

GRANT F. LANGLEY
City Attorney

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VINCENT D. MOSCHELLA
Deputy City Attorneys



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
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SUSAN E. LAPPEN
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KURT A. BEHLING
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MELANIE R. SWANK
JAY A. UNORA
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EDWARD M. EHRlich
LEONARD A. TOKUS
VINCENT J. BOBOT
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
HEIDI E. GALVÁN
Assistant City Attorneys

April 18, 2008

To the Honorable Common Council
of the City of Milwaukee
Room 205 - City Hall

Re: Communication from Attorney Jon Cermele, Cermele & Associates, S.C.
for legal fees for Police Officer Brian Biscobing; EC 2552

Dear Council Members:

Returned herewith is a document filed by Attorney Jon Cermele for attorney's fees for representing Police Officer Brian Biscobing. The claim is in the amount of \$2,426.12 including \$17.12 in disbursements for 21.90 hours of service billed at the rate of \$110.00 per hour. We ask that this matter be introduced and referred to the Committee on Judiciary & Legislation.

We have reviewed this claim and advise that in our opinion, the time spent was reasonable. Legal representation was occasioned by the filing of a citizen's complaint against the officer with the Fire and Police Commission. The complaint was dismissed by the Commission.

As we have advised you under similar circumstances in the past, the Common Council has discretion to reject this claim or to pay it in whole or in part. Wis. Stat. § 895.35, *Bablitch and Bablitch v. Lincoln County*, 82 Wis. 2d 574 (1978).

Very truly yours,


GRANT F. LANGLEY
City Attorney


JAN A. SMOKOWICZ
Assistant City Attorney

JAS:amp
Enc.

1032-2007-740:124771v1

OFFICE OF THE CITY ATTORNEY

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

March 12, 2008

TO: P.O. BRIAN BISCOBING
DISTRICT: SIX

RE: Receipt of Legal Services from Law Firm of
Attorney Jonathan Cermele

Attorney Jonathan Cermele has made a claim with the City, indicating the attached was provided with legal services arising out of one of the following situations:

- 1) An incident occurring on JULY 29, 2005
- 2) A citizen complaint made by ANTOINE GEE
- 3) A police shooting incident occurring on N/A

Is this information correct?

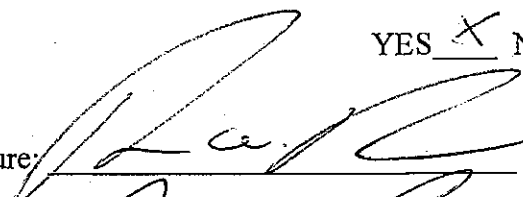
YES NO

Did you receive legal representation
in this matter?

YES NO

Your signature:

Print your name:


Brian W. Biscobing

Upon completion, please return this memorandum to the Professional Performance Division at the Police Academy (Room 325) as soon as possible.

A/C Kurt Leibold KSP

KURT LEIBOLD
Acting Captain of Police
Professional Performance Division

KRL: kjs

PROFESSIONAL PERFORMANCE DIVISION
MILWAUKEE POLICE DEPARTMENT
03/12/08 11:00 AM

CERMELE & ASSOCIATES, S.C.

- ATTORNEYS AT LAW -
WWW.CERMELELAW.COM

JONATHAN CERMELE
RACHEL L. PINGS
MATTHEW L. GRANITZ

LAURIE A. EGGERT
- OF COUNSEL -

6310 WEST BLUEMOUND ROAD
SUITE 200
MILWAUKEE, WISCONSIN 53213
(414) 276-8750
FAX (414) 276-8906

February 13, 2008

Mr. Ronald D. Leonhardt
Milwaukee City Clerk
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

CITY OF MILWAUKEE
2008 FEB 15 PM 12:54
RONALD D. LEONHARDT
CITY CLERK

**RE: Citizen Complaint of Mr. Antoine Gee
Against PO Brian Biscobing
Complaint No.: 05-52
Date of Incident: July 29, 2005**

Dear Mr. Leonhardt:

Pursuant to Article 58 of the 2007-2009 Collective Bargaining Agreement between the City and the Milwaukee Police Association, the City should request that this claim be placed on the Common Council Committee agenda within 180 days of its receipt.

The above-named police officer has retained us to represent him in connection with the above-referenced matter.

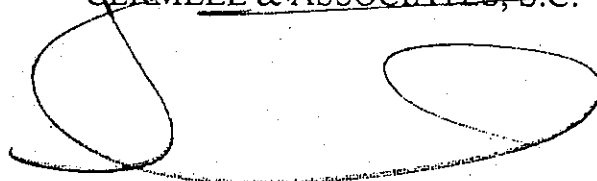
Consistent with its policy, the City Attorney's Office has refused to represent him and, as he was performing the duties of his office at the time of the events giving rise to the incident, this claim is hereby made on his behalf for the indicated legal fees. This incident involved an arrest.

