

CERMELE & MATTHEWS, S.C.

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OF COUNSEL

March 30, 2023

Jennifer Williams
Deputy City Attorney
841 North Broadway, 7th Floor
Milwaukee, WI 53202-3653

*Re: Citizen Complaint of Mr. Toccaro Harris
Against PO's Richard Michalak and Jacob Baczek
FPC No: 2022 - 0088
Date of Incident: May 16, 2022*

Jennifer:

Per our conversation, please ensure that this communication is provided to the Judiciary & Legislative Committee when it considers this claim for attorneys fees in successfully defending the above-referenced matter.

The way I read and understand §895.35, Stats., is that the City has discretion to pay reasonable expenses incurred by a police officer in defense of charges as long as one (1) of three (3) things occur. Specifically, the matter is: (1) discontinued; (2) dismissed, or; (3) determined favorably to the officer(s). All three (3) factors are satisfied in this instance.

The Matter Was Determined Favorably To The Officers

First, the FPC's Order of Dismissal, dated March 8, 2023, represents a favorable outcome for the officers, who were each facing multiple charges. Second, this never should've even made it that far, as the FPC's own Investigator determined, following an extensive investigation, that charges were not appropriate against the officers. Third, MPD conducted multiple reviews of the officers' conduct and each one concluded that they had done nothing wrong. That is significant, as the Chief of Police, or anyone under his command tasked with ensuring officers comply with MPD policy, could've intervened or issued charges against the officers but chose not to. Again, MPD determined that the officers' conduct did not warrant discipline. That more than suggests that MPD viewed the officers' actions as appropriate and in compliance with MPD rules and procedures. A courtesy copy of the MPD's Use of Force Report detailing the same, and the determinations made by the officers' supervisors and MPD Command Staff, is attached.

The Matter Was Dismissed

As confirmed by the attached Order from the FPC, the matter was formally dismissed on March 8, 2023. That written notice followed oral notice of the dismissal of all charges against the officers, given during a March 7, 2023 motion hearing.

The Matter Was Discontinued

The matter has not been re-filed by the FPC, though the FPC likely has that authority (setting aside various due process concerns). The lack of a re-filing of the matter is strong evidence that the FPC recognizes that the charges are without merit and never should have been brought in the first place. That is, after all, consistent with the findings of the FPC Investigator who handled this matter. As well as multiple entities within MPD, who also investigated the matter.

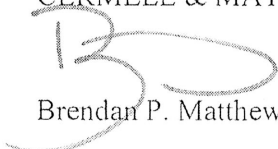
In turn, this case is really no different than had the matter never occurred—except that the officers had to incur personal liability for our legal fees associated with their defense. That seems to be the precise scenario contemplated by the statute with regard to payment of the reasonable costs of defense.

On behalf of Officers Michalak and Baczek, I therefore respectfully request that the Common Council pay the claim associated with their successful defense.

Thank you.

Sincerely,

CERMELE & MATTHEWS, S.C.



Brendan P. Matthews

BPM/lth

Attachments

PC: Officer Richard Michalak (via US Mail)
Officer Jacob Baczek (via US Mail)

BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

IN THE MATTER OF THE CITIZEN COMPLAINT RE: TOCCARO HARRIS

ORDER OF DISMISSAL

WHEREAS, the Fire and Police Commission received a citizen complaint filed by Toccaro Harris (hereinafter referred to as "Complainant") on August 1, 2022, concerning an alleged use of force by Police Officer Jacob E. and Police Officer Richard D. Michalak (hereinafter referred to as "Respondents");

WHEREAS, on November 30, 2022, the Executive Director of the Fire and Police Commission, following a full investigation of the citizen complaint, referred charges against Respondents for trial pursuant FPC Rule XV, Sec. 4, to resolve the citizen complaint;

WHEREAS, on December 1, 2022, the Executive Director of the Fire and Police Commission, issued amended charges against the Respondents for trial pursuant FPC Rule XV, Sec. 4, to resolve said citizen complaint;

