

Legislative #
190184A



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229

Box 46

TO: Mayor and City Commissioners **DATE:** July 23, 2019

FROM: Nicolle Shalley, City Attorney *NMS*

PREPARED BY: Brian Franklin, Assistant City Attorney II *BF*

SUBJECT: Participating in Litigation

In response to recent City Commission requests to participate in litigation filed by other parties, the City Attorney's Office has prepared this informational memorandum to assist the Commission in understanding the issues.

Participating in litigation cannot be based on simply supporting (or disagreeing with) a cause or a political viewpoint. The City in determining whether, and to what extent, to become involved in litigation must consider how the issues affect its municipal interests. There are three ways in which the City may engage in litigation: (1) The City may file suit, or join with other similar entities in an action where its interests are directly impacted; (2) The City may intervene in litigation wherein its presence is necessary because disposing of the action may, as a practical matter, impair or impede the City's ability to protect its interest; or (3) The City may, when granted permission by the courts, file an amicus brief as a non-party having a strong interest in the outcome of the litigation.

Participating as a Plaintiff

Before initiating litigation, a plaintiff must establish standing. Standing to bring suit requires that a party have a "personal stake in the outcome" of the claim asserted. To meet this threshold, a plaintiff must establish each of the following: injury, causation, and redressability.

Additionally, a plaintiff must show that its claim is premised on its own legal rights as opposed to the rights of a third party, and that its claim is not merely a generalized grievance. As applied to a municipality, the threshold factual inquiry is essentially whether the issue being litigated impacts City operations. The impact should be significant to justify suit, i.e., the issue will typically have a financial impact or significantly affect municipal administration.

An example is our recent challenge to Florida Statute section 790.33, the law purporting to regulate the field of firearms and ammunition. The law prohibits the enactment of any local ordinances or regulations "relating to firearms," and imposes onerous penalties (such as removal from office, fines and damages) upon municipalities and their officials for impinging upon the preempted area of regulation. The law adversely impacted the City of Gainesville, preventing the City Commission from responding to certain petitions and requests of its residents to enact reasonable measures related to firearms. The City and the Commission members appropriately joined as plaintiffs in litigation pressed by ten other municipalities and 31 elected officials seeking to invalidate the law.

Participating as an Intervenor

Where litigation has ensued on an issue impacting the City, the City may need to intervene and become a party to the lawsuit to vindicate a significant right. Intervention can be “of right” or “permissive.” Intervention of right is allowed where the party seeking to intervene claims an interest in the outcome and is so situated that disposing of the action may as a practical matter impair or impede that party’s ability to protect its interest. Intervention of right must be supported by a “direct, substantial, legally protectable interest in the proceeding.” In essence, the party seeking to intervene must be a real party in interest in the issues in litigation. Permissive intervention is at the discretion of the court and, as a practical matter, requires a showing that the intervenor has some legal interest in the litigation to protect, and that the intervenor’s claim or defense shares a common question of law or fact with the main action.

By way of example, in 2010 the City of Gainesville, along with the Cities of Archer, Waldo, High Springs and others, intervened in a lawsuit filed against the Board of County Commissioners of Alachua County and the Supervisor of Elections, by a plaintiff seeking to preclude placement of a charter amendment question on the ballot. The proposed charter amendment, supported by the Cities within Alachua County, impacted the home rule authority of those Cities. The Cities were the real parties in interest in the case, whereas the Board and Supervisor were named solely for their ministerial role of passing a resolution to place the charter amendment question on the ballot. The Board and Supervisor had no interest in the outcome and were in fact neutral on the issues presented. Therefore, the involvement of the Cities in the litigation was vital to protecting the municipal interests at stake.

Participating as an Amicus

Where the City is not a real party in interest to ongoing litigation, but nonetheless has a significant interest in the outcome, it may seek permission from the court to submit an amicus brief, commonly referred to as a “friend of the court” brief. Amicus briefs are typically submitted at the appellate level to address questions of law in dispute, but may on rare occasions be submitted to the trial court. In all cases, the court has the discretion to permit or not permit the filing of an amicus brief. The purpose of an amicus brief is to supplement, but not duplicate the supported party’s legal argument. Supreme Court Rule 37.1 provides: “An amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored.” Courts require the filing of a motion seeking leave to submit an amicus brief. The motion must state the movant’s interest and the reason why an amicus brief is desirable, and why the matters asserted are relevant to the disposition of the case. Amicus briefs should not be submitted unless they will add something of value, such as additional legal arguments not already addressed, or a unique perspective on the importance and potential impact of the legal issues involved.

By way of example, the City has filed several amicus briefs in cases across the State dealing with a city’s ability to charge stormwater fees. These cases establish law that, while not directly litigating the City’s own stormwater fees, may impact who the City charges and under what circumstances. In another case, the City joined an amicus brief with other cities, counties, and businesses that offer transgender-inclusive medical benefits, to challenge the Department of Veteran Affairs regulation that excludes gender-confirmation surgery from the medical benefits available to veterans. There the City had an amicus interest because of its policy prohibiting discrimination based on, among other things, gender identity. Under the City’s medical plan, a City employee was covered for gender confirmation surgery. The amicus brief presented the

court with the broad, collective experience of entities that offered transgender-inclusive medical benefits, to demonstrate the significant benefits, yet negligible costs, of providing comprehensive care for transgender individuals.

While the City's interest in litigation may vary to some extent -- at any level of involvement -- including the filing of an amicus brief, the City must show an interest that will be affected by the outcome of the litigation.