The Fire and Police Commission dismissed the complaint. Attached is a copy of the dismissal notice and an itemization of the time and services rendered.

Thank you.

Sincerely,

~~CERMELE & ASSOCIATES, S.C.~~

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a final flourish.

Jon Cermele

/kjs
Attachments
BISCOBING

CERMELE & ASSOCIATES, S.C.

- ATTORNEYS AT LAW -
WWW.CERMELELAW.COM

JONATHAN CERMELE
RACHEL L. PINGS
MATTHEW L. GRANITZ

6310 WEST BLUEMOUND ROAD
SUITE 200
MILWAUKEE, WISCONSIN 53213
(414) 276-8750
FAX (414) 276-8906

LAURIE A. EGGERT
- OF COUNSEL -

February 13, 2008

Mr. Ronald Leonhardt
Milwaukee City Clerk
City Hall, Room 205
200 East Wells Street
Milwaukee WI 53202

RE: Citizen Complaint of Mr. Antoine Gee
Against PO Brian Biscobing
FPC No: 05-52
Date of Incident: July 29, 2005
Professional services

	<u>Hours</u>
1/30/2006 Initial conference with client; open file; memo to file; review complaint; check citizen on Muni. and CCAP; send Open Records requests.	1.00
3/22/2006 Telephone call from client; calendar conciliation.	0.20
3/23/2006 Review file; intra-office conference with KS regarding necessary paperwork; review and sign correspondence to FPC.	0.30
3/28/2006 Travel to and perform conciliation; return travel; memo to file regarding conciliation.	2.00
5/8/2006 Receive and review FPC Open Records regarding previous citizen complaints by complainant.	0.50
5/17/2006 Receive and review correspondence from FPC; correspondence to client.	0.20
6/23/2006 Receive and review Open Records.	0.10

	<u>Hours</u>
2/13/2007 Calendar Witness and Exhibit List due date.	0.10
2/14/2007 Review file; draft Witness and Exhibit List; telephone call to and from and correspondence to MPD regarding PPD records request.	0.60
2/15/2007 Telephone call from MPD regarding authorizations; fax same to MPD.	0.20
2/21/2007 Receive and review PPD records regarding incident; finish and send Witness and Exhibit List.	1.00
5/2/2007 Telephone call from Fronk regarding scheduling trial; review file.	0.20
5/7/2007 Receive and review Notice of Hearing; correspondence to client.	0.30
5/8/2007 Review file to prepare witness subpoena; prepare documents to serve with witness subpoena.	0.50
5/9/2007 Telephone call from Fronk confirming hearing; serve witness subpoena.	0.10
5/15/2007 Telephone call from client; schedule and calendar conference with client.	0.30
5/21/2007 Review file as preparation for conference with client; conference with client.	1.00
5/23/2007 Telephone call to Fronk; prepare for hearing, including review of file and preparation of exhibits; travel to and attend hearing; adjourn hearing and reschedule for 05/31/07; return travel; telephone call from and to witness regarding subpoena.	4.50
5/24/2007 Receive and review Notice of Hearing; receive and review correspondence from Hearing Examiner Fronk with copies of exhibits; correspondence to client.	0.30

	<u>Hours</u>
5/25/2007 Correspondence to witness with subpoena and enclosures to prepare testimony; travel; hand-deliver same.	0.30
5/31/2007 Review file as preparation for hearing; create hearing outline; travel; attend hearing; return travel.	5.00
10/19/2007 Receive and review Decision from Hearing Examiner; calendar response deadline; correspondence to client.	0.70
11/24/2007 Draft Brief to Board in Support of Examiner's Recommendation.	1.50
11/26/2007 Correspondence to FPC; revise and file Brief in Support of Hearing Examiner's Recommendation.	0.50
2/7/2008 Receive and review Board's Decision affirming dismissal of complaint; correspondence to client; close file.	0.50

	<u>Amount</u>
For professional services rendered	21.90
Additional charges:	\$2,409.00
3/28/2006 Parking	1.50
6/9/2006 MPD Open Records request	3.62
5/9/2007 Subpoena	6.00
5/23/2007 Parking	2.00
5/31/2007 Parking	4.00
Total costs	<u>\$17.12</u>
Total amount of this bill	<u>\$2,426.12</u>

Mr. Ronald Leonhardt

Page 4

Amount

Balance due

\$2,426.12

(Rate: \$110.00 per hour)



FEB 07 2008

CERMELE & ASSOCIATES, S.C. Leonard J. Sobczak
Chairman

Fire and Police Commission

Michael G. Tobin
Executive Director

Ernesto A. Baca
Vice-Chairman

Woody Welch
Earl A. Buford
Richard C. Cox
Commissioners

February 5, 2008

Rachel L. Pings, Esq.
Cermele & Associates, S.C.
6310 West Bluemound Road
Suite 200
Milwaukee, WI 53213

Mr. Antoine Gee
2712 North 11th Street
Milwaukee, WI 53206

Re: Antoine Gee v. Police Officer Brian Biscobing
FPC Complaint No. 2005-52

Dear Ms. Pings and Mr. Gee:

Enclosed is a copy of the Board's decision in the above-captioned matter.

