

RECEIVED
AUG 02 2010

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

FRATERNAL ORDER OF POLICE, GATOR
LODGE 67,

Plaintiff,

Case No. 01-10-CA-4182

v.

CITY OF GAINESVILLE, FLORIDA,

Defendant.

K.
A True Copy
SADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at _____ on the 2 Day
of _____, 20 10
BY _____ AS DEPUTY SHERIFF

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 the Defendant:

CITY OF GAINESVILLE, FLORIDA

c/o Craig Lowe, Mayor (individual service only)
200 E. University Avenue
Gainesville, FL 32601

OR in his absence

- c/o Thomas Hawkins, Commissioner (individual service only)
- Jeanna Mastrodicasa, Commissioner (individual service only)
- Scherwin Henry, Commissioner (individual service only)
- Lauren Poe, Commissioner (individual service only)
- Jack Donovan, Commissioner (individual service only)
- Randy Wells, Commissioner (individual service only)

200 E. University Avenue
Gainesville, FL 32601

****SUBSTITUTION OF SERVICE NOT ALLOWED****

Each defendant is required to serve written defenses to the complaint or petition on plaintiff's attorney whose name and address is:

PAUL A. DONNELLY
DONNELLY & GROSS, P.A.
P.O. Box 358866
Gainesville, FL 32635

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 seal of said Court on this 28
day of July, 2010.



J.K. "Buddy" Irby
Clerk of the Circuit Court

By [Signature]
Deputy Clerk

COPY

"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. Please contact the Court Administrator's Office by phone at (352) 377-6237 or in writing at 201 E University Ave, Gainesville, FL 32601 within 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

FRATERNAL ORDER OF POLICE, GATOR
LODGE 67,

Plaintiff,

Case No.

v.

CITY OF GAINESVILLE, FLORIDA,

Defendant.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Fraternal Order of Police, Gator Lodge 67, files this Petition for Declaratory Relief to declare unlawful the Gainesville Police Department's (GPD) refusal to convene a Compliance Review Panel to determine whether GPD intentionally failed to comply with the requirements of the Law Enforcement Officers' Bill of Rights, § 112.531 et seq., Florida Statutes¹ by:

(1) transferring an active internal affairs investigation to the City's Human Resources Department for review and recommendation by non-law enforcement personnel;

(2) failing to complete an internal affairs investigation and provide notice of disciplinary action within 180 days after the date GPD received notice of the alleged misconduct; and

(3) failing to provide a law enforcement officer a complete copy of the investigative file and the opportunity to respond thereto before interrogation or imposing disciplinary action.

¹ All statutory references are to Florida Statutes (2009).

JURISDICTION

1. This Court has jurisdiction pursuant to Article V, § 20(c)(3), Florida Constitution and §§ 26.012(2)(a) and 86.011, Florida Statutes.

VENUE

2. Venue is appropriate in Alachua County as the acts giving rise to this complaint occurred within Alachua County, Florida.

PARTIES

3. Plaintiff Fraternal Order of Police Gator Lodge 67 (FOP) is the sole and exclusive bargaining agent for all non-supervisory employees who are employed by the City as state-certified law enforcement officers and are beneficiaries of and entitled to FOP's representation while under internal investigation including, but not limited to, Officer A and Officer B, described below.

4. Defendant City of Gainesville ("City") is a municipal corporation of the State of Florida.

5. Gainesville Police Department (GPD) is a law enforcement agency operated and administered by the City.

6. The names of the law enforcement officers subject to the internal affairs investigations referenced herein are omitted and redacted from this Complaint and documents appended hereto, consistent with the Law Enforcement Officers' Bill of Rights which

requires confidentiality under §§ 112.533(2)(a) and (4) and 112.534((1)(e) throughout an active investigation including any required hearing and determination by the Compliance Review Panel.

COUNT I: GPD'S REFUSAL TO CONVENE
A COMPLIANCE REVIEW PANEL FOR "OFFICER A"

7. Based on an incident alleged to have occurred on May 9, 2009, GPD commenced an internal affairs investigation of a GPD law enforcement officer who was in the bargaining unit represented by FOP.

8. Hereinafter, the officer described in paragraph 7, above, is referred to as "Officer A."

9. During the investigation, Officer A was represented by FOP through FOP's President Jeff McAdams and attorney Michael Finesilver.

10. On July 23, 2009, GPD interrogated Officer A.

11. In August 2009, GPD transferred the internal affairs investigation of Officer A to the City's Human Resources Department for review and recommendation by the City's non-law enforcement human resources personnel.

12. In August 2009, non-law enforcement Human Resources employees reviewed the investigation of Officer A.

13. In August 2009, at least one non-law enforcement Human Resources employee gave GPD recommendations related to the disposition of the investigation of Officer A.

