

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

THOMAS E. HAYES
PATRICK B. McDONNELL
LINDA ULISS BURKE
Special Deputy City Attorneys



OFFICE OF CITY ATTORNEY
800 CITY HALL
200 EAST WELLS STREET
MILWAUKEE, WISCONSIN 53202-3551
TELEPHONE (414) 286-2601
TDD 286-2025
FAX (414) 286-8550

May 2, 2002

BEVERLY A. TEMPLE
THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
HAZEL MOSLEY
HARRY A. STEIN
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
MICHAEL G. TOBIN
DAVID J. STANOSZ
SUSAN E. LAPPEN
DAVID R. HALBROOKS
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

Assistant City Attorneys

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

Re: **Communication from Attorney Kenneth J. Murray
for legal fees for Police Officers Jerry Wind and James Harvey
C.I. File No. 94-S-357**

Dear Council Members:


Returned herewith is a document filed by Attorney Kenneth Murray for attorney's fees for representing Police Officers Jerry Wind and James Harvey. The claim is in the amount of \$3,947.30 including \$32.30 in disbursements for 43.5 hours of service billed at the rate of \$90.00 per hour. Mr. Murray has agreed to reduce this claim to \$3,407.30 to reflect that one officer was found guilty on one charge, and the amount deducted relates to work on that charge. 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 officers with the Fire and Police Commission. The complaint was dismissed by the Commission, except, as noted above, for one charge.

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. Sec. 895.35, Stats., 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:enm
Enc.
2295

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
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CHARLES R. THEIS
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VINCENT J. BOBOT
KURT A. BEHLING
LAURI A. EBEL
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK

Assistant City Attorneys

RECEIVED
94 AUG -3 AM 7:58
MILWAUKEE POLICE
INTERNAL AFFAIRS
DIVISION

OFFICE OF CITY ATTORNEY
800 CITY HALL
200 EAST WELLS STREET
MILWAUKEE, WISCONSIN 53202-3551
TELEPHONE (414) 286-2601
TDD 286-2025
FAX (414) 286-8550

July 28, 1994

Mr. Walter Franklin, Deputy Inspector
Milwaukee Police Department
749 West State Street, Room 714
Milwaukee, WI 53233

Re: C.I. File No. 94-S-357
Communication from Kenneth J. Murray

Dear Inspector Franklin:

Enclosed please find a claim filed by attorney Kenneth Murray for Attorney's fees incurred during his representation of officers Jerry Wind and James Harvey.

Please determine whether these officers were in fact involved in the matter described in Mr. Murray's claim, and have the officers verify Mr. Murray's representation. Thank you for your anticipated cooperation in this matter.

Very truly yours,

Jan Smokowicz (s)
JAN A. SMOKOWICZ
Assistant City Attorney

*4/24/2002
o.k.
for only
\$3407.30
letter # 2295
JAS*

JAS:jg
Enclosure

*Need to
break time
down on P.I.
pt. re Harvey's
loss.*

CITY OF MILWAUKEE

ADELMAN, ADELMAN & MURRAY, S.C.

ATTORNEYS AT LAW

94 JUL 25 AM 11:00

RONALD D. LEONHARDT
CITY CLERK

1840 NORTH FARWELL
SUITE 403
MILWAUKEE, WI 53202
(414) 225-2929

LYNN ADELMAN*
ELIZABETH ADELMAN
KENNETH J. MURRAY**
LAURIE A. EGGERT
JEFFREY S. HYNES
KATHLEEN STILLING
PAMELA S. MOORSHEAD
GRACE M. MASSON***
PAUL A. OBERER****

*ALSO LICENSED TO PRACTICE IN NEW YORK
**ALSO LICENSED TO PRACTICE IN ILLINOIS
***ALSO LICENSED TO PRACTICE IN MARYLAND
****ALSO LICENSED TO PRACTICE IN OHIO

July 13, 1994

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

RE: Citizen complaint of Mr. Robert Braun
Against Police Officers Jerry Wind and James Harvey
Complaint No.: 718
Date of Incident: October 16, 1990
and
Citizen complaint of Ms. Diane Kruschek
Against Police Officer Jerry Wind and James Harvey
Complaint No.: 719
Date of Incident: October 16, 1990

1994 JUL 26 PM 4:14
CITY ATTORNEY
CITY OF MILWAUKEE
RECEIVED

Dear Mr. Leonhardt:

The above-named police officers have retained us to represent them in connection with the above-referenced matter.

