

MEMORANDUM

Office of the City Attorney

071150
Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: April 28, 2008

FROM: City Attorney

CONSENT


SUBJECT: Eugene Gamble, Jr. vs. City of Gainesville, a Florida municipality and Christopher L. Perry; Alachua County Circuit Court; Case No.: 01-08-CA-1200.

Recommendation: In the case styled Eugene Gamble, Jr. vs. City of Gainesville, a Florida municipality and Christopher L. Perry; Alachua County Circuit Court Case No.: 01-08-CA-1200, the City Commission 1) authorize the City Attorney to represent the City of Gainesville and City employee(s) acting in the course and scope of their employment, with the consent and waiver of potential conflict by the City Commission and by said City employee(s), and; 2) the City Commission authorize the City Manager to execute a consent and waiver of potential conflict on behalf of the City.

On April 3, 2008 a summons and complaint was served on the City of Gainesville. Mr. Gamble alleges that he was a driver of a vehicle involved in an automobile accident with a City of Gainesville Regional Transit vehicle. He claims to have sustained bodily injury, loss of capacity for the enjoyment of life, expenses for medical care and treatment in the past and in the future, loss of earnings and ability to earn money. Mr. Gamble seeks money damages and attorney's fees in excess of \$15,000.00. In the same Complaint, Mr. Gamble also filed suit individually against the former City employee that allegedly drove the City of Gainesville Regional Transit vehicle.

In this lawsuit, the interests of the former City employee and the City appear, at this time, to not be in conflict. However, the possibility does theoretically exist for a conflict of interest to develop at some time in the future between the City's interests and those of the former City employee. Therefore, informed consent confirmed in writing by both the City and the former City employee is appropriate.

Prepared by:


Daniel M. Nee,
Assistant Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

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

2008 APR 3 PM 1:36

2008 APR -3 PM 1:36

EUGENE GAMBLE, JR.

CASE NO.: 01-08-CA-1200

Plaintiff,

DIVISION: J

vs.

CITY OF GAINESVILLE,
a Florida municipality, and
CHRISTOPHER L. PERRY, individually. *ju*

Defendants.

AT... COPY
SADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at *1100* on the *15* Day
of *APRIL* 20 *08*
BY *[Signature]*
As Deputy Sheriff

ALIAS 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, together with the attached Interrogatories, Request to Produce, and Request for Admissions, on Defendant:

CITY OF GAINESVILLE
MAYOR
200 E. University Avenue
GAINESVILLE, FLORIDA

Each Defendant is required to serve written defenses to the Complaint or Petition on Plaintiff's attorney whose name and address is:

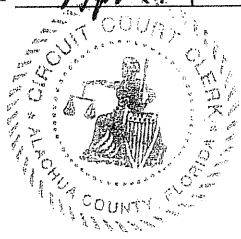
TOM L. COPELAND, ESQUIRE
Jeffrey Meldon & Assoc., P.A.
Florida Bar No.: 0611913
Post Office Box 65
Gainesville, FL 32602-0065
Phone No.: (352) 373-8000

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CITY ATTORNEY

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within ³⁰~~20~~ days after service of this Summons on that Defendant, exclusive to 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, and 45 days in which to respond to the Interrogatories, Request to Produce, and Request for Admissions. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Complaint or Petition.

DATED on APR - 1, 2008.



J.K. "BUDDY" IRBY
Clerk of Circuit Court

(COURT SEAL)

By: [Signature]
As Deputy Clerk

"In accordance with the Americans With Disabilities Act, persons with disabilities needing a special accommodation to participate in this proceeding should contact Court Administration at 37 North Orange Avenue, Suite 1130, Orlando, Florida 32801, telephone (407) 836-2050, not later than seven (7) days prior to the proceeding. If hearing impaired, (TDD) 1-800-955-8771, or Voice (V) 1-800-955-8770, via Florida Relay Service."

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

EUGENE GAMBLE, JR.

Plaintiff,

vs.

CITY OF GAINESVILLE,
a Florida municipality, and
CHRISTOPHER L. PERRY.