14. On or around September 9, 2009, GPD notified Officer A of its intent to impose a 3-day suspension.

15. On or about September 10, 2009, Officer A, through Finesilver, requested a complete copy of the Human Resources Department's file related to the investigation of Officer A.

16. On or about September 14, 2009, Officer A learned that the GPD had transferred his case to the City's Human Resources Department for review and recommendation by non-law enforcement Human Resources personnel.

17. On or about September 14, 2009, Officer A, through his FOP attorney, Finesilver, provided to Investigator Sergeant Jorge Campos via service to Campos' line supervisors Internal Affairs Bureau Commander Lynne Benck and Lieutenant Brian Helmersen, written notice entitled "Notice of Intentional Violations and Demand for Compliance Review Hearing Pursuant to Florida Statute 112.534" asserting "intentional violations of F.S. 112.532, and .533, and F.S. 92.525," and requesting a compliance review hearing within ten (10) working days, "pursuant to F.S. 112.534" and identifying as grounds, GPD's:

1. Failure to provide a complete copy of the investigative file to the officer's representative.
2. Allowing non-law enforcement personnel to participate in the Internal Affairs Investigation.
3. Violating F.S. 92.525 by stating that the contents of the report are true and accurate and then swearing to it, and by knowingly or wilfully depriving, or allowing another to deprive the

subject of the investigation of any rights contained in F.S. 112.532 and 112.533.

18. A true and correct copy of the Notice of Intentional Violations and Demand for Compliance Review Hearing Pursuant to Florida Statute 112.534 (with Officer A's name and case number redacted) is appended hereto as Exhibit A.

19. In the afternoon of September 14, 2009, Officer A's predetermination conference was held in the presence of Internal Affairs Bureau Commander Benck, Lieutenant Helmerson, and Officer A's FOP representatives, McAdams and Finesilver. At the predetermination conference, the facts and issues giving rise to Notice of Intentional Violations and Demand for Compliance Review Hearing Pursuant to Florida Statute 112.534 were reviewed and discussed.

20. On September 14, 2009, Officer A, through his representative McAdams, informed Internal Affairs Bureau Commander Benck of his Compliance Review Panel member choice, Corporal Joe Senn, for the § 112.534 hearing and determination.

21. On September 21, 2009, Officer A, through his FOP attorney, Finesilver, sent an email to Helmerson, copying McAdams, that stated in pertinent part:

Brian, as a follow up to our phone conversation from this morning, Jeff McAdams and I are ready to meet with you and Capt. Benck at a mutually agreeable time in the next few days to discuss "ground rules" for the Compliance Review Hearing.

As you know, our choice for the Review Panel is Cpl. Joe Senn. Please notify us as soon as possible as to the Chief's choice for the Panel.

22. On September 21, 2009, Helmerson responded by email to Finesilver, copying McAdams and Benck, and stated:

Thanks Mike. Capt. Benck is out of the office until Wed. 9-23-09 so I will get with her then and we'll get back with you.

23. On September 23, 2009, Finesilver replied by email to Helmerson, copying McAdams and Benck, and stated:

Brian, We are ready to meet with you to set ground rules and to pick a date and time for the Compliance Review Hearing.

24. On September 23, 2009, Helmerson replied by email to Finesilver, copying McAdams and Benck, and stated:

Mike,

Sorry for the late response. It is the week for illnesses. Capt. Benck is home with her son, who has a 103 degree temperature. Sgt. Campos is home, with his own 103 degree temperature. I am home with my daughter, who has only hit a 102.4 because my wife is out of town for two days (Wed. and Thurs.) for a mediation in Ft. Myers. I have honor guard training tomorrow, if I get to go, but expect to be back in on Friday. I'll see if we can do something hen.

Sorry for the delays but it is cold and flu season. Thanks. Brian

25. On September 23, 2009, Benck sent an email to Helmerson and Finesilver, copying McAdams, and stated:

I will most likely be back on Friday also. Matt's temp went to 104 today but the meds he got are supposed to make him much better by tomorrow night. Hope we can resume this process on Friday.

26. A true and correct copy of the emails referenced in paragraphs 21 through 24 of this Complaint (with Officer A's name and case number redacted) are appended hereto as Exhibit B.

27. On September 24, 2009, Police Chief Jones denied Officer A's request for a hearing and determination by a Compliance Review Panel.

28. On October 2, 2009, FOP President McAdams, on behalf of Officer A, notified GPD that its refusal to convene a Compliance Review Hearing was unlawful and requested:

a Compliance Review Hearing within ten (10) working days pursuant to F.S. 112.534. And as grounds therefore would show:

1. That Chief Tony Jones of the Gainesville Police Department was served through his official designee, Captain Lynne Benck, Internal Affairs Commander, on September 14, 2009, with a Notice of Intentional Violations and Demand for Compliance Review Hearing. That the undersigned representative met with Captain Benck and Lieutenant Brian Helmerson on September 14, 2009, and notified them of the employee's choice of the three person review panel and notified them that the tenth (10th) working day to conduct the hearing pursuant to F.S. 112.534 is September 28, 2009. That despite numerous attempts by the undersigned representative to schedule the hearing, Chief Tony Jones refused to name a person of his choosing to the panel.