Consistent with its policy, the City Attorney's Office has refused to represent them and as they were performing the duties of their office at the time of the events giving rise to the incident, the claim is hereby made on their behalf for the indicated legal fees.

The Fire and Police Commission consolidated for hearing two complaints against P.O.s Wind and Harvey arising from an abortion protest, Robert Braun v. Wind and Harvey, FPC No. 718, and Diane K. Kruschek v. Wind and Harvey, FPC No. 719.

Kruschek's complaint was dismissed by the Fire and Police Commission as to both officers at the conclusion of the complainants' consolidated case after two nights of hearing.

The Fire and Police Commission dismissed Braun's complaint against Wind at the conclusion of complainant's consolidated case.

Braun's complaint against Harvey continued; Braun alleged two violations against Harvey, i.e. Rule 4, Section 98 and Rule 4, Section 12. The Fire and Police Commission dismissed the Rule 4, Section 12 charge after deliberation at the end of the hearing, but found Harvey guilty of violating Rule 4, Section 98. Enclosed is a copy of the FPC decision and order.

The following is an itemization of the time and services rendered. We have not included in the bill time spent on Phase II of the hearing since those services involved a charge that was not dismissed. (Please note that there was no testimony from anyone in Phase II.)

<u>DATE</u>	<u>NATURE OF WORK PERFORMED</u>	<u>HOURS</u>
12-18-90	Telephone call from Wind; open file; telephone call from Harvey; correspondence to FPC	1.2
01-23-91	Conference with Harvey; review of file	2.1
04-08-91	Review of file; telephone call to FPC; memo to file	0.4
05-06-91	Telephone call from Fronk	0.1
05-21-91	Correspondence to FPC; review of file	0.3
05-22-91	Memo to file; correspondence to Open Records	2.1
05-23-91	Correspondence to clients	0.1
05-28-91	Review of witness and exhibit list from Braun	0.1
05-30-91	Correspondence to Personnel	0.1
05-30-91	Telephone calls to Insp. Hastings and #7; conference with Sgt. Krenzke	
05-31-91	Preparation for and appearance at pre-trial; review of information from Fronk	1.1
06-05-91	Review of correspondence from FPC	0.1
06-06-91	Intraoffice conference; correspondence to Open Records; correspondence to Chief; review of file	1.3
06-13-91	Telephone call from Personnel	0.1
06-18-91	Correspondence to Fronk	0.1
06-20-91	Telephone call from and to Jacobsen	0.1
06-24-91	Telephone call to Open Records	0.2
06-24-91	Review of correspondence from FPC	0.1
06-25-91	Conference with Open Records; memo to file	0.4
07-02-91	Conference with clients	1.5
07-09-91	Conference with Open Records; conference with Personnel; review open records	1.2
07-12-91	Correspondence to Morgan	0.1
07-15-91	Review of correspondence from FPC	0.1
07-18-91	Review of correspondence from FPC	0.1
07-24-91	Review of correspondence from FPC	0.1

Wind and Harvey Statement
July 13, 1994
Page Three

09-03-91	Review of correspondence from FPC	0.1
09-23-91	Draft witness and exhibit list; correspondence to FPC; review of correspondence from FPC	0.6
10-01-91	Intraoffice conference; telephone call to and from Fronk	1.6
10-01-91	Telephone call to office and FPC; conference with Fronk and Morgan; appearance before FPC	1.9
10-18-91	Review of correspondence from FPC	0.1
10-21-91	Preparation for and appearance at hearing; review of file; research	10.6
11-11-91	Study transcript	2.5
11-13-91	Study transcript; prepare for continued hearing; appearance at hearing; conference with client	12.0
11-25-91	Review findings of fact and decision; correspondence to clients; close file	<u>0.9</u>
	TOTAL HOURS	43.5

DISBURSEMENTS:

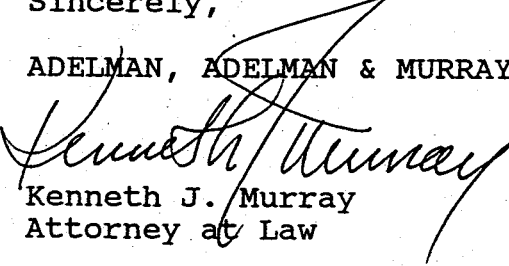
07-09-91	Open Records Request	\$ 6.80
07-09-91	Parking	1.50
09-24-91	Subpoenas (4)	<u>24.00</u>
	TOTAL	\$ 32.30

43.5 hours at \$90.00 per hour = \$ 3,915.00
Disbursements = 32.30

TOTAL DUE: \$ 3,947.30

Sincerely,

ADELMAN, ADELMAN & MURRAY, S.C.


Kenneth J. Murray
Attorney at Law

KJM/LAE/ldq
WIND

NOV 25 1

BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

In The Matter Of The Complaint Of

ROBERT C. BRAUN
VS.
P.O. JAMES HARVEY AND
P.O. JERRY WIND

SUMMARY OF PROCEEDINGS
FINDINGS OF FACT
AND DECISION

FPC Complaint No. 718

SUMMARY OF PROCEEDINGS

The above-captioned matter was heard on October 21, 1991, and November 13, 1991; before a panel of Fire and Police Commissioners consisting of Leonard W. Ziolkowski, Kathy Harrell-Patterson and Robert Harris, Jr. Complainant Robert C. Braun appeared in person, pro se, on both dates. Accused members James Harvey and Jerry Wind appeared on both dates, in person and by Attorney Kenneth J. Murray.

The hearing began with testimony from witnesses Diane Kruschek, Matthew Trewhella, Mary Lynn Haferman and Maura Gaskin, each of whom indicated that, on October 16, 1990, they had been at Bread and Roses Women's Health Center, 5825 West Capitol Drive, in an attempt to dissuade women from obtaining abortions at such location. Each of these individuals was arrested, and carried to the police van via stretcher, as was complainant Robert Braun. The stretcher bearing Mr. Braun, according to testimony from Trewhella, was passed to Police Officers Wind and Harvey inside the van who then, with little or no warning, flipped Braun onto the floor of the van. According to Trewhella, Braun immediately cried out in pain. A short time later another arrestee was brought into the van on a stretcher and flipped onto Braun, causing him further pain, as a result of which he cried out once again. Others who were arrested, according to Kruschek, Trewhella, Haferman and Gaskin, continued to be flipped onto Braun despite his outcries and despite indications by others in the van that Braun was injured. Braun was eventually removed from the van and transported to the Milwaukee County

Medical Center for treatment. Testimony from Gaskin concluded at approximately midnight on October 21, and the matter was adjourned to November 13, 1991 for further proceedings.

On November 13, 1991, Braun concluded his portion of the case by testifying regarding the events of October 16, 1990. Braun stated that it was his opinion that Police Officer Harvey deliberately flipped him off the stretcher knowing of the danger of injury, that others were flipped on top of him, and that Harvey also made a number of verbal comments which exhibited his disregard for the wellbeing of Braun and other prisoners. Officer Wind, according to Braun, made no effort to prevent Harvey from injuring Braun or others. On the other hand, neither Braun nor the others who testified could indicate that Wind took any direct action which could be viewed as intended to injure any of the prisoners in the van.

At the close of testimony presented by complainant Robert Braun, Attorney Murray moved to dismiss Braun's complaint as to both Wind and Harvey. The Commission panel, after deliberations, unanimously determined that Braun had failed to meet his burden of presenting a prima facie case against Police Officer Jerry Wind, but had met such burden as concerned Police Officer Harvey.

Testimony on behalf of Harvey was received from Deputy Inspector James Warren (who was, on October 16, 1990, the Captain at the scene of Bread of Roses), Police Officer John P. Gunning and Police Officer Jerry Wind. Each of these witnesses stated that they had only a very limited recollection, if any, of the arrest of Robert Braun on October 16, 1990. This may have been due, in part, to the fact that Braun has been arrested almost 100 times in connection with pro-life demonstrations in Milwaukee. Each witness specifically denied knowledge of Braun or anyone else being flipped from a stretcher on such date, and further denied hearing Harvey use inappropriate language or make

inappropriate comments to any of those arrested. Wind testified that those arrested were rolled onto the van's seats, not dropped onto the floor. The majority of the testimony from all department members other than Wind and Harvey centered around standard operating procedures relative to arrest of protestors at Bread and Roses.