Defendants.

CASE NO.: 01-08-CA-1200
DIVISION: J.

RECEIVED BY ALACHUA
COUNTY CLERK OF COURT

2008 MAR-12 pm 4:07

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, EUGENE GAMBLE, JR., sues the Defendants, CITY OF GAINESVILLE, and CHRISTOPHER L. PERRY and alleges:

COUNT I, AS TO CITY OF GAINESVILLE

1. This is an action for damages that exceed fifteen thousand dollars and no/100. (\$15,000.00).
2. Eugene Gamble, Jr. is an individual who at all times material to this action has resided in Alachua County, Florida.
3. The City of Gainesville, at all times material to this action, was and is a municipality in Alachua County Florida.
4. The City of Gainesville operates a public bus service through a city agency called Regional Transit System.

5. On or about September 11, 2006 the City of Gainesville, through the Regional Transit System, owned a motor vehicle that was operated with its consent by Christopher L. Perry on SW 23rd Terrace in Gainesville, Alachua County, Florida.

6. At that time and place, Christopher L. Perry, was operating within the course and scope of his employment for the City of Gainesville, through the Regional Transit System, in his capacity as a bus driver.

7. At that time and place, Christopher L. Perry negligently operated and/or maintained the vehicle so that it collided with Plaintiff's motor vehicle.

8. As a result, Plaintiff, Eugene Gamble suffered bodily injuries and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care treatment, loss of earnings, loss of ability to earn money, and aggravation of a previous existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

9. On or about, April 10, 2007, Plaintiff presented a claim, in writing, to the Defendant, and the State of Florida Department of Financial Services, in compliance with §768.28 Florida Statutes. More than six months has passed and the claim has been denied or Plaintiff has been unable to resolve his claim with the Defendant.

10. The City of Gainesville, and its' agency Regional Transit System, are not protected by sovereign immunity when they are performing such operational level functions as driving city owned vehicles on the public roadways of Alachua County, Florida. Therefore, the acts and/or omissions of the City of Gainesville, through the Regional Transit System, and their drivers in failing to operate any city owned vehicles in

a non-negligent manner is conduct for which Defendant may not claim sovereign immunity.

WHEREFORE, Plaintiff Eugene Gamble, Jr. demands judgment for damages against Defendant City of Gainesville and a trial by jury together with all costs of this action.

COUNT II, AS TO CHRISTOPHER L. PERRY

As an alternative to Count I, Plaintiff sues Defendant Christopher L. Perry and alleges:

11. This is an action for damages that exceed fifteen thousand dollars and no/100. (\$15,000.00).

12. Eugene Gamble, Jr. is an individual who at all times material to this action has resided in Alachua County, Florida.

13. Christopher L. Perry is an individual who at all times material to this action, has resided in Alachua County, Florida.

14. On or about September 11, 2006 the City of Gainesville, through the Regional Transit System, owned a motor vehicle that was operated with their consent by Defendant Christopher L. Perry on SW 23rd Terrace in Gainesville, Alachua County, Florida.

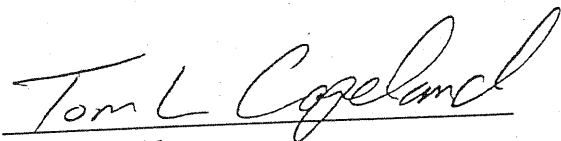
15. On or about September 11, 2006, Christopher L. Perry was not acting within the course and scope of his employment for the City of Gainesville through the Regional Transit System.

16. At that time and place, Defendant Christopher L. Perry negligently operated and/or maintained the vehicle so that it collided with the Plaintiff's motor vehicle.

17. As a result, Plaintiff, Eugene Gamble, Jr., suffered bodily injuries and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care, treatment, loss of earnings, loss of ability to earn money, and aggravation of a previous existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff Eugene Gamble, Jr. demands judgment for damages against Defendant Christopher L. Perry and a trial by jury together with all costs of this action.

Jeffrey L. Meldon & Associates, P.A.



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