That Chief Tony Jones has intentionally violated Florida Statutes 112.532, 533, and 534 by knowingly and wilfully ignoring his sworn duty to uphold Florida law, to name a choice to the three person review panel, and to participate in the mandated Compliance Review Hearing, within ten (10) working days, as provided by law.

29. A true and correct copy of FOP's Notice of October 2, 2009 (with Officer A's name and case number redacted) is appended hereto as Exhibit C.

30. By letter dated October 2, 2009, Finesilver told Assistant City Attorney Stephanie Marchman in pertinent part that:

Chief Jones is knowingly and wilfully ignoring his sworn duty to uphold Florida law by refusing to name his selection to the three person compliance review panel, and by refusing to convene a Compliance Review Hearing as mandated by law.

The Chief has apparently been misinformed by someone as to the specific facts surround the above investigation and when we became aware that [Officer A's] rights were being violated. The Notice of Intentional Violations and Demand for Compliance Review Hearing was served on the Chief within four (4) hours of the undersigned attorney being made aware of the violations by the City of Gainesville on September 14, 2009. Furthermore, a meeting was held that same afternoon at the Gainesville Police Department between Captain Benck, Lieutenant Helmersen, Gator Lodge 67 President, Jeff McAdams and myself, during which all details giving rise to the allegations of intentional violations were discussed. The Chief was on notice from that point forward of each and every factual basis for each alleged violation. For the Chief to claim otherwise is disingenuous.

31. A true and correct copy of Finesilver's letter dated October 2, 2009 (with Officer A's name and case number redacted) is appended hereto as Exhibit D.

32. On or about October 6, 2009, Assistant City Attorney Marchman denied Officer A's request for a Compliance Review Hearing.

33. FOP and Officer A have requested GPD to acknowledge that GPD was required to convene a Compliance Review Panel to determine

whether GPD's actions violated the Law Enforcement Officers Bill of Rights, § 112.532 and 112. 533.

34. GPD has refused to acknowledge that GPD was required to convene a Compliance Review Panel to determine whether GPD's actions violated the Law Enforcement Officers' Bill of Rights, §§ 112.532 and 112.533.

35. Because of the uncertainty of the parties' rights, the issue is likely to recur in other internal affairs investigations and this uncertainty restricts the ability of FOP to effectively represent its bargaining unit members and pursue alternative causes of action due to the reasonable concern that GPD will refuse to acknowledge its obligation to convene a Compliance Review Panel to determine whether its actions violated the Law Enforcement Officers' Bill of Rights, §§ 112.532 and 112.533.

36. As a result of the foregoing, FOP and its members including, but not limited to, Officer A, need a declaration of rights with regard to GPD's obligation to convene a Compliance Review Panel to determine whether its actions violated the Law Enforcement Officers' Bill of Rights, § 112.532 and 112.533.

COUNT II: GPD'S REFUSAL TO CONVENE
A COMPLIANCE REVIEW PANEL FOR "OFFICER B"

37. Pursuant to a complaint filed on October 14, 2009 based on allegation of an incident on the previous day, GPD commenced

internal affairs investigation of a GPD law enforcement officer who was in the bargaining unit represented by FOP.

38. The officer referenced in paragraph 34, above, is hereinafter referenced as "Officer B."

39. Officer B was interrogated by GPD on October 14, 2009 and again on January 4, 2010.

40. The investigation of Officer B continued until at least April 6, 2010 when GPD Polygraph Examiner Joseph Mayo was directed to polygraph the complainant.

41. The polygraph and results were not provided to Officer B for his review and response before the decision to impose discipline was made.

42. By memorandum dated April 22, 2010, Officer B was notified that, as a result of the investigation, GPD intended to impose a suspension of forty (40) hours against Officer B.

43. On April 23, 2010, as a result of the investigation, a suspension of forty (40) hours was imposed against Officer B.

44. On or about April 23, 2010, Officer B learned that GPD had failed to provide him a complete copy of the investigative file including, but not limited to, the results of the polygraph of the complainant.

45. On April 23, 2010, FOP President McAdams provided Captain Scott and Sergeant Campos a written "Notice of F.S. 112 Violations" which stated:

In accordance with F.S. 112.534(1)(a); please allow this email to serve as official notice of intentional violations in the ongoing internal affairs investigation against [Officer B]. Based on my review of the investigative file, [this investigation] was commenced (pursuant to F.S. 112.532(6)(a)) on October 14, 2009.