Police Officer James Harvey testified on his own behalf, specifically denying intentionally flipping anyone from a stretcher on October 16, 1990, and further denying the use of inappropriate language. Harvey stated that Braun and others actively attempted to prevent the orderly placement in the van of those arrested, and that he (Harvey) used no more force in any case than was necessary to perform his duties. Harvey further testified that Braun was already in the van when he (Harvey) first entered, and that Braun first complained of being injured after Harvey moved Braun to the front of the van to provide for room for others to be placed in the van.

FINDINGS OF FACT

1. That Police Officers James Harvey and Jerry Wind were, on October 16, 1990, and at all other times pertinent hereto, subject to Milwaukee Police Department Rules, Regulations and Standard Operating Procedures.

2. That, on October 16, 1990, Officer Harvey utilized force against a prisoner, Robert Braun, in excess of that necessary under the circumstances then existing. Such action constituted a reckless disregard for the safety and dignity of said Robert Braun, and was a direct violation of MPD Rule 4, Section 98.

3. That complainant Robert Braun has failed to show, by a preponderance of the evidence, that Police Officer James Harvey utilized profanity in violation of MPD Rule 4, Section 12.

4. That complainant Robert Braun has failed to present a prima facie case against Police Officer Jerry Wind.

DECISION

It is the unanimous opinion of this panel that complainant Robert Braun has failed to present a prima facie case showing any violation of Milwaukee Police Department rules or regulations by Police Officer Jerry Wind, and such charges are therefore dismissed with prejudice.

It is also the unanimous decision of this panel that complainant Robert Braun has failed to prove, by a preponderance of that evidence, that Police Officer James Harvey used profanity as alleged in Braun's complaint. Those charges alleging a violation of MPD Rule 4, Section 12, by Officer Harvey are therefore dismissed with prejudice.

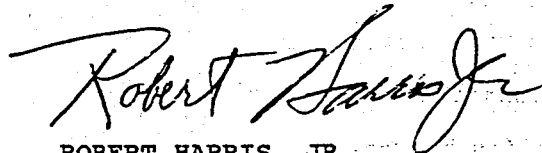
It is further the unanimous decision of this panel that the actions of Police Officer James Harvey on October 16, 1990, constituted an unreasonable and unnecessary use of force against complainant Robert Braun. The weight of the evidence, and the more credible evidence, support Mr. Braun's version of the incident. All witnesses indicate that Braun was engaged in non-violent protest, was under arrest and posed no danger of physical resistance or escape. Failure to cooperate with police by walking to the van, and/or moving out of the way while in the van, cannot be viewed as a justification for the callous disregard for Braun's wellbeing exhibited by Officer Harvey. There is no justification for subjecting a prisoner, who offers no resistance and poses no threat, to further force or the likelihood of injury. It is the unanimous decision of this panel that Police Officer James Harvey did, on October 16, 1990, violate Milwaukee Police Department Rule 4, Section 98.

As a result of this finding, it is the also unanimous decision of this panel that the good of the service requires that Officer James Harvey be suspended, without pay, for two (2) working days.

Dated at Milwaukee, Wisconsin, this 20TH day of November, 1991.

MILWAUKEE BOARD OF
FIRE AND POLICE COMMISSIONERS

BY:

A handwritten signature in cursive script, appearing to read "Robert Harris, Jr.", is written over the printed name.

ROBERT HARRIS, JR.
Commissioner

RECEIVED
ADELMAN ADELMAN
& M. 1/7

NOV 25 1991

BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

In The Matter Of The Complaint Of

DIANE K. KRUSCHEK
VS.
P.O. JAMES HARVEY AND
P.O. JERRY WIND

SUMMARY OF PROCEEDINGS
FINDINGS OF FACT
AND DECISION

FPC Complaint No. 719

SUMMARY OF PROCEEDINGS

The above-captioned matter was heard on October 21, 1991, and November 13, 1991, before a panel of Fire and Police Commissioners consisting of Leonard W. Ziolkowski, Kathy Harrell-Patterson and Robert Harris, Jr. Complainant Diane K. Kruschek appeared in person on October 21, 1991, but did not appear on November 13, 1991. Accused Police Department members James Harvey and Jerry Wind appeared on both dates, in person and by Attorney Kenneth J. Murray.