WHEREAS, the trial was to be conducted in accordance with FPC Rule XVI, Trial Procedures. Section 6 of the Trial Procedures directs the Commission to serve the parties with a Scheduling Order fixing the date and time for trial not less than sixty (60) days nor more than one hundred and twenty days (120) after service of the notice to the member. In compliance with Section 6, the Executive Director issued a Scheduling Order on December 6, 2022 setting the matter for trial on March 22, 2023 and for a telephonic pretrial conference call on March 8, 2023. The order also set dates for disclosure of exhibit and witness lists;

WHEREAS, on December 7, 2022, the FPC was notified by Cermele & Matthews, S.C. that their office was representing the Respondents in this matter. Additionally, the FPC was notified by Cermele & Matthews, S.C. that their assigned counsel had a calendar conflict with the then scheduled March 22, 2023 trial date and requested the trial be

rescheduled. Having received no objection to the request, the FPC rescheduled the telephonic pretrial conference call to February 21, 2023, and rescheduled the trial for two (2) days for March 7, 2023 and March 8, 2023;

WHEREAS, on January 31, 2023, FPC Hearing Examiner Moroney instructed counsel for the Respondents that, in order to address concerns regarding Complainant's compliance/non-compliance with the FPC rules and/or Complainant's ability to prove his case by a preponderance of the evidence, counsel should file an appropriate motion with notice and support provided to all interested parties. Any such Motion to Dismiss was to be filed by Respondents with support by February 7, 2023 and Complainant's response to the Motion to Dismiss was to be filed by February 14, 2023. Further, FPC Hearing Examiner Moroney stated that Respondents' Motion to Dismiss and Complainant's Response to Motion to Dismiss would be addressed at the time of the then-scheduled telephonic pretrial conference call on February 21, 2023;

WHEREAS, on February 7, 2023, Respondents filed a Motion to Dismiss with prejudice with supporting documentation along with their truncated Witness and Exhibit List;

WHEREAS, on February 14, 2023, the FPC confirmed that no response to Respondents' Motion to Dismiss was filed by the Complainant pursuant to the scheduling deadline given by the Hearing Examiner on January 31, 2023;

WHEREAS, on February 14, 2023 at 10:38 p.m., all interested parties received a responsive email from Complainant regarding Respondents' Motion to Dismiss, in which Complainant asserted he was unaware of the imposed deadlines surrounding the filing and response to said Motion to Dismiss;

WHEREAS, the telephonic pretrial conference took place on February 21, 2023, at which time, the Complainant stated he had not received Respondents' Motion to Dismiss. Hearing Examiner Moroney adjourned the March 7, 2023 and March 8, 2023 trial to May 10, 2023 and May 11, 2023 and scheduled an in-person continuance of the telephonic pretrial conference call and motion hearing on March 7, 2023;

WHEREAS, at the March 7, 2023 pretrial conference, the Complainant repeatedly failed to follow the rules governing the presentation of arguments, made inappropriate

objections without a legal basis, and refused to honor rulings made by the Hearing Examiner; and

WHEREAS, the Hearing Examiner instructed the Complainant to cease his improper interruptions of Respondents' argument and to make only proper objections supported by relevant and appropriate legal arguments, to permit a usable record to be created. That despite such admonitions, the Complainant continued his disruptive behavior resulting in the dismissal of his action.

IT IS HEREBY ORDERED that this matter be dismissed.

Dated at Milwaukee, Wisconsin, this 8th day of March, 2023.

**MILWAUKEE BOARD OF FIRE
AND POLICE COMMISSIONERS**

BY:



Leon W. Todd, III
FPC Executive Director

Prepared by:

Fire and Police Commission
200 East Wells Street, Room 705
Milwaukee, WI 53202
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Fax: 414-286-5050

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Of Counsel

April 20, 2023

Mr. Andy Wagner, Vice President
Milwaukee Police Association
6310 West Bluemound Road
Milwaukee, WI 53213

RE: Michalak/Baczek

Professional Services (Attorney's Fees)

		<u>Hours</u>	<u>Amount</u>
12/1/2022	BPM Review complaints and e-mails; meeting with Cardenas regarding file; telephone call to client (x2); numerous texts with clients regarding case; e-mails with FPC regarding scheduling.	1.50	450.00
12/2/2022	BPM Calls and texts with client regarding hearing; e-mails with FPC regarding same.	0.80	240.00
12/15/2022	BPM E-mails and call with Niko regarding scheduling and discovery.	0.60	180.00
12/22/2022	TS Review entire file from FPC; watch body cameras; read statements; read and review charges.	7.10	1,420.00
1/23/2023	TS Review Witness and Exhibit List and review file material to determine possible arguments from Harris (Citizen complainer).	1.50	300.00
1/24/2023	TS Attempt to gain access to Witness and Exhibit List provided documents.	0.50	100.00