On April 22, 2010, [Officer B] was served with a "Bill of Rights Conference" notice, which state's in part that the Chief of Police was intending to issue discipline against [Officer B] in this case. According to my calculations, as of April 22, 2010, this investigation has exceeded the statutory limitation of 180 days and therefore the Department cannot serve Officer B with any discipline. The Department also violated [Officer B's] statutory rights when the Department failed to provide [Officer B] and his FOP representative with a copy of all evidence related to this case. Specifically, the Department failed to provide the results of any and all polygraph examinations that were conducted as apart of this ongoing investigation.

I must demand that the City immediately and without delay, rescind any all proposed discipline close this investigation.

46. A true and correct copy of the April 23, 2009 Notice (with Officer B's name and case number redacted) is appended hereto as Exhibit E.

47. On April 23, 2010, FOP President McAdams sent an email to Chief Jones, copying then Internal Affairs Bureau Commander Captain Scott and Internal Affairs Investigator Jorge Campos among others, regarding "Notice of Intentional Violation on IA #09-057-I, Demand for a Cure," that stated:

Written and email notice was provided today to Sgt. Jorge Campos and Capt. Lonnie Scott of intentional violations of FS 112 in the above-referenced investigation. This notice was given because it is mandated by FS 112.534(1)(a).

Your Internal Affairs Commander, Capt. Scott, responded to this notice in a face to face meeting this morning and informed me that it is his intention to "continue the violation". Therefore, I am now required to inform you, the agency head, of this intentional violation. This notice is being given because it is mandated by FS 112.534(1)(b).

Within 3 working days, a Notice of Intentional Violation and demand for Compliance Review Hearing will be filed in your office, if you do not cure the violation. (FS 112.534(1)(c)).

48. A true and correct copy of the April 23, 2010 email from McAdams (with Officer B's name and case number redacted) is appended hereto as Exhibit F.

50. No remedy was provided to Officer B.

51. Three business days later, on April 28, 2010, Officer B and FOP, through Finesilver, provided Police Chief Jones a written "Notice of Intentional Violations and Demand for Compliance Review Hearing Pursuant to Florida Statutes, Section 112.534" based on "intentional violations of Florida Statutes, Section 112.532, .533 and Section 92.525" and stating that when GPD served Officer B with the Bill of Rights Conference notice of intent to impose discipline, GPD had failed to provide him with the complainant's polygraph documents and information and had exceeded the 180 day statutory limitation.

52. A true and correct copy of the April 28, 2009 Notice to Chief Jones (with Officer B's name and case number redacted) is appended hereto as Exhibit G.

53. On May 6, 2010, Chief Jones refused to convene a Compliance Review Hearing.

54. FOP and Officer B has requested GPD to acknowledge that GPD was required to convene a compliance review panel to determine whether GPD's actions violated the Law Enforcement Officers Bill of Rights, § 112.532 and 112. 533.

55. GPD has refused to acknowledge that GPD was required to convene a Compliance Review Panel to determine whether GPD's actions violated the Law Enforcement Officers' Bill of Rights, §§ 112.532 and 112.533.

56. Because of the uncertainty of the parties' rights, the issue is likely to recur in other internal affairs investigations and this uncertainty restricts the ability of FOP to effectively represent its bargaining unit members and pursue alternative causes of action due to the reasonable concern that GPD will refuse to acknowledge its obligation to convene a Compliance Review Panel to determine whether its actions violated the Law Enforcement Officers' Bill of Rights, §§ 112.532 and 112.533.

57. As a result of the foregoing, FOP and its members including, but not limited to, Officer B, need a declaration of rights with regard to GPD's obligation to convene a compliance review panel to determine whether its actions violated the Law Enforcement Officers' Bill of Rights, § 112.532 and 112.533.

WHEREFORE, Fraternal Order of Police, Gator Lodge 67, respectfully requests that this Court declare that the Gainesville Police Department must convene a Compliance Review Panel to determine whether GPD's actions in its internal affairs investigations of its law enforcement officers including, but not limited to, Officers A and B, have violated the Law Enforcement Officers' Bill of Rights, § 112.532 and 112.533, Florida Statutes.

DATED this 28 day of July, 2010.

Respectfully submitted,

DONNELLY & GROSS, P.A.



PAUL A. DONNELLY, Trial Counsel
Florida Bar No. 813613
pdonnelly@laborattorneys.org

ANDY J. INGRAM
Florida Bar No. 17339
aingram@laborattorneys.org

2421 NW 41st Street
Suite A-1
Gainesville, FL 32635-8866
(352) 374-4001
(352) 374-4046 (facsimile)

General Counsel for Plaintiff Fraternal Order
of Police, Gator Lodge 67