Feel free to contact the undersigned should you have any questions.

Very truly yours,

Steven Fronk
Hearing Examiner

SF:cj

Enclosure

c: Chief Edward A. Flynn (w/enclosure)
Brian Biscobing (w/enclosure)

BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

In the matter of the complaint of
ANTOINE GEE

v.

POLICE OFFICER BRIAN BISCOBING

DECISION OF THE BOARD

Complaint No. 05-52

SUMMARY OF PROCEEDINGS

Fire and Police Commission members Richard Cox, Woody Welch and Leonard Sobczak met on January 23, 2008 and, having reviewed the complete transcript, exhibits and all other pertinent documents regarding this matter, did reach the following Decision:

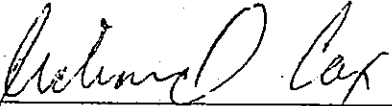
Complainant Antoine Gee has failed to show by a preponderance of the evidence that Police Officer Brian Biscobing was, on July 29, 2005, less courteous or civil than was appropriate or that he violated any rule or standard operating procedure in dealing with Mr. Gee.

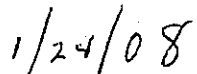
The Summary of Complaint and Proceedings, Proposed Findings of Fact and Recommendation submitted by Hearing Examiner Ness Flores are adopted by the Board, attached hereto and made a part hereof by reference.

IT IS HEREBY ORDERED that this complaint be, and is hereby, DISMISSED.

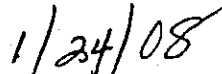
Board of Fire and Police Commissioners
of the City of Milwaukee

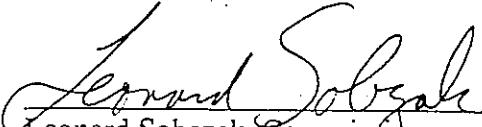
By:

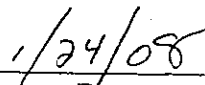

Richard Cox, Commissioner


Date


Woody Welch, Commissioner


Date


Leonard Sobczak, Commissioner


Date

BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

In the matter of the complaint of:

ANTOINE GEE AGAINST

POLICE OFFICER BRIAN BISCOBING

FPC File No. 05-52

SUMMARY OF COMPLAINT AND PROCEEDINGS

This complaint was heard on May 23, 2007 and May 31, 2007 before Ness Flores acting as Hearing examiner on behalf of the Board. Complainant Antoine Gee appeared in person, pro se. Milwaukee Police Officer Brian Biscobing appeared in person and by Attorney Rachel Pings. The complaint (Exhibit 1) alleges that on July 29, 2005 at around 5:00 P.M. Mr. Gee had a business appointment with his landlord near 37th Street and National Avenue in the City of Milwaukee. His friend parked the car on National Avenue between 37th and 38th Streets on the north side of the street facing west. Mr. Gee noticed a squad car at the corner of 38th Street and National Avenue facing south. Mr. Gee and his friend got out of the car and crossed National Avenue on foot to look for an address. The squad car pulled up along side of them and Officer Biscobing asked what Mr. Gee was looking for. Mr. Gee responded that he had found the address he was looking for and then Officer Biscobing asked Mr. Gee for identification. Mr. Gee questioned why the officer needed to see an ID and, according to the complaint, the officer said, "I'm the officer I'll ask the questions not you." Mr. Gee told the officer he had left his ID at home and asked the officer what the problem was. The complaint goes on to state that the officer then told Mr. Gee that he had almost caused an accident in crossing the street, which Mr. Gee denied. The complaint alleges that the officer seemed very angry at that point and began asking for Mr. Gee's name to run a check on him. Mr. Gee wanted to know why he needed to be checked and asked what had he done to warrant being checked. A discussion ensued with the officer threatening arrest and jail if Mr. Gee did not provide his name and Mr. Gee maintaining he had not done anything wrong and that he was there for a business appointment and that he was being harassed by the officer, according to the complaint. Ultimately, Mr. Gee did not give his name to the officer nor could the officer obtain his name from Mr. Gee's friend and he was arrested, cuffed, conveyed to the district station and given municipal citations for Sudden Pedestrian Movement Into Traffic and Resist/Obstruct An Officer. (Exhibit 11) The complaint further alleges that Mr. Gee was placed in the squad with the windows completely rolled up and the air conditioner off when the temperature was 85 degrees outside. In response to Mr. Gee's request to open the windows or turn the air conditioner on, Officer Biscobing allegedly said, "Why should I listen to you when you wouldn't

give me your name when I asked for it?" The complaint also alleges that Officer Biscobing harassed Mr. Gee's friend, Ms. Barbara Simmons, by asking her for Mr. Gee's name and then retaliating against her for not coming forth with his name by issuing her two citations.

