



Office of the City Attorney

Recent Highlights

ASSISTANT CITY ATTORNEY RICHARD APPLETON SELECTED TO THE COMMUNITY SCHOLARS IN AFFORDABLE HOUSING 2019 COHORT

Richard F. Appleton has been selected by the University of Miami to the Community Scholars in Affordable Housing 2019 Cohort. Mr. Appleton is an Assistant City Attorney with the City of Miami City Attorney's Office handling community development, real estate, economic development, and grant related matters. Mr. Appleton received his Juris Doctorate from Duquesne University School of Law and his Bachelor of Science from Pennsylvania State University.

FAVORABLE RESULT IN THE CASE OF *CARLOS NIEVES V. CITY OF MIAMI*

Plaintiff, Carlos Nieves (62 years old), alleged that on December 11, 2012, he tripped-and-fell over an uneven/unleveled sidewalk at or near the corner of N.W. 2nd Avenue and N.W. 56th Street in the Little Haiti enclave within the City of Miami. Mr. Nieves alleged that the City of Miami had failed to inspect, warn and/or maintain the subject sidewalk in a reasonably safe condition thereby directly and proximately causing his fall. Mr. Nieves claimed that he suffered permanent injuries to his right knee (fracture of the patella and a full medial meniscus tear) and right elbow (hairline fracture) as a result of this fall. Further, Mr. Nieves alleged that his right knee injury would require a complete knee-replacement surgery in the future.

The Plaintiff requested the jury award damages in the amount of \$194,000 to compensate him for future medical bills and his past/future pain and suffering. The jury returned a defense verdict stating that the City of Miami was not liable for the allegations asserted by Mr. Nieves. This case

will now proceed to seek recovery for the City attorneys' fees and costs pursuant to the City's Proposal for Settlement.

This case was successfully tried by Assistant City Attorney Carlos Gamez and Senior Assistant City Attorney Douglas Harrison

FAVORABLE RESULT IN THE CASE OF UNITED STATES V. CITY OF MIAMI

In 1975, the United States filed a complaint against the City and other defendants, alleging that the defendants discriminated against women, Blacks and Hispanics in employment, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., and other federal laws.

On March 31, 1977, the Court entered a Consent Decree that governed this case until it was superseded by a May 1999 Order. The May 1999 Order maintained the Court's jurisdiction over certain Police Department positions. By the end of 2001, the Court had terminated the May 1999 Order with respect to all covered positions, except those of Police Officer and Lieutenant.

In April 2016, the United States and the City moved to partially terminate the May 1999 Order as it applied to the position of Police Officer and the Court granted that motion on June 30, 2016. Then the position of Lieutenant remained the only position governed by the consent decree. Since that time, the City, in consultation with the United States, continued to work through to final resolution regarding the City's promotional process.

Recently, the City and United States moved for a final order of termination of the consent decree and that order was granted by the Court. With this order, the City has successfully ended four decades of federal government oversight into its promotional practices.

This result truly took a team effort over many years and we want to thank Angela Roberts, Director of Human Resources, Police Chief Colina, former Police Chief Llanes, our former City Attorney Julie Bru, and former Labor and Employment Chief, the Honorable Diana Vizcaino for their dedication. We would also like to thank Chief of General Government and police advisor George K. Wysong, III. This matter was successfully handled and finally closed out by Chief of Labor and Employment Kevin R. Jones.

FAVORABLE RESULT IN THE CASE OF YANEISYS TRIANA V. CITY OF MIAMI

Ms. Yaneisys Triana is a former City of Miami police officer who was injured on-the-job in an automobile collision. The City of Miami accepted her injuries as compensable under workers' compensation and ultimately the City Commission approved a washout of her claim[s], together with a separate general release in exchange for a lump sum settlement of \$110,850.00. The City had paid \$330,222.98 in total past and future workers' compensation benefits, including the washout.

The claimant sued the third party that caused her injuries and has since recently settled that law suit, and despite the washout of her injuries, this office preserved the City's lien on the employee's recovery in her lawsuit. The lien recovery represents a full recovery of the entire washout together

with reimbursement of some past payments of indemnity and medical. The exact terms of the third party settlement between Ms. Triana and the tortfeasor are confidential.

This matter was handled by Senior Assistant City Attorney William A. Juliachs.

FAVORABLE RESULT IN THE CASE OF OLGA PEGUERO, ET AL. V. CITY OF MIAMI

This case involved an injury sustained by the Plaintiff's 6-year old daughter on June 18, 2015, during her participation in the City's summer camp program at the Roberto Clemente Park. The minor suffered a fractured left elbow on the playground and the Plaintiff subsequently filed a Negligent Supervision claim against the City. However, prior to the minor's participation in the City's program, the Plaintiff had completed and signed a hold harmless agreement.

On December 19, 2017, the City filed a Motion for Summary Judgment based on the hold harmless agreement in this noncommercial activity pursuant to *Gonzalez v. City of Coral Gables*, 871 So. 2d 1067 (Fla. 3d DCA 2004). In response, the Plaintiff relied on *Kirton v. Fields*, 997 So. 2d 349 (Fla. 2008), which addressed a pre-injury release signed for a minor's participation in a commercial activity.

A hearing was held in which Judge Mavel Ruiz agreed with the City's position, found the hold harmless agreement enforceable, and granted the City's Motion for Summary Judgment.

This matter was successfully handled by Assistant City Attorney Joseph Murray.