

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BARBARA ORBAN,

Plaintiff,

v.

CASE NO.: 8:04-CV-1904-T-23MA

CITY OF TAMPA, FLORIDA,

Defendant.

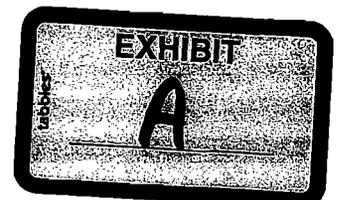
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SETTLEMENT PROPOSAL

In order to foster settlement efforts Dr. Barbara Orban has taken the declaratory relief requested under the claims for relief and offers suggested approaches for accomplishing that relief without requiring the City to agree to liability. Therefore, we will list paragraphs from the declaratory relief sought followed by those suggested approaches.

Declaratory Relief Requested

1. A traffic citation should not be issued without reasonable and probable grounds to believe a violation has occurred.
2. The issuance of citations after it has been determined that issuance of a citation is inappropriate is unconstitutional and otherwise illegal.
3. A practice of allowing a supervisor to override a determination of an officer investigating at the scene is unconstitutional and otherwise illegal in the absence of facts showing the supervisor had reasonable and probable grounds to cause a citation to issue.



Settlement Proposal

- a) Amend Tampa Police Policy 833 Traffic Crash Investigation on F. Types of Charges 1. Civil Infractions. The current policy should be deleted, which requires supervisor approval to not issue a citation. It should be replaced with language from Fla. Stat. 316.645, which states that a citation can be written in a crash investigation only if the officer conducts a personal investigation and has reasonable and probable grounds to conclude a traffic law was violated. The grounds should be documented on the citation and the crash report.
- b) The policy can provide that a supervisor can override an officer's decision to not write a citation in a crash investigation only if the supervisor personally conducts an investigation, writes and signs the citation, and documents the contributing cause.
- c) A listing or log of all complaints regarding traffic citations should be maintained by Internal Affairs and available for review by the public for a 10 year time period. At a minimum, the list should include the driver's name and driver license number; the citation date, number and type of infraction; the officer's name and badge number; and a brief statement of the driver's complaint.
- d) All complaints made by a citizen or law enforcement officer regarding a traffic citation issued by an officer or required by a supervisor should be investigated consistent with Florida Stat. § 112.533, CALEA standards, and Tampa police Internal Affairs policy. The reports of such investigations are public records once investigations are complete, and documentation of such investigations should be available for all complaints listed on the log/listing noted above.

- e) For unresolved disputes, an oversight system should be established outside the police department and their legal counsel. The city's ethics committee may be used for the purpose, or alternatively an oversight system through the City Council that would assure the police department abides by laws and policies. At present, the police department polices itself in an area it personally financially benefits from..
- f) Re-train current officers and supervisors regarding new policies and revise training program accordingly.

- a. Declaratory Relief Requested

4. Placing known erroneous entries in a citation or crash report to supply a rationale for the citation or conclusions of the crash report is unconstitutional and otherwise illegal.

- b. Settlement Proposal

- a) Officers should be re-trained on the correct use of the long and short form crash reports, consistent with Florida law. This will have the initial impact of reducing the number of major crashes in Tampa as reported by the State. As a training officer, Officer Bowden did not have knowledge of when to use the long form report.
- b) Traffic crash investigation policies must require accurate and complete reports, and a system should be established to review allegations of false entries on crash reports, amend false entries, and submit amendments to the state.
- c) The police department should create a notification form that officers provide to drivers who receive a citation in a crash investigation. The form should provide

the crash report number and instructions on obtaining a copy of the report, and should notify the driver that the crash report serves as the officer's testimony if a hearing is requested. It should also provide information on how to contact the officer and the supervisor to address any questions or concerns about the report.

- d) The police department will make reasonable effort to request the traffic courts not consider these hearsay reports.

- a. Declaratory Relief Requested

5. The crash report applicable to the March 27, 2000 incident contains factual errors as set forth above.

- b. Settlement Proposal

- a) Dr. Orban's report is now on microfiche, however hand entries can be requested to the report. The contributing cause as careless driving should be changed to "77 - All Other" and the space underneath the careless driving citation entry should note the citation was dismissed by a judge. The report should be amended: delete the misrepresentations that air bags deployed on both cars, change dry road to wet, change clear conditions to cloudy, change to "influenced by an intersection" rather than not. The narrative should add the actual accident circumstances, and note that the officers incorrectly used the long form report.

- a. Settlement Proposal Requested

6. Traffic court use of crash reports to contradict the testimony of witnesses without providing said report to the parties and without appearance and authentication by the police officer is unconstitutional and otherwise illegal.