Testimony of Complainant Antoine Gee (pages 7 – 40): Mr. Gee testified that he went to meet his landlord on the south side and was lost because he didn't know that area very well and he was looking for a certain address. He pulled over, parked the car and crossed the street. He conceded that it may have looked to the officer like he was lost because he was looking for the address. He said he had seen the officer stopped only a quarter or half a block away and he could see the officer's face. Mr. Gee crossed the street directly in front of the building he was going to. When the officer saw Mr. Gee cross the street the officer spun his car around and came up to Mr. Gee and through the squad window said, "Can I help you?" Mr. Gee said, "No, I found what I was looking for." Mr. Gee explained that he had found the address he was looking for. Mr. Gee testified that because the officer first said, "Can I help you?", he didn't think the encounter with the officer was very significant because he thought the officer was just trying to help him find the address. However, after that, the officer asked him for an ID. Surprised, Mr. Gee said, "An ID, for what?" The officer then told Mr. Gee that he, the officer, was asking the questions, and again asked if he had an ID. Mr. Gee testified he told the officer that even if he did, he would not show him because he had not done anything to have to show his ID. Mr. Gee testified that the officer angrily threw the car into park, jumped out of the squad car, came over to him and said "If you don't have any ID....what is your name?" Mr. Gee told the officer that he wasn't going to give him his name because he didn't have time for this as he was there for other business and he wasn't going to go back and forth with the officer about who he was and any ID. business. Mr. Gee thought the officer was very rude and that he had tried to fool him by coming up to him with the pretense that he wanted to help him and then he jumped out of his car demanding to know who he was. Mr. Gee testified that he had not done anything to cause the officer to demand to know who he was or what he was doing.

Mr. Gee testified that the officer asked, "Well, you are not going to give me your name? Well, that is pretty ignorant because you could be arrested if you don't give me your name." Mr. Gee still would not give him his name. The officer, according to Mr. Gee, then tried to get his name from Mr. Gee's companion, Ms. Barbara Simmons. When she wouldn't give Mr. Gee's name the officer became even more angry and he said, "I'll tell you what," and he cuffed Mr. Gee and said "You are under arrest."

Mr. Gee testified that the officer tried to get his name from Ms. Simmons by telling her that if she didn't give him Mr. Gee's name Mr. Gee would go to jail until the following Tuesday. The incident took place on a Friday.

Mr. Gee testified he was placed in the squad car in 78 – 80 degree weather with the windows up and the air conditioner off. He said it was hot in the back of the squad and that the officer would not crack the windows open and told Mr. Gee, "You are not cooperating with me, so I am not cooperating with you." Later, Mr. Gee again asked the officer to roll the windows down but he refused again because Mr. Gee was not cooperating by giving him his name. Mr. Gee testified the officer had the air conditioner on himself in front but it was hot in the back.

Mr. Gee further testified that the officer called him ignorant and said if he had an education he would know not to cross the street in the middle of the block and nearly cause an accident. Mr. Gee also testified the officer said "You people are ignorant."

Mr. Gee testified he told the officer, "I said okay. We will see who has the last laugh because I am going to write you up for saying you people be ignorant. You think all blacks are ignorant." He also testified that was when he used profanity toward the officer, telling him, "I'm going to write your mother fucking ass up."

Mr. Gee testified that when a second friend, Mr. Kenneth Dwayne Williams, who was separately coming to the same meeting, approached the officer and asked where Mr. Gee was being taken, the officer refused to tell him what station he was being taken to. Mr. Gee said he was arrested and kept at the district station for an inordinate amount of time because the officer was angry and hostile toward him.

Mr. Gee testified that Officer Biscobing told his friend (a police officer at the station) to keep him longer and therefore he "ended up staying there close to two hours."

On cross-examination by Ms. Pings, Mr. Gee admitted he crossed National Avenue in the middle of the block and not at the crosswalk "because the crosswalk was a half a block away. It is common sense to cross right in the middle of the street without going all the way to the end of a corner a half a block away."

Mr. Gee also testified on cross that Officer Biscobing violated the Courtesy and Civility rule by calling him ignorant, calling his whole race ("You people") ignorant, by harassing him when he was minding his business. He said he was made to feel like he was stopped for being a black man on the south side, that he needed to show an ID and state what he was doing there.

