



**CITY OF FORT LAUDERDALE**  
**City Commission Agenda Memo**  
**REGULAR MEETING**

**#16-1299**

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**TO:** Honorable Mayor & Members of the  
Fort Lauderdale City Commission

**FROM:** Cynthia A. Everett, City Attorney

**DATE:** October 18, 2016

**TITLE:** Resolution Approving Payment of Legal Fees incurred by Commissioner Robert L. McKinzie in defending the following lawsuit: *Gino Jameson and Claudette Grant v. City of Fort Lauderdale and Robert McKinzie*, Case No. 14-021340, in the 17<sup>th</sup> Judicial Circuit Court in and for Broward County, Florida

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**Recommendation**

It is recommended that the City Commission consider the adoption of a resolution authorizing payment of legal fees, in the amount of \$11,111.60, to the law firm of Gregory Durden, P.A. These fees were incurred by Commissioner McKinzie in defending against a suit filed in state court. The resolution may be approved if a determination is made that the suit arose out of or in connection with the performance of Commissioner McKinzie's official duties as an Interim City Commissioner and serves a public purpose.

**Background**

On November 4, 2014, Commissioner McKinzie was appointed to serve as Interim City Commissioner by Resolution No. 14-180.

On November 7, 2014, Plaintiffs, Gino Jameson and Claudette Grant, filed a Motion for Emergency Relief and a Verified Motion for Injunctive and Declaratory Relief in the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida against Commissioner McKinzie and the City of Fort Lauderdale alleging that the City Clerk violated the City Charter by erroneously placing Commissioner McKinzie on the ballot because he was employed by the City as an Interim Commissioner at the time and because he had failed to execute the Oath of Candidate. Plaintiffs also alleged that Commissioner McKinzie was not qualified to serve as a City Commissioner because he did not reside in the City of Fort Lauderdale. The Court entered an order dismissing Plaintiffs' emergency motion and, on January 23, 2015, Plaintiffs filed a complaint abandoning the residency claim but continuing to allege that the City Clerk violated the City Charter by placing Commissioner McKinzie on the ballot while he served as an interim City Commissioner. On June 2, 2015, the Court entered an order dismissing Plaintiffs' complaint and on February 9, 2016, Plaintiffs filed a notice voluntarily dismissing the lawsuit.

The City Code, Section 2-42, provides in part:

...The city, to the extent allowed by state law, shall promptly preserve, protect, defend, aid and assist such official and exonerate, indemnify and hold harmless such official from and against any and all expenses, liabilities, claims, demands, proceedings, damages, losses, charges, advances, disbursements, payments, expenses, costs, including reasonable counsel fees, awards, settlements, judgments, decrees and mandates paid, incurred by or imposed upon such official in all disputes, proceedings, trials and appeals, by reason of such official being or having been a city official, even though he is no longer an official at the time the expenses are incurred or the claims are made against him. The protection guaranteed in this section shall exist during and after the term of office or employment for liabilities incurred during the term of office or employment....

Florida Attorney General Opinions and existing state case law indicate that “if the city commission makes a determination that the ethics proceeding arose out of or in connection with the performance of the officer’s official duties and serves a public purpose, the official is entitled to legal representation at public expense.” (AGO 91-58); *Thornber v. City of Fort Walton Beach*, 568 So.2d 914, 916-917 (Fla. 1990). The determination of whether the litigation: 1) arose out of or in connection with the performance of the Commissioner’s official duties, and 2) serves a public purpose, must be made by the City Commission based upon the factual evidence as may be required by the City Commission to make such determination.

If the Commission makes the determination that the lawsuit arose out of or in connection with the performance of Commissioner McKinzie’s official duties as Interim City Commissioner and serves a public purpose (i.e. the Court’s interpretation of the applicable provisions of the City Charter), then the Commissioner would be entitled to payment for such costs. The determination as to whether the two criteria have been met must be made by the City Commission.

### **Resource Impact**

Gregory Durden, P.A.’s invoice reflects a total of \$14,299.60 in attorney’s fees and costs. The City Attorney’s Office reviewed the invoice and requested a reduction. Counsel has agreed to accept \$11,111.60. Funds for this purchase in the amount of \$11,111.60 are available in the FY 2017 operating budget in the account listed below:

<i>Funds available as of October 13, 2016</i>					
ACCOUNT NUMBER	INDEX NAME (Program)	OBJECT CODE/ SUB- OBJECT NAME	AMENDED BUDGET (Object Code)	AVAILABLE BALANCE (Object Code)	PURCHASE AMOUNT
543-INS010101-5116	Self-Insurance Claims	Non-Operating Expenses/Labor Relations Claims	\$ 5,910,000	\$5,910,000	\$11,111.60
<b>PURCHASE TOTAL ►</b>					\$11,111.60

Attachment:

Exhibit 1- Resolution

Exhibit 2- Invoice

Prepared by: Candace R. Duff, Assistant City Attorney

Charter Officer: Cynthia A. Everett, City Attorney