The hearing on October 21, 1991, began with testimony from complainant Diane Kruschek wherein she indicated that, on October 16, 1990, she had been at Bread and Roses Women's Health Center, 5825 West Capitol Drive, in an attempt to dissuade women from obtaining abortions at such location. During the course of her activities Ms. Kruschek was arrested, and was carried to the police van via stretcher. The stretcher, according to Kruschek, was passed to Police Officers Wind and Harvey inside the van who then, with little or no warning, flipped Kruschek onto others already in the van. A short time later another arrestee was brought into the van on a stretcher and flipped onto Kruschek and others. At this time one of the stretcher poles struck Kruschek in the head, causing pain and injuries for which she was later treated at Milwaukee County Medical Complex. Testimony from Matthew Trewhella, Mary Lynn Haferman and Maura Gaskin essentially corroborated Kruschek's testimony although no one, including Kruschek, could indicate that it appeared to be the intent of Wind or Harvey to cause injury to Kruschek.

On November 13, 1991, at the close of testimony presented by complainant Robert Braun (whose case was joined with Kruschek's) Attorney Murray moved to dismiss the complaint of Diane Kruschek on the grounds that Kruschek had failed to meet her burden of presenting a prima facie case. As previously indicated, Ms. Kruschek did not appear on November 13, 1991.

FINDINGS OF FACT

1. That complainant Diane K. Kruschek has failed to present sufficient evidence to constitute a prima facie case.

DECISION

This panel has considered all evidence, as the law requires at this juncture, in a light most favorable to complainant. Despite this fact, there is no real evidence to support even a preliminary finding that Police Officers Wind and Harvey intended that the stretcher pole strike Kruschek in the head. It is therefore the unanimous decision of this Commission panel that the complaint of Diane K. Kruschek be, and is hereby, dismissed with prejudice.

Dated at Milwaukee, Wisconsin, this 20TH day of November, 1991.

MILWAUKEE BOARD OF
FIRE AND POLICE COMMISSIONERS

BY:



ROBERT HARRIS, JR.
Commissioner

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

To: POLICE OFFICER Jerry WIND
DISTRICT/DIVISION BUREAU: #7

Re: RECEIPT OF LEGAL SERVICES FROM ATTORNEY KENNETH MURRAY AND/OR
ATTORNEY LAURIE EGGERT OF THE FIRM OF ADELMAN, ADELMAN, AND
MURRAY

Attorney MURRAY has made a claim with the City, indicating that he or Attorney EGGERT have provided you with legal services arising out of one of the following:

- 1) An incident occurring on 10-16-90
- 2) A citizen's complaint made by Robert BRAUN
- 3) A police shooting incident occurring on _____

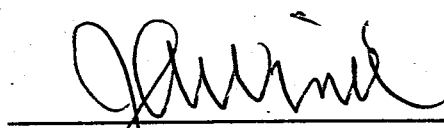
Is this information correct?

YES NO

Did you receive legal representation in this matter?

YES NO

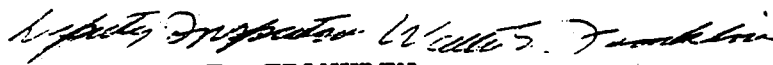
Your signature: _____



Print your name: _____

JERRY WIND

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



WALTER E. FRANKLIN
Deputy Inspector of Police
Internal Affairs Division

WEF:bt

(5\PO.MEMO)

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

To: POLICE OFFICER James HARVEY
 DISTRICT/DIVISION BUREAU: #7

Re: RECEIPT OF LEGAL SERVICES FROM ATTORNEY KENNETH MURRAY AND/OR
 ATTORNEY LAURIE EGGERT OF THE FIRM OF ADELMAN, ADELMAN, AND
 MURRAY

Attorney MURRAY has made a claim with the City, indicating that he or Attorney EGGERT have provided you with legal services arising out of one of the following:

- 1) An incident occurring on 10-16-90
- 2) A citizen's complaint made by Robert BRAUN
- 3) A police shooting incident occurring on _____

Is this information correct? YES NO

Did you receive legal representation in this matter? YES NO

Your signature: James Harvey

Print your name: JAMES HARVEY

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

Walter E. Franklin
 WALTER E. FRANKLIN
 Deputy Inspector of Police
 Internal Affairs Division

WEF:bt
 (5\PO.MEMO)

CITY OF MILWAUKEE

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

THOMAS E. HAYES
PATRICK B. McDONNELL
CHARLES R. THEIS
Special Deputy City Attorneys



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800 CITY HALL
200 EAST WELLS STREET
MILWAUKEE, WISCONSIN 53202-3551
TELEPHONE (414) 286-2601
TDD 286-2025
FAX (414) 286-8550

February 2, 1996

BEVERLY A. TEMPLE
THOMAS O. GARTNER
LINDA ULISS BURKE
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ROXANNE L. CRAWFORD
THOMAS C. GOELDNER
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ELLEN H. TANGEN
MELANIE R. SWANK
TRACY M. JOHNSON

Assistant City Attorneys

Attorney Kenneth Murray
Adelman, Adelman & Murray
308 East Juneau Avenue
Milwaukee, WI 53202

Re: **Various Claims for the Representation of
Certain Police Officers**

Dear Mr. Murray:

I have recently had the opportunity to review and forward for appropriate action certain various claims which you have submitted for the representation of various police officers. During this process, however, I have either once again encountered certain problems which remain unanswered as to certain claims or have encountered certain claims which have certain problems. This correspondence addresses those claims about which I have additional questions.

1. Citizen Complaint of Kathryn Masch Against Police Officer Randy Furmack.

You submitted a bill for the representation of Officer Furmack before the Fire and Police Commission, under cover of a letter dated September 20, 1994. Upon review of the materials which you submitted, I note that you provided an Order of Dismissal from the Fire and Police Commission which stated in part that "investigation and disposition by the Milwaukee Police Department would be appropriate" and that the "Complaint has therefore been referred to the Chief of Police."

As you are well aware, sec. 895.35, Stats. provides that a municipality may pay all of the officer's reasonable expenses in the defense of claims against such an officer only when an action

OFFICE COPY

or charge are "discontinued or dismissed or such matter is determined favorably to such officer. . . ." The only reasonable interpretation of those equivalent phrases is that the dismissal or discontinuance ultimately results in a favorable determination of the matter to the officer.

Given the Order of the Fire and Police Commission in this case, and given that you have submitted nothing from the Chief's office indicating what action, if any, the Chief took, I cannot represent to the Common Council without further information that this claim is appropriate for payment under sec. 895.35. In a similar matter which is discussed below, your associate, Laurie Eggert, has written in September, 1994 that your firm could not provide additional information under similar circumstances because:

- 1) It had not continued to represent the officer before the Milwaukee Police Department;
- 2) One of your other clients, the Milwaukee Police Association, might have such information but that it would be considered confidential personnel information;
- 3) Such information would not be available from another law firm which would have only represented the officer before the Commission; and
- 4) The charges had been "dismissed" before the Commission.

As noted above, however, a fair reading of sec. 895.35, Stats. certainly does not end there. A dismissal of a matter before the Fire and Police Commission which results in a discipline imposed within the Department itself certainly does not meet the letter or the spirit of the law

As for confidentiality concerns, those concerns would of course relate to any information about a discipline or discharge proceeding which came to a close prior to any public hearing before the Board of Fire and Police Commissioners. In other words, much of the information that you supplied to our office about many of these claims would otherwise be confidential and we have always assumed that your clients are willing to waive their right of confidentiality so that the Common Council may consider whether or not to pay for their legal expenses in their representation.

Please advise whether under all of these circumstances you can provide our office with the appropriate and necessary information. If you cannot do so, I will be compelled to recommend to the City

Attorney that we recommend the denial of such claims to the Common Council.