			<u>Hours</u>	<u>Amount</u>
1/24/2023	BPM	Review countless e-mails on matter; review filed documents from Harris.	1.30	390.00
1/27/2023	BPM	Review videos; discuss with MPA; review prior criminal history; telephone call from client (Michalak).	1.60	480.00
1/31/2023	TS	Research how to download live streamed videos; download same and review for accuracy; begin drafting Motion.	3.00	600.00
	BPM	Numerous e-mails with parties regarding motion to dismiss and misstatements by Harris.	0.70	210.00
2/1/2023	TS	Begin drafting Motion to Dismiss and Brief.	5.10	1,020.00
	BPM	Telephone call to FPC Director Todd x3; multiple e-mails regarding same.	0.90	270.00
2/2/2023	TS	Continue drafting Brief; continue drafting Witness and Exhibit List; check exhibits.	3.90	780.00
	BPM	Review file; discuss with MPA; work on witness ideas/concepts for Witness and Exhibit List; numerous e-mails with FPC regarding same.	3.50	1,050.00
2/3/2023	TS	Review lengthy social media videos and posts for potential trial exhibits; download videos; finish drafting brief and Witness and Exhibit List.	6.00	1,200.00
	BPM	E-mails with FPC regarding Harris; research for same; work on Witness and Exhibit List, discuss with Sucevic; review/revise MTD.	2.50	750.00
2/6/2023	TS	Prep all exhibits; finalize draft of brief; finalize Witness and Exhibit List; prepare to file documents and review comparables.	3.40	680.00
	BPM	Review comparables; work on file; revise documents for filing; work on Witness and Exhibit List; telephone call to FPC regarding same.	6.00	1,800.00

			<u>Hours</u>	<u>Amount</u>
2/7/2023	TS	Draft cover letter; begin drafting truncated witness list; prepare attachments; file Witness and Exhibit List.	2.30	460.00
	JC	Intra-office conference with Matthews regarding strategy, Motion to Dismiss, etc.; legal research regarding same and whether FPC has the authority to appoint legal counsel for complainant.	0.90	270.00
	BPM	Finalize Witness and Exhibit List; view videos from Harris.	1.30	390.00
2/9/2023	TS	Communication with FPC regarding subpoena duces tecum; review produced document.	0.40	80.00
2/17/2023	TS	Draft final non-truncated Witness and Exhibit List, prepare for filing.	1.80	360.00
2/20/2023	TS	Draft timeline of events; compile documented lies by Harris; prepare argument for hearing; review file.	3.40	680.00
2/21/2023	TS	Attend Motion hearing; draft arguments for new scheduled motion hearing based on new evidence and accusations; communication with parties and FPC.	2.40	480.00
	BPM	Attend pretrial/Motion Hearing; e-mails with parties regarding same; telephone call to Sucevic regarding same; telephone call from client regarding same (x2).	1.50	450.00
3/6/2023	BPM	Hearing prep; review file; in office conference with Sucevic regarding same.	2.00	600.00
	TS	Review file; prepare new arguments; practice arguments for motion hearing.	3.40	680.00
3/7/2023	BPM	Finish hearing prep; travel to hearing; attend same; attorney notes to file; return travel; telephone call to client (Michalak) regarding result; office conference with Cardenas regarding same.	2.20	660.00

Mr. Andy Wagner, Vice President

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		<u>Hours</u>	<u>Amount</u>
3/7/2023	TS	Travel to and from City Hall; attend Motion Hearing.	1.00 200.00
3/9/2023	BPM	Work on repayment for MPA; e-mail to FPC regarding dismissal; statutory research for repayment; review FPC dismissal.	1.40 420.00
3/10/2023	BPM	E-mails with FPC regarding Motion to Dismiss; e-mails with DCA Pederson regarding payment.	0.40 120.00
		For professional services rendered	<u>74.30</u> <u>\$17,770.00</u>
		Balance due	<u><u>\$17,770.00</u></u>