OF ERIN E. PELTON AS A RESULT OF**  
**NEGLIGENCE OF DEFENDANT CITY OF GAINESVILLE**

20. Plaintiff RALPH PELTON as Personal Representative of the Estate of ERIN E. PELTON, reiterates and re-alleges all the allegations contained in 1-13 above of this Complaint as though fully stated herein.

21. Defendant CITY OF GAINESVILLE owned and operated the RTS bus system at the time of Decedent's death.

22. Defendant CITY OF GAINESVILLE designed and/or approved the design of the RTS transit system, including the bus routes and the location of the bus stops within the system.

23. On information and belief, Defendant CITY OF GAINESVILLE was on notice at the time of Decedent's death that the bus stop located near the 2800 block of SW Archer Road was situated on a road with six lanes of traffic, hundreds of yards from the nearest pedestrian crosswalk.

24. On information and belief, Defendant CITY OF GAINESVILLE was on notice at the time of Decedent's death that, in addition to dangerous conditions created by heavy traffic in the 2800 block of SW Archer Road and the absence of any traffic signals or pedestrian crosswalks, there had been prior instances of near misses and collisions between automobiles traveling near the 2800 block of SW Archer and pedestrians using the RTS bus stop located near the 2800 block of SW Archer.

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500 East University Ave, Suite C  
Gainesville, FL 32601  
[P] 352-377-4444 [F] 352-377-2667

25. Defendant CITY OF GAINESVILLE owed a duty of care to Decedent to take affirmative actions upon receiving notice and warnings concerning dangers to RTS bus riders using the bus stop near the 2800 block of SW Archer Road due to heavy traffic and erratic actions of drivers on prior occasions.

26. Defendant CITY OF GAINESVILLE breached its duty of care to Decedent when it failed to act in response to notice of dangerous conditions existing at the RTS bus stop near the 2800 block of SW Archer Road caused or contributed to an unreasonable risk of injury or death of the Decedent.

27. As a direct and proximate result of the negligence Defendant, CITY OF GAINESVILLE, the Plaintiff suffered the following injuries and damages:

- a. Loss of support and services;
- b. Mental pain and suffering;
- c. Medical and funeral expenses;
- d. Loss of earnings and prospective net accumulations; and
- e. Any and all other damages allowable under the law.

**WHEREFORE**, Plaintiff RALPH PELTON, on behalf of the Estate and survivors, demands judgment against Defendants HARRIS and CITY OF GAINESVILLE for all damages allowable under the law, interest, costs of these proceedings, and requests this Court grant any relief it deems just and equitable, and requests a trial by jury of all issues so triable.

THE CHESTNUT FIRM, LLC  
500 East University Ave, Suite C  
Gainesville, FL 32601  
[P] 352-377-4444 [F] 352-377-2667



*Complaint for Wrongful Death Damages and Demand for Jury Trial*  
*RALPH PELTON v. Harris, et al.*

Respectfully submitted this 5 day of January 2011.

**THE CHESTNUT FIRM, LLC**

By: \_\_\_\_\_

  
**DANIELLE A. COHEN, ESQUIRE**

FBN: 0027623

500 East University Avenue

Suite C

Gainesville, FL 32601

(352) 377-4444

(352) 377-2667 Fax

*ATTORNEYS FOR PLAINTIFF*

**THE CHESTNUT FIRM, LLC**

500 East University Ave, Suite C

Gainesville, FL 32601

[P] 352-377-4444 [F] 352-377-2667

IN THE CIRCUIT COURT FOR ALACHUA COUNTY,  
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

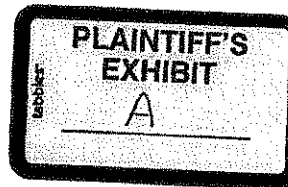
ERIN ELAINE PELTON

Deceased.

File No. 2010 CP 1381

Division B

RECORDED IN OFFICIAL RECORDS  
INSTRUMENT # 2606182 1 PG(S)  
October 20, 2010 09:24:26 AM  
Book 3989 Page 589  
J. K. IRBY, Clerk Of Circuit Court  
ALACHUA COUNTY, Florida



LETTERS OF ADMINISTRATION  
(Settlement Authority and Disbursement of Settlement Proceeds Require Court Approval)

TO ALL WHOM IT MAY CONCERN:

WHEREAS, ERIN ELAINE PELTON, a resident of Alachua County, Florida, died on November 2, 2009, owning assets in the State of Florida, and

WHEREAS, RALPH PELTON has been appointed Personal Representative of the estate of the decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned Circuit Judge, declare RALPH PELTON duly qualified under the laws of the State of Florida to act as Personal Representative of the estate of ERIN ELAINE PELTON, deceased, with the power to administer the estate according to law; to ask, demand and sue for, recover and receive the property of the Decedent; to pay the debts of the Decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law, except that the personal representative must petition the Court for approval of any potential settlement, deposit the gross settlement proceeds into the trust account of the attorney of record for the personal representative, and obtain Court approval before distributing any settlement funds.

