



**Request for City Council Committee Action
From the City Attorney's Office**

Date: January 4, 2010
To: Ways & Means/Budget Committee
Referral to:

Subject: *Augustin Ganley vs. City of Minneapolis*
United States District Court File No.: 08-cv-05048 RHK/JSM

Recommendation: That the City Council approve the settlement of this case by payment of \$70,800.00, payable to Augustin Ganley and his attorney, Jordan S. Kushner from Fund/Org. 06900 1500100 145400 and authorize the City Attorney's Office to execute any documents necessary to effectuate the settlement.

Previous Directives: None.

Prepared by: Timothy S. Skarda Phone: (612) 673-2553

Approved by:


Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
 Other financial impact (Explain): Payment from Fund/Org. 06900 1500100-145400
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact: Build Community

Background/Supporting Information

This lawsuit involves the arrest and prosecution of Augustin Ganley on August 31, 2007, during a Critical Mass bicycle ride. The Plaintiff is represented by Jordan S. Kushner. A proposed settlement of all claims was reached in the amount of \$70,800.00, including all claims for costs and attorneys' fees.

Ganley asserted causes of action pursuant to 42 U.S.C. § 1983 for unlawful arrest, use of excessive force, malicious prosecution, violation of his due process and First Amendment rights, conspiracy and failure to properly train and supervise officers. Mr. Ganley also asserted state tort causes of action for false imprisonment, assault, battery, defamation, malicious prosecution and negligence. The Defendants sought summary judgment on all counts. On October 8, 2009, the Hon. Richard H. Kyle, granted the Defendants motion in part, leaving allegations of false arrest, substantive due process violations, First Amendment violations, false imprisonment and malicious prosecution scheduled for trial beginning January 4, 2010.

On August 31, 2007, officers were assigned to monitor the monthly Critical Mass bicycle ride through Minneapolis. Officer Lilliard was arresting a rider who had made aggressive moves in front of a moving squad

car. A group of 200 to 300 bicyclists surrounded Officer Lilliard and two other officers and began to chant for the release of the rider being arrested. Mr. Ganley was near the front of the group and joined in the chanting. Officer Lilliard directed Mr. Ganley to step back which he did and shortly thereafter stepped closer and continued to chant. Officer Lilliard called for assistance. Officer Williams responded to the call, observed Mr. Ganley and, after a short struggle, placed him under arrest. Several other individuals were also arrested and booked into the Hennepin County jail for 'probable cause riot.' Mr. Ganley was subsequently charged by criminal complaint with gross misdemeanors of assault in the fourth degree and obstructing legal process with force and the misdemeanor of fleeing a police officer. Mr. Ganley asserted that he was verbally protesting the arrest, but took no physical action toward the officers. After a criminal trial lasting approximately one week Mr. Ganley was acquitted of all criminal charges.

Mr. Ganley suffered minor physical injuries during the incident from which he has recovered. Mr. Ganley asserts mental distress related to his arrest, incarceration and prosecution. Mr. Ganley incurred approximately \$35,000.00 in legal fees related to the criminal case which are recoverable as damages if the arrest was illegal. He asserts a claim for punitive damages. Attorney's fees and costs incurred in the civil litigation are recoverable should be prevail at trial.

The parties engaged in voluntary mediation conducted by retired Magistrate Judge Jonathan Lebedoff on November 20, 2009, and were not able to reach a resolution. A court ordered settlement conference was held on December 9, 2009, before Magistrate Judge Janie S. Mayeron attended by Council President Barbara Johnson, Assistant City Attorney Timothy Skarda and Officers Lilliard and Williams. A proposed settlement in the amount of \$70,800.00 was reached. The proposed settlement was reviewed and approved by Chief Timothy Dolan. All parties believe that the proposed settlement is in the best interests of the City and join in recommending approval by this Committee and the City Council.