Testimony of Ms. Barbara Simmons (pages 41 – 52): Ms. Simmons substantially corroborated Mr. Gee's testimony about the incident. She stated that the police officer pulled up in his car and asked what they were looking for and that Mr. Gee responded by saying that they had found what they were looking for. She testified that the officer asked a second time what they were

looking for and again she and Mr. Gee told the officer that they had found what they were looking for. At that point the officer asked Mr. Gee for an ID. When Mr. Gee asked why the officer needed an ID the officer mentioned that they had disrupted traffic as they had run across the street. She testified that she knew they had not interfered with traffic because they had checked both ways before they ran across the street. She testified that they had not caused any cars to slow down "or anything."

She further testified that the officer got angry because Mr. Gee kept asking what had he done wrong and insisting he had not done anything wrong and refusing to give an ID and the officer stating that he would take him to jail. The officer asked Ms. Simmons for Mr. Gee's name and she did not give it to him.

Officer Biscobing tried to get Mr. Gee's name out of her by telling her that he would go to jail for the weekend and when she refused he ordered her to get in her car. She confirmed that the temperature was very hot, that all the windows of the squad were up and that Mr. Gee was in the squad at least one hour. She was not certain if the squad car engine was running or not after the officer gave her the ticket but she was certain the engine was not running, and therefore neither was the air conditioner, during the 20 to 30 minutes the officer spoke to her, did a check on her and wrote her the two citations.

Ms. Simmons stated that maybe they were wrong for crossing the street in the middle of the block but she insisted they checked both ways for traffic and they were not rude to the officer. On the other hand, she said, the officer appeared as though he was having a bad day, he was in a bad mood and he took it out on her and Mr. Gee. She testified that the officer's behavior toward them was completely uncalled for and that they had done nothing to provoke it. Further, she said, the officer got highly angry and she felt like he was trying to intimidate her or break her down to get information from her. She thought he retaliated against her by giving her two citations, one for Illegal Registration and one for Pedestrian Movement Into Traffic. She thought the registration citation was unfair because it was given after she had exited the vehicle and not immediately after it had occurred.

On cross-examination she testified that the incident on the street lasted one and a half to two hours.

Testimony of Mr. Kenneth Dwayne Williams (pages 61 – 64): Mr. Williams testified that he was scheduled to meet Mr. Gee and Mr. Gee's landlord somewhere on Greenfield Avenue on July 29, 2005. He said he was coming directly from work and was running pretty close to the scheduled time. He parked on the south side of Greenfield Avenue and noticed a police squad with its lights on. He saw Ms. Simmons' car parked across the street on the north side and he asked her where Mr. Gee was. When she told him Mr. Gee was in the police car he asked her what was going on. She told him to ask the officer.

He confirmed that the officer was in the squad with the windows up and said that when he approached the squad the officer rolled the window down and asked Mr. Williams if he knew Mr. Gee and if he knew his name. Mr. Williams asked the officer whether Mr. Gee had given him his name. When the officer said no, Mr. Williams said that in that case Mr. Williams was not going to tell the officer his name. The officer then rolled the window up and continued to do what he was doing. Ms. Simmons then informed Mr. Williams what had transpired. Mr. Williams returned to the squad and asked if Mr. Gee was going to get a citation and also asked, "what are we going to do in this situation?" When told Mr. Gee was going to be taken to the district station he asked the officer where the station was located so he could go there and meet Mr. Gee. The officer did not answer the question, he merely said they could meet him at the station and rolled up the window, finished the paperwork and drove off. Mr. Williams drove to the station and he and Ms. Simmons waited there one and a half hours for Mr. Gee.

Testimony of Police Officer Brian Biscobing (pages 65-101): Officer Brian Biscobing testified that he has been a City of Milwaukee Police Officer since November of 1998 and was so employed on July 29, 2005. On that date he was patrolling in a marked police squad and was on 36th Street and National Avenue facing southbound waiting to make a right turn to go west on National Avenue. The vehicle that Ms. Simmons was driving and Mr. Gee was a passenger in was traveling westbound. He noticed the vehicle at 36th Street and it appeared to him that both Mr. Gee and Ms. Simmons looked directly at him and then as soon as they saw him pulled over to the right side of the street and parked. He said it looked strange to him that they pulled over right after they looked at him. Based on his experience this often means the driver doesn't have a license. He made his turn and continued westbound and put the car registration plates into the computer system to check them because of his suspicion. The plates came back as improperly registered.

