

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

RICHARD GARNER FRAUNFELDER,

Plaintiff,

vs:

CITY OF MOBILE, ALABAMA

Defendant.

CIVIL ACTION NO.: 1:06-CV-0256-CG-M

MOTION TO DISMISS

Defendant City of Mobile moves this Court, pursuant to Rule 12 of the Federal Rules of Civil Procedure, for entry of an order dismissing this case as a matter of law. Plaintiff asserts claims against the City of Mobile pursuant to 42 U.S.C. § 1983 based on allegations of false arrest, illegal search and seizure, and excessive force arising out of an incident that occurred on April 23, 2004. Because plaintiff did not file his complaint until April 24, 2006, these claims are outside of the two-year statute of limitation and are due to be dismissed as a matter of law.

Submitted contemporaneously with this motion is a brief setting out in more detail why plaintiff's claims are due to be dismissed as a matter of law by operation of the applicable statute of limitation.

FOR THESE REASONS, defendant City of Mobile moves this Court for an order dismissing plaintiff's claims as a matter of law.

1:06-CV-0256-CG-M
Motion to Dismiss

s/Thomas O. Gaillard, III

Federal Bar No.: GAILT9459

E-mail: tog@gswelaw.com

s/Erin B. Fleming

Federal Bar No.: FLEME3705

E-mail: efleming@gswelaw.com

GALLOWAY, SMITH, WETTERMARK
& EVEREST, LLP

Post Office Box 16629

Mobile, Alabama 36616-0629

PH: 251-476-4493

FX: 251-479-5566

Attorneys for Defendant City of Mobile

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

NONE.

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Richard Garner Fraunfelder
5857 Shadesview Drive
Mobile, Alabama 36608-6023

s/Thomas O. Gaillard, III