



TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: December 11, 2007
SUBJECT: Kocenda v. Troy et. al.

Plaintiff David Kocenda filed the attached lawsuit against the City of Troy, Troy Police Chief Charles Craft, Captain Edward Murphy, Lieutenant Richard Hay, Captain Colleen Mott, Lieutenant Charles Pappas, and Lieutenant Robert Rossman. Kocenda filed the complaint on August 31, 2007, but didn't serve the City and the individual defendants until November 28, 2007. In his complaint, Kocenda alleges Defamation (Count I) and Intentional Infliction of Emotional Distress (Count II). The lawsuit was filed in Oakland County Circuit Court and is assigned to Judge Fred M. Mester.

According to the complaint, the Plaintiff, who is a police officer for the City of Troy, was offered a job as a police officer for the City of Palm Beach Gardens, Florida (PBG). Co-Defendant PBG Police Officer Ellen Lovejoy then initiated an extensive background investigation and fitness for employment evaluation. The PBG job offer was subsequently retracted. In his complaint, Plaintiff alleges that the individual Troy defendant officers provided false information to PBG Officer Lovejoy, which led to the retraction of the PBG job offer. He claims that as a result of remarks made by Troy police officers to PBG, his prospective employer, he has suffered damage to his reputation, loss of income, emotional distress, humiliation, mortification, embarrassment, sleeplessness, anxiety and other damages. He is seeking over \$25,000 in damages, exclusive of interest and costs.

Absent any objection from City Council, we will initiate an aggressive joint defense of the City and the individual defendant police officers from Troy, and will file a Motion for Summary Disposition as our first responsive pleading. If you have any questions concerning the above, please let us know.

Approved, SCAO

STATE OF MICHIGAN

JUDICIAL DISTRICT
JUDICIAL CIRCUIT
COUNTY PROBATE

SUMMONS AND COMPLAINT

CASE NO.
07-085524-CZ



CLERK OF COURT
JUDGE FRED M. MESTER
COUNTY: KOCENDA, DAVID V TROY CITY

Court address

Plaintiff name(s), address(es), and telephone no(s).
DAVID KOCENDA
95 STARK RD
Roch. Hills MI 48307

Plaintiff attorney, bar no, address, and telephone no.
Richard Corravean 348449-3558
Joseph Corravean
Margaret Browning
324 E MAIN
Northville MI 48167

Defendant name(s), address(es), and telephone no(s).
City of Troy 500 W. Big Beaver
Charles Carr 734-488-4444
Edwards Murphy Richard Hays
Robert Rossman Charles Pappas
Colleen Most
Ellen Loujoy - 10500 N. Military
Tomb
Palm Beach Gardens FL
33410

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:
1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued **AUG 31 2007** This summons expires **NOV 30 2007** Court clerk **RUTH JOHNSON**

*This summons is invalid unless served on or before its expiration date.

COMPLAINT Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

Family Division Cases

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
 An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.
The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no. Judge Bar no.
PA

General Civil Cases

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint/
 A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in Troy Circuit Court Court.
The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no. Judge Bar no.
07-619 **Giddings**

VENUE

Plaintiff(s) residence (include city, township, or village) Roch Hills Mich.
Defendant(s) residence (include city, township, or village) Troy, Mich.; Palm Beach Gardens
Place where action arose or business conducted Oakland County - Troy

Date 8/31/07
Signature of attorney/plaintiff [Signature]

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

Law Suit – FYI

David Kocenda v City of Troy, Charles Craft, Edward Murphy, Robert Rossman, Colleen Mott, Ellen Lovejoy, Richard Haye, Charles Pappas

City Attorney	X
City Manager	X
Police Department - Admin	X
Risk Management	X
City Clerk's Office - Original	X

STATE OF MICHIGAN
RECEIVED FOR FILING
IN THE CIRCUIT COURT FOR THE COUNTY OF

DAVID KOCENDA,

2007 AUG 31 P 3:31

Plaintiff,

BY: _____
DEPUTY COUNTY CLERK



Case No.: 07- -CZ

VS.

CITY OF TROY, CHARLES CRAFT, EDWARD MURPHY,
RICHARD HAYE, COLLEEN MOTT, CHARLES PAPPAS,
ROBERT ROSSMAN AND ELLEN LOVEJOY,

Defendants.

RICHARD J. CORRIVEAU (P25901)
JOSEPH P. CORRIVEAU (P64479)
MARGARET L. BROWNING (P51647)
Attorneys for Plaintiff
324 E. Main Street
Northville, MI 48167
(248) 449-3558

PLAINTIFF'S COMPLAINT AND JURY DEMAND

A civil action between other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in the Ingham County Circuit Court, where it was given docket number 07-619-NO and was assigned to Judge James R. Giddings. The action remains pending.