The officer then testified that because they have problems on National Avenue with prostitution and people crossing in the middle of the busy street, his captain wants officers to write tickets for all pedestrian violations and traffic infractions. He drove to 39th Street and turned around and was now facing eastbound on National on the south side of the street. He could see the car and watched Mr. Gee and Ms. Simmons exit the car and go to a business on the north side of the street, look around the business for a little while and then proceed to cross National Avenue "in the middle of the road" at 3719 West National. As the two proceeded into the eastbound lane of traffic an eastbound car had to slam its brakes to avoid hitting them and so did a second car following. Mr. Gee and Ms. Simmons quickly stepped back. The cars drove past them and they crossed to the south side of the avenue. That's when Officer Biscobing pulled up to talk to them.

Officer Biscobing testified that he probably said something like "Excuse me, you almost just caused an accident on National Avenue. We have a problem with

stuff like that here." And then he asked Mr. Gee for his ID because he intended to give him a ticket and release him. He said he didn't get a chance to speak to Ms. Simmons then because immediately Mr. Gee told him he wasn't going to give him his ID. Officer Biscobing explained to Mr. Gee the violation he had just committed, which was "Pedestrian Movement Into Traffic."

Mr. Gee answered, "I didn't have no violation, I am not giving you my name." That is when the officer got out of the squad and told Mr. Gee he had to give him his name because he was conducting an investigation for crossing in the middle of the block.

Again, Officer Biscobing testified that based on his experience, 99 percent of the time when people refuse to give their name, they have something to hide. Either they have a warrant or they have drugs or guns on them. Officer Biscobing told Mr. Gee that if he didn't give him his name he was obstructing and he was going to have to take him to jail. Mr. Gee told the officer he was going to have to take him to jail because he wasn't going to give his name.

According to his testimony Officer Biscobing told Mr. Gee he didn't want to take him to jail, that he only was going to issue a ticket for crossing in the middle of the road, but Mr. Gee insisted he had not crossed the road and that he had not done anything wrong. Again he told the officer that he was going to have to take him to jail because he was not giving him his name. The officer said okay and cuffed Mr. Gee and put him in the squad.

The officer then went up to Ms. Simmons and asked her if she knew Mr. Gee's name so he could write a citation and let him go, but she refused to give him the name. He then told her to have a seat in her car because he was going to issue her a citation too. He gave her a citation for Improper Registration and one for Pedestrian Movement Into Traffic. She wasn't taken to jail with Mr. Gee because she gave the officer her name.

The officer confirmed that it was a warm day and that the windows of the squad were rolled up but he said the air conditioning was on and the window between the front and back seats was open and that air could also get to the back under the seat. The officer testified he was warm also because he was wearing a vest.

Officer Biscobing testified that from the time he first spoke to Mr. Gee to the time they got to the District 6 station approximately 20 minutes had elapsed. He said it was a little less than 5 minutes from the time he approached Mr. Gee to the time he arrested him and put him in the squad. A computed automated dispatch report was admitted into evidence which indicated that Mr. Gee was stopped at 4:55 P.M. and the squad arrived at District 6 at 5:21 P.M. for a total of 26 minutes. The officer estimated it took eight or nine minutes to drive from the scene to the station.

Officer Biscobing concluded his testimony by stating that he did not stop Mr. Gee and Ms. Simmons for any reason other than the ordinance violation he observed, that he was not at all angry at them for some personal reason, that he did not know them prior to July 29, 2005, that he did not retaliate against Ms. Simmons for not giving him Mr. Gee's name, that the squad was running the whole time of the incident with the air conditioning on and blowing into the back of the squad, that he did not call Mr. Gee ignorant, that he did not threaten anyone that if they did not give Mr. Gee's name he was going to make certain that he stayed in jail until Tuesday, that he did not ask an officer at the station to take longer to book Mr. Gee, that he did not recall if Mr. Williams had asked where he was taking Mr. Gee, that the conversation with Mr. Williams had been polite, that Mr. Williams had asked the officer if Williams gave him Mr. Gee's name would he let Mr. Gee go, that he told Mr. Williams he had to take Mr. Gee in because he didn't know who he was, that he did not feel comfortable having a third party who was not there during the whole ordeal give him a name because he had no way of checking the information, that he never questioned Mr. Gee's education, that he did not use any derogatory categorization of black people such as "you people," that he has given tickets for pedestrian violations on West National Avenue to people other than African Americans, that he would have stopped and ticketed anybody that would have been in the same situation as Mr. Gee, that he did not subject Mr. Gee to any greater indignity than was necessary under the circumstances and that he was never discourteous, rude or profane to Mr. Gee.

Testimony of Police Sergeant Krystyn Riestra (pages 101 – 114): Sergeant Riestra testified that she works for the Professional Performance Division of the Milwaukee Police Department and was assigned to investigate Mr. Gee's complaint to the Department.