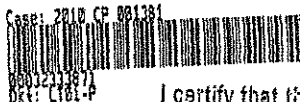
Ordered on October 20, 2010

2010 OCT 15 PM 1:59

*[Signature]*  
CIRCUIT JUDGE



J.K. "Buddy" Irby, Clerk of the Circuit & County Court, Eighth Judicial Circuit of Florida, in and for Alachua County, hereby certifies this to be a true and correct copy of the document now of record in this office. Witness my hand and seal this 20 day of November, 2010.  
J.K. "Buddy" Irby, Clerk of the Circuit & County Court.  
By D. Thomas  
Deputy Clerk



I certify that the Letters are in full force and effect as of this date: November 2, 2010  
J.K. "Buddy" Irby, Alachua County Clerk of Court  
By D. Thomas

*Out*

IN THE CIRCUIT COURT FOR ALACHUA COUNTY,  
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

ERIN ELAINE PELTON

Deceased.

File No. 2010 CP 1381

Division B

ORDER APPOINTING PERSONAL REPRESENTATIVE  
(Intestate -Single Personal Representative, Settlement Authority and Disbursement of  
Settlement Proceeds Require Court Approval)

On the Petition of RALPH PELTON for the administration of the estate of ERIN ELAINE PELTON, deceased, the Court finding that the Decedent died on November 2, 2009, and that RALPH PELTON is entitled to appointment as Personal Representative by reason of the fact he is the father of the decedent and the decedent's mother, who is a beneficiary of the estate, has signed a consent in his favor, thereby entitling Petitioner to serve as personal representative pursuant to Sec. 733.301, Fla. Stat., and is qualified to be Personal Representative, it is therefore

ADJUDGED that RALPH PELTON is appointed Personal Representative of the estate of the Decedent, and that upon taking the prescribed oath, filing designation of resident agent and acceptance, letters of administration shall be issued, that bond is hereby waived, and in lieu of bond, the proposed personal representative must petition the Court for approval of any potential settlement, deposit the gross settlement proceeds into the trust account of the attorney for record for the personal representative, and obtain Court approval before distributing any settlement proceeds.

Ordered on Oct. 14, 2010.

*[Handwritten Signature]*

CIRCUIT JUDGE



J.K. "Buddy" Irby, Clerk of the Circuit & County Court, Eighth Judicial Circuit of Florida, in and for Alachua County, hereby certifies this to be a true and correct copy of the document now of record in this office. Witness my hand and seal this 14 day of October, 2010.  
J.K. "Buddy" Irby, Clerk of the circuit & County Court.  
By: *[Signature]*  
Deputy Clerk



Case: 2010 CP 001381  
Date: 0817-0

CLERK OF COURTS  
ALACHUA COUNTY, FL  
2010 OCT 15 PM 1:59  
FILED  
CLERK

*Aut*



**THE CHESTNUT LAW FIRM**

GAINESVILLE • JACKSONVILLE • MIAMI



**CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

7009 1680 0001 4760 0412/0429/0436/0443/0450/0467/0474

Christopher Chestnut, Esq.  
Terron Carrington, Esq.  
Danielle A. Cohen, Esq.\*  
Joshua A. Cossey, Esq.\*

February 24, 2010

Ph: 888.374.4448  
Fax: 352.377.2667  
wecare@chestnutfirm.com

Mailing Address:  
500 E University Ave, Suite C  
Gainesville, FL 32601

4651 Salisbury Road  
Suite 409 & 410  
Jacksonville, FL 32256

1000 5th Street, Suite 200  
Miami, FL 33139

Alex Sink, Insurance Commissioner  
Department of Financial Services  
Division of Risk Management  
200 East Gaines Street  
Tallahassee, FL 32399

Pegeen Hanrahan, Mayor  
City of Gainesville  
200 East University Avenue  
P.O. Box 490, Station 19  
Gainesville, FL 32399-0001