NOW COMES PLAINTIFF, DAVID KOCENDA, by and through his Counsel, CORRIVEAU & ASSOCIATES, P.C., and BROWNING & ASSOCIATES, P.C., and for his Complaint against the Defendants, states as follows:

1. Plaintiff is a resident of the City of Rochester Hills, County of Oakland, State of Michigan.
2. Plaintiff is an employee of Defendant, CITY OF TROY, and is employed as a police officer.
3. Defendant, CITY OF TROY, is a Michigan Municipal Corporation, located within the County of Oakland.

PROOF OF SERVICE

SUMMONS AND COMPLAINT
Case No. _____

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE

OFFICER CERTIFICATE

OR

AFFIDAVIT OF PROCESS SERVER

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- I served personally a copy of the summons and complaint,
- I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the Summons and Complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

I have personally attempted to serve the summons and complaint, together with any attachments on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature _____
Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Date Signature: _____
Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

_____ on _____
Day, date, time

_____ on behalf of _____
Signature

4. The incident(s) complained of took place in the County of Oakland.
5. The amount in controversy exceeds \$25,0000, exclusive of interest and costs.

Common Allegations

6. In October 2005, Plaintiff applied for employment as a police officer with the City of Palm Beach Garden, Florida.
7. On or about June 24, 2006, the City of Palm Beach Gardens offered Plaintiff employment.
8. On or about July 20, 2006, requested a copy of Defendant, CITY OF TROY'S records regarding Plaintiff.
9. On or about July 20, 2006, the City of Palm Beach Gardens conducted a background check regarding Plaintiff.
10. On or about July 20, 2006 , Ellen Lovejoy, an employee of City of Palm Beach Gardens, came to Michigan to gather information regarding Plaintiff and to discuss Plaintiff's fitness for employment with various agents, employees and/or representatives of Defendant, CITY OF TROY.
11. On or about July 20, 2006, Defendant, CITY OF TROY, provided materials to the City of Palm Beach Gardens regarding Plaintiff.
12. Upon information and belief, Defendant, CITY OF TROY, by and through the individual defendants named above, while acting outside the scope of their official positions, but with the imprimatur of their official positions, communicated to Ellen Lovejoy and others that Plaintiff was unfit to serve as a police officer, that he had committed various crimes and/or offenses, that he suffered from mental instability and/or impairment, and other statements which have not yet been discovered.
13. On or about September 1, 2006, Plaintiff received a letter from the City of Palm Beach Gardens retracting and rescinding the offer of employment.
14. Upon information and belief, Plaintiff was rejected for employment by the City of

Palm Beach Gardens based, in part or in whole, on the false information provided regarding the Plaintiff by Defendant, CITY OF TROY, and by the individual defendants named above.

Count I - Defamation

15. Plaintiff incorporates by reference paragraphs 1 through 14.
16. The statements that Plaintiff was unfit to serve as a police officer, that he had committed various crimes and/or offenses, that he suffered from mental instability and/or impairment, are false.
17. Defendants published the remarks to third parties with knowledge of the falsity of the statements or in reckless disregard of the truth or falsity.
18. The publication was not privileged.
19. Defendants' statements regarding Plaintiff were defamation per se.
20. The publication of these remarks has resulted in damage to Plaintiff's reputation in the community and in the City of Palm Beach Gardens and Plaintiff has sustained economic loss as a consequence, including but not limited to the following:
 - a. loss of income,
 - b. loss of employment benefits, including but not limited to health benefits, life insurance, disability insurance benefits, and retirement pension funds, etc.,
 - c. emotional distress,
 - d. humiliation, mortification and embarrassment,
 - e. sleeplessness and anxiety,
 - f. and other damages that may arise during the course of this lawsuit.
21. The Plaintiff neither knew or should have known that he had a legal cause of action against the Defendants until September 1, 2006 because the Defendants fraudulently concealed their conduct.

Count II –
Intentional Infliction of Emotional Distress

22. Plaintiff incorporates by reference paragraphs 1 through 21.
23. Defendants' conduct outlined above was intentional.
24. Defendants' conduct outlined above was extreme, outrageous, and of such character as not to be tolerated by a civilized society.
25. Defendants' conduct as outlined above was for an ulterior motive or purpose.
26. Defendants' conduct resulted in severe and serious emotional distress.
27. As a direct and proximate result of Defendant's conduct, Plaintiff has been damaged in the manner outlined above.

WHEREFORE, Plaintiff respectfully requests that this court enter judgment in his favor against Defendants in whatever amount Plaintiff is found to be entitled, together with costs and interest.

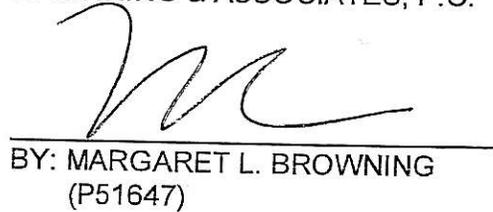
Jury Demand

Plaintiff hereby requests a Trial by Jury.

CORRIVEAU & ASSOCIATES, P.C.

BROWNING & ASSOCIATES, P.C.


BY: RICHARD J. CORRIVEAU
(P25901)


BY: MARGARET L. BROWNING
(P51647)

DATE: 8/31/2007