She testified that if an officer observes an ordinance violation and stops a person for that infraction, the person's name is needed in order to issue a citation. The law requires one who breaks the law to give his name to a police officer if asked. She also testified that it was Officer Biscobing's obligation and duty, under the Department's Standard Operating Procedures, to enforce the laws he saw violated. If a citizen who violates an ordinance refuses to give his name to an officer, the only recourse an officer has is to summarily arrest him so he can be identified through finger-prints.

She also testified that it would be impossible for an officer to print a fake Computer Aided Dispatch which is generated at the central communications center. The only thing the officer does to create a CAD is radio in his activities to the dispatcher; "...he is not the one, pushing the time or generating things on the computer."

PROPOSED FINDINGS OF FACT

1. On July 29, 2005, the complainant, Mr. Antoine Gee, had an appointment to meet his landlord on the south side of Milwaukee. He was unfamiliar with the area and was looking for an address he had been given by his landlord.
2. Mr. Gee was a passenger in a car driven by Ms. Barbara Simmons. She parked her car at 3719 W. National Avenue directly across the street from the building address they were looking for.
3. Mr. Gee noticed the officer's marked police squad facing southbound less than a half block away while he was still in Ms. Simmons car and looking for the address.
4. Mr. Gee and Ms. Simmons got out of their car and crossed the street in the middle of the block.
5. Police Officer Brian Biscobing was patrolling the area near 37th Street and National Avenue in squad number 6220 on July 29th, 2005. He has been a City of Milwaukee Police Officer since November 1998. He was at the intersection of 36th Street and W. National Avenue facing southbound when he observed Ms. Simmons' car traveling westbound on National Avenue past him and then immediately pull over to the curb. He then made a right turn and drove past her parked vehicle.
6. Office Biscobing became suspicious because the car had stopped shortly after it passed his location and put Ms. Simmons' plate into his computer and had it checked. When the plate came back as improperly registered the officer turned around at 39th Street and was then facing east. He observed Mr. Gee and Ms. Simmons get out of the car and cross the street in the middle of the block. Several cars had to slow down because of their actions.
7. Officer Biscobing then approached Mr. Gee and Ms. Simmons and began to question them. He also asked Mr. Gee for his identification. Mr. Gee refused to show or give Officer Biscobing his ID or his name.
8. Mr. Gee asked the officer what he had done and insisted he had not done anything wrong. When Mr. Gee refused to identify himself Officer Biscobing asked Ms. Simmons for Mr. Gee's name but she refused to give it to him. She was cited for Sudden Pedestrian Movement Into Traffic and Improper Registration.
9. When Officer Biscobing could not determine Mr. Gee's name at the scene he arrested him by cuffing him and placing him in the squad car.
10. July 29, 2005 was a warm summer day with the temperature around 78 – 80 degrees F.
11. Mr. Gee sat in the squad car with the windows up from the time he was arrested to the time he was transported to the district station. The air conditioner was on in the squad.
12. A third person, Mr. Kenneth Dwayne Williams, was also scheduled to meet with Mr. Gee and Mr. Gee's landlord at the location in question at around 5pm on July 29, 2005. He arrived at the scene close to 5pm but after Mr. Gee had been arrested and did not witness the interaction between Mr. Gee and Ms. Simmons and Officer Biscobing prior to the

- arrest. Mr. Williams asked Officer Biscobing what was going to happen to Mr. Gee. Officer Biscobing told him he was going to take Mr. Gee to the District Station for identification.
13. Shortly after Mr. Williams arrived Mr. Gee was transported to the District 6 Station for booking and identification and was cited and released. He was issued citations for Sudden Pedestrian Movement Into Traffic and Obstructing An Officer for refusing to give his name.
 14. The whole incident from the time Officer Biscobing approached Mr. Gee to the time he was taken to District 6 Station took approximately 26 minutes, from 4:55 P.M. until 5:21 P.M.
 15. Mr. Gee was released from the District 6 Station at approximately 7:33 P.M. The whole incident took approximately 2.5 hours.
 16. There is insufficient evidence to support a finding that Officer Brian Biscobing was discourteous, uncivil or discourteous to Mr. Antoine Gee. Officer Biscobing did not use coarse, violent, profane or insolent language toward Mr. Gee and did not subject him to any greater indignity than was necessary.
 17. Complainant has failed to show by a preponderance of the evidence that Police Officer Brian Biscobing violated Milwaukee Police Department Rule 4, Section 2/060.00.

