

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



THOMAS O. GARTNER
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
THOMAS D. MILLER
JARELY M. RUIZ
ROBIN A. PEDERSON
CHRISTINE M. QUINN
MARGARET C. DAUN
JEREMY R. MCKENZIE
MARY L. SCHANNING
PETER J. BLOCK
NICHOLAS P. DESIATO
Assistant City Attorneys

October 17, 2012

Honorable Common Council
of the City of Milwaukee
Room 205 – City Hall
Milwaukee, WI 53202

Re: Settlement of Lawsuit Entitled *Estrella Javier, et al.*
v. City of Milwaukee, et al.
Case No. 07-C-0204

Dear Council Members:

Enclosed please find a proposed resolution. We ask that it be introduced and referred to the Committee on Judiciary and Legislation with the following recommendation.

This lawsuit arises out of an incident that occurred during the early morning hours of March 6, 2005. In driving to his way home at the end of his shift, off-duty Milwaukee Police Officer Alfonzo Glover, not dressed in any identifiable police uniform, had a confrontation with another driver, Wilbert Prado. The confrontation ended when Glover fatally shot Prado.

As the Council may be aware, Glover subsequently committed suicide. Prior to his death, however, Glover gave several statements about the incident and testimony in an inquest proceeding into Prado's shooting.

Glover steadfastly maintained that he had exited his vehicle and approached Prado's stopped vehicle because he was concerned that Prado had been following him for some distance. Glover also maintained that he shot Prado only after Glover observed something in Prado's hands that appeared to be a gun. In other words, Glover maintained that he was only taking "police action" in accordance with Milwaukee Police Department rules.

The investigation into the incident, however, produced certain evidence that cast doubt upon Glover's recounting of the events. This included the location of at least one bullet hole in the Prado vehicle, certain damage to the firearm used by Glover, the location of certain shell casings from Glover's firearm, and the absence of any firearm or anything resembling a firearm recovered from Prado. In addition, because there was no violation of the law by Prado that initially prompted Glover's action and because no one in the area

Honorable Common Council
of the City of Milwaukee
October 17, 2012
Page 2

heard Glover identify himself as a police officer before or during the shooting, the totality of the circumstances led to the reasonable conclusion that the shooting was the result of a personal conflict rather than any attempt to take “police action.”

Prado’s estate and his two surviving children sued Glover’s estate and the City of Milwaukee, claiming that Glover had violated Prado’s civil rights, that he had done this in the course of his employment, and that the City was therefore required to pay any judgment on Glover’s behalf. The matter was tried in August 2010. The jury ultimately concluded that Glover was acting under color of law and had violated Prado’s civil rights, but that Glover was not acting within the scope of employment. They also concluded that the City’s policies had not caused any constitutional violation. Damages were set at \$250,000 for Prado’s children’s loss of his society and companionship, \$600,000 for Prado’s pain and suffering and \$1,000,000 in punitive damages, for a total of \$1,850,000. With the finding that the action was outside of the scope of his employment, however, the City was not then required to pay the judgment.

The plaintiffs appealed on the single question of whether they were entitled to a new trial on the scope-of-employment issue. The federal court of appeals ruled in their favor and remanded the matter back to the trial court for a trial on that single question.

Just before the trial on remand was set to begin, counsel for the parties reached a tentative agreement. The plaintiffs have agreed to accept \$600,000 in settlement of all of their claims, including claims for reasonable attorneys’ fees and costs.

Because settlement of this matter is deemed expeditious to the City of Milwaukee, we recommend payment of this proposed settlement amount and have enclosed an appropriate resolution for your convenience.

Very truly yours,

GRANT F. LANGLEY
City Attorney

JAN A. SMOKOWICZ
Assistant City Attorney

GFL:JAS

Encl.
1032-2007-753:185795