City of Gainesville  
Office of the City Attorney  
200 East University Avenue  
P.O. Box 1110  
Gainesville, FL 32602

City of Gainesville  
Regional Transit System  
P.O. Box 490  
Station 5  
Gainesville, FL 32602-0490

University of Florida  
Environmental Health & Safety  
P.O. Box 112190  
Gainesville, FL 32611

Florida Board of Governors  
State University System  
325 West Gaines Street, Suite 1614  
Tallahassee, FL 32399-0400

University of Florida  
Office of the General Counsel  
123 Tigert Hall  
P.O. Box 113125  
Gainesville, FL 32611-3125

**NOTICE OF CLAIM**

On behalf of the Personal Representative for the Estate of Erin Elaine Pelton, decedent, and pursuant to Florida Statutes §768.28(6), we hereby serve this written notice of claim based upon the following allegations:

- 1) Name and address of the Claimant: Erin Elaine Pelton, deceased; 2725 SW 27<sup>th</sup> Avenue, Apt. Y5, Gainesville, Florida 32608.
- 2) Date, time and place of incident: November 2, 2009, 6:19 p.m., 2300 block of SW Archer Road, Gainesville, FL 32608.
- 3) Description of the injury and damage: On or about said date, Erin

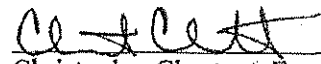
of Counsel\*

Elaine Pelton, alighted from a City of Gainesville Regional Transit System bus and was attempting to cross the street when she was struck by a vehicle and fatally injured.

- 4) Name of agents or employees of City or independent agency involved: City of Gainesville; City of Gainesville Regional Transit System; University of Florida.
- 5) Statement of relief sought: All damages as allowable by law.
- 6) There exist no prior adjudicated claims in excess of Two Hundred Dollars.
- 7) Date and place of birth of Claimant: January 15, 1985, Leesburg, Florida, Lake County.
- 8) Social Security Number of Claimant: [REDACTED]

If you believe this notice of claim is defective in any way please notify us immediately.

Sincerely,  
*The Chestnut Firm, LLC*

  
Christopher Chestnut, Esq.



## THE CHESTNUT LAW FIRM

GAINESVILLE • JACKSONVILLE • MIAMI

Christopher Chestnut, Esq.  
Terror Carrington, Esq.  
Danielle A. Cohen, Esq.\*  
Joshua A. Cossey, Esq.\*

### CERTIFIED MAIL/RETURN RECEIPT REQUESTED

7809 1410 0000 1071 2597

March 10, 2010

Ph: 888.374.4448  
Fax: 352.377.2667  
wecare@chestnutfirm.com

Mailing Address:  
500 E University Ave, Suite C  
Gainesville, FL 32601

4651 Salisbury Road  
Suite 409 & 410  
Jacksonville, FL 32256

1000 5th Street, Suite 200  
Miami, FL 33139

University of Florida Board of Trustees  
123 Tigert Hall  
PO Box 113125  
Gainesville, FL 32611-3125

### NOTICE OF CLAIM

On behalf of the Personal Representative for the Estate of Erin Elaine Pelton, decedent, and pursuant to Florida Statutes §768.28(6), we hereby serve this written notice of claim based upon the following allegations:

- 1) Name and address of the Claimant: Erin Elaine Pelton, deceased; 2725 SW 27<sup>th</sup> Avenue, Apt. Y5, Gainesville, Florida 32608.
- 2) Date, time and place of incident: November 2, 2009, 6:19 p.m., 2300 block of SW Archer Road, Gainesville, FL 32608.
- 3) Description of the injury and damage: On or about said date, Erin Elaine Pelton, alighted from a City of Gainesville Regional Transit System bus and was attempting to cross the street when she was struck by a vehicle and fatally injured.
- 4) Name of agents or employees of City or independent agency involved: City of Gainesville; City of Gainesville Regional Transit System; University of Florida.
- 5) Statement of relief sought: All damages as allowable by law.
- 6) There exist no prior adjudicated claims in excess of Two Hundred Dollars.
- 7) Date and place of birth of Claimant: January 15, 1985, Leesburg, Florida, Lake County.
- 8) Social Security Number of Claimant: [REDACTED]

of Counsel\*

**If you believe this notice of claim is defective in any way please notify us immediately.**

Sincerely,  
*The Chestnut Firm, LLC*



Yerron Carrington, Esq.