RECOMMENDATION OF HEARING EXAMINER

The facts in this case are not overly complicated. Mr. Gee and Ms. Simmons crossed National Avenue in the middle of the block and not at the crosswalk, half a block away. Jaywalking is not a major infraction but it is a violation of a city ordinance. The officer also testified that their actions caused several cars to hit their brakes either to avoid hitting Mr. Gee and Ms. Simmons or as a precaution when they saw them in the street. They were cited for Sudden Pedestrian Movement Into Traffic. When the officer saw them cross the Avenue he had the right to approach them and also to cite them. Mr. Gee insisted to the officer that he had done nothing wrong and told him he knew how to cross a street and that it was natural for him to cross the street in the middle of the block and that he knew how to cross without causing a traffic jam.

Mr. Gee was upset because he thought Officer Biscobing tried to trick him by first asking him if he could help him. Officer Biscobing said that he used that salutation so as to be polite. When the officer then went on to address the matter of the pedestrian infraction Mr. Gee got annoyed and thereafter refused to cooperate, insisting he had done nothing wrong and that he was being harassed and that he was there on business and didn't have time for a discussion with the officer.

Mr. Gee testified that he felt that he was singled out because he was African American on the south side of Milwaukee. The officer did mention that he

became suspicious when Ms. Simmons and Mr. Gee pulled over quickly right after they appeared to see him. He testified that police have a lot of problems in that area with prostitution and with people crossing in the middle of the block. It does seem strange that he would think of prostitution when he saw an African American couple on West National Avenue and some may say that smacks of racial profiling. Certainly Mr. Gee thought he was being harassed because he was African American on the south side. However, the officer did observe several ordinance violations before approaching Mr. Gee.

During the hearing Mr. Gee was very argumentative and combative and claimed that counsel's objections and my rulings were very unfair to him. He also interrupted and continued to talk when I was trying to rule on a point of law. At one point I had to warn him that I would dismiss his complaint if he didn't stop talking and arguing when I was trying to make a ruling. He also told his witnesses not to answer even after I ruled they could answer. He contradicted his own testimony at times and insisted he didn't do anything wrong on the day in question even after he had testified otherwise. At times he was a very good advocate for himself, even brilliant, but in general he was disruptive and uncooperative and toward the end of the hearing he picked up his papers and ordered his witnesses to leave the hearing room with him because he disagreed with my ruling on an exhibit. I can see where he would be a difficult challenge for a police officer on the street and the totality of the circumstances must be considered when deciding this case. It is possible that Officer Biscobing got angry at times during his encounter with Mr. Gee. But I am convinced by the preponderance of the evidence that he controlled himself, his temper and his language under probably very trying circumstances with a very uncooperative person. The proof is that Ms. Simmons gave the officer her name and she was cited and released on the street and she could have left had she so desired. Had Mr. Gee done the same he would have been cited and could have gone to his business meeting.

Mr. Gee was cited and he went to court and took care of his obligation. He paid for his actions. The questions here is: Did Officer Biscobing violate Rule 4, Section 2/060.00? The preponderance of the evidence does not show that, under the circumstances, Officer Biscobing violated the rule.

Mr. Gee said the officer was rude, but the rule says that when required to act, officers must do so with firmness and sufficient energy to perform their duties. The evidence shows the officer acted in a no-nonsense, firm but appropriate way under the circumstances.

Mr. Gee also complained that the officer refused to crack open or roll down the windows for the time he was in the squad car in hot weather. The officer and Mr. Gee testified the air conditioner was on and the officer said that the air was getting into the back of the squad and that he was hot also as he was

wearing his vest. For the 25 or so minutes Mr. Gee was in the squad it cannot be said that this conduct violated the rule or caused any greater indignity than is necessary, especially when Mr. Gee could have avoided the situation by giving his name and arguing his case in court.

The accusation by Mr. Gee concerning Officer Biscobing calling him ignorant and uneducated and saying "You people" are ignorant is not substantiated by the preponderance of the evidence. The officer denied saying those things and they were not corroborated by other witnesses.

Mr. Gee accused the officer of refusing to give Mr. Williams the address of the station he was being taken to. Mr. Williams testified he asked where the district station was and the officer didn't reply but instead simply said, "You can meet me at the district." The officer then rolled up the windows, finished his paperwork and drove off. Mr. Williams then drove to the station, presumably following the officer. Officer Biscobing testified he didn't remember if Mr. Williams asked him where he was taking Mr. Gee and added that the conversation with Mr. Williams was polite on the part of both of them. I don't believe this evidence supports a finding of a violation of the rule.

For all these reasons I recommend that Mr. Gee's complaint be dismissed. As to the officer's motion to dismiss for lack of prosecution by Mr. Gee for leaving the hearing before its conclusion, I recommend that be denied. First, Mr. Gee had concluded his side of the case and it did not interfere with the accused officer's defense. Secondly, if the Board accepts my recommendations on the merits, this is a moot issue and the case would be res judicata.

Respectfully submitted this 11th day of October 2007.



Ness Flores
Hearing Examiner