- b. Settlement Proposal

a) Addressed under 4c and 4d.

a. Declaratory Relief Requested

7. A *de facto* quota system for traffic citations is unconstitutional and otherwise illegal.

b. Settlement Proposal

a) The practice of calculating average citations or arrests and evaluating officers who are below average should be discontinued. Using averages results in continuously increasing the average. At any time, half the officers would be less than the average such that when they work to the former average they increase the average.

b) Evaluations in traffic law enforcement should not be restricted to the number of moving violations written that were not associated with crash investigations. Instead, all related performance should be considered, which includes the number of traffic stops, crashes investigated, and non-moving violations, as well as productivity in other areas that affects that time available for traffic.

a. Declaratory Relief Requested

8. A system which causes citations to be issued to generate funds for the Police Pension Fund is unconstitutional and otherwise illegal.

b. Settlement Proposal

a) The parties should either consent to authorizing the court or agree to jointly notify the Governor and Florida Attorney General that the law creates a real or apparent financial incentive for officers to increase insurance rates, as officers receive a pecuniary benefit when automobile insurance increases. This creates a

direct financial incentive to write more citations that increase insurance rates. In addition, a financial incentive exists to sustain or increase crash and claim rates since officers receive more extra benefits with any and all insurance increases. If crashes are reduced and insurance rates decrease as a consequence, officers would receive fewer benefits.

a. Declaratory Relief Requested

9. The practice of reducing employee or city contributions to the pension fund based upon premium tax revenues received is unconstitutional and otherwise illegal.

b. Settlement Proposal

- a) Tampa fails to conform to Florida law. The amount of premium tax collections in the base year (1997) can be deducted from the annual plan cost with the remainder then allocated to city and employee contributions. However, premium tax collections in excess of the 1997 year cannot be used to reduce contribution rates and must be allocated to extra benefits.
- b) Each year, collections in excess of the base should be separately accounted for and allocated to extra benefits, which is currently defined as 300 hours of pensionable overtime. When extra benefits revenues exceed extra benefit expenses, the surplus, and possibly any related investment income, should be carried to the next year. If extra benefit expenses exceed the related revenues, the additional expense should be added to the annual pension cost and then allocated to city and employee contributions.
- c) The extra benefit, which is 300 hours of pensionable overtime, should be amended. It creates a financial incentive for officers to write citations in order to

accrue overtime hours since off-duty traffic hearings result in two hours of overtime. Further, firefighters do not have a similar self initiated activity that generates overtime, such that the benefit structure is inequitable and advantages police officers who write citations relative to officers who do not write citations and the firefighters. Further, other methods to achieve overtime are not under the direct control of officers or firefighters, which further renders the benefit inequitable and not available to all.

a. Declaratory Relief Requested

10. The practice of having insurance companies contribute to police pension funds based upon a percentage of premiums collected is unconstitutional and otherwise illegal.

b. Settlement Proposal

a) See 8.a.

a. Declaratory Relief Requested

11. Also the practice and policy of keeping police officers away from court and not honoring subpoenas is unconstitutional and otherwise illegal.

b. Settlement Proposal

a) Amend policy to require officers to attend traffic hearings if subpoenaed by the other party and notify the Court and State Attorney of this requirement such that officers will be disciplined for failing to respond to such subpoenas even if they submit a crash report.

b) See 4.c.

a. Declaratory Relief Requested

12. Refusing to give information to citizens that is required to given so the citizen can protest citations is unconstitutional and otherwise illegal.

b. Settlement Proposal

a) See 4c and 4d.

Respectfully submitted,

JOSEPH D. MAGRI, ESQUIRE
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July 25, 2007

Ursula Richardson, Esq.
City Attorney's Office
315 East Kennedy Blvd., 5th Floor
Tampa, Florida 33602

RE: Mediation August 1, 2007
Case: Appeal of Barbara Orban v. City of Tampa

Dear Ms. Richardson:

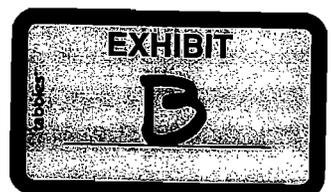
In light of the fact that it is the mayor who is ultimately responsible for the Police Department, Dr. Orban respectfully requests that Mayor Pam Iorio attend the above referenced mediation. Should Mayor Iorio's schedule will not permit her attendance at the mediation, it is requested that a member of her staff attend in her stead. It is more likely that the mediation could have a positive outcome for all concerned if either the Mayor or someone from her staff participates in the discussions.

Thank you for your attention to this matter.

Very truly yours,

Angela Merkle for
Joseph D. Magri

SIGNED IN
ATTORNEY'S ABSENCE
TO AVOID DELAY





FILE

THE
MAKHOLM
Law Group

JOHN A. MAKHOLM
WENDY A. MAKHOLM

July 26, 2007

Merkel & Magri, P.A.
Joseph D. Magri, Esq.
5415 Mariner Street
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Tampa, FL 33609

RE: Mediation August 1, 2007
Case: Appeal of Barbara Orban v. City of Tampa
07-12635-BB

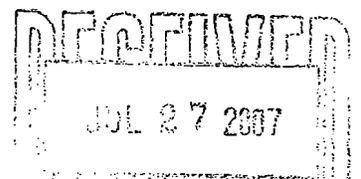
Dear Mr. Magri:

We are in receipt to your July 25, 2007 letter requesting that Mayor Iorio attend the Court Ordered Mediation on August 1, 2007. Unfortunately, the City of Tampa cannot honor you client's request. The designated representative from the City of Tampa will attend the Mediation as required and as you know from past Mediations with the City of Tampa, is routine. Rest assured that the Mayor's absence will not in any way hinder the Mediation, and that the representative present will have full settlement authority for the City of Tampa, to the degree that anyone can have settlement authority under the Charter of the City of Tampa. As always, I look forward to working with you on this case.

Sincerely,

John A. Makhholm, Esquire
For the Defendant City of Tampa

/JAM



DEFENDING THOSE WHO PROTECT US!™

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