2. Citizen Complaint of Allen Stanke Against Detectives Gary Temp, Timothy Burkee and Michael Lewandowski.

This claim presents the same problem as the aforementioned claim. Once again, we will need to know whether or not the complaint was "determined favorably to such officer[s]" by the Chief of Police. § 895.35, Stats.

3. Citizen Complaints of Robert Braun and Diane Kruschek Against Police Officers Jerry Wind and James Harvey.

It is my understanding from your claim regarding this matter that Officer Harvey was found guilty of one of the two alleged rule violations brought by one of the two complaining citizens. It is further my understanding that the other officer was exonerated of all alleged rule violations by both of the complaining citizens. It is also my understanding that the officer who was found guilty of one of the charges was found to have used excessive force on one of the complaining citizen witnesses.

With respect to another claim which is discussed below, Ms. Eggert of your office has indicated that she would be unable to allocate the time up to and during a phase one hearing to defense of a successful charge, versus defense of an unsuccessful charge. I believe that it is your burden to be able to establish such an allocation, as the Common Council cannot exercise its discretion except with respect to any charges that are "determined favorably to such officer." § 895.35, Stats. We are not in a position to make such an allocation, and any estimate on our part as to such allocation would be subject to a claim of being purely arbitrary.

With respect to these complaints, therefore, I would ask that you eliminate any time from your claim which may have been devoted to the defense of the unsuccessful excessive force rule violation charge.

4. Citizen Complaint of Denise Stib Against Police Officer James Nisiewicz.

This claim has been the subject of an exchange of correspondence between myself and Ms. Eggert of your office. It suffers from the same problem as the aforementioned claim involving Officer Harvey, that is, that the Board of Fire and Police Commission dismissed one charge of excessive force, but found the

officer guilty of a second charge relating to courtesy and civility. Your billing statement did not exclude fees for work on the charge on which the officer was found guilty. It is your firm's burden to remove from its bill any time which was allocated to the unsuccessful charge, to the best of your firm's ability.

5. Citizen Complaint of Michael and Bernadette Dawsey Against Police Officer Edward Harness.

Like the above-noted matter involving Officer Furmack, this case was dismissed by the Board of Fire and Police Commissioners, but, at the same time, was referred to the Department for investigation and disposition. I will be compelled to recommend denial of the payment of this claim unless we are provided information by you to indicate that the "matter is determined favorably" to the officer by the Department. \$ 895.35, Stats.

6. Battery Complaint Against Police Officer Mark Walton.

With the additional information which I received from you via your letter of September 11, 1995, I have recommended the approval of your bill in this matter and have forwarded it for review by the City Attorney and the Common Council.

7. John Doe Proceedings Involving Bradley DeBraska.

This matter has been the subject of a previous exchange of correspondence between you and me. Your latest correspondence of September 11, 1995 indicated that DeBraska was subpoenaed to go to the John Doe proceedings to testify whether certain criminal conduct had occurred and that he was required to testify regarding certain information he had obtained as a City of Milwaukee employee.

As I am certain you are aware, § 895.35, Stats., provides that anytime "in any city . . . charges of any kind are filed or an action is brought against any officer thereof in the officer's official capacity . . ., and such charges or such action is discontinued or dismissed or such matter is determined favorably to such officer . . ., such city . . . may pay all reasonable expenses which such officer necessarily expended by reason thereof." While I respect that the John Doe proceedings are generally confidential, I have asked you only to indicate whether Mr. DeBraska was subpoenaed to those proceedings: 1) in his capacity as a Milwaukee police officer, rather than as President of the Milwaukee Police Association; and 2) whether any charges were filed or action was brought against DeBraska as a police "officer." If you cannot

indicate to me both that he was subpoenaed in his capacity as a police officer and that charges were at least contemplated against him as an officer, then I will be compelled to recommend that this claim be denied. Under those circumstances, the claim would not fit within the statute itself and it would be my recommendation that the Common Council does not have the discretion to pay for his legal representation.

8. Citizen Complaint of Jerome Allen Against Police Officers Robert Driebel, Steven Tank, Daniel Teske and Richard Porubcan.

This matter has also been the subject of an exchange of correspondence between myself and Ms. Eggert of your office, with her latest letter to me being June 7, 1995. I had inquired about this matter because of a conflict of interest.

Ms. Eggert in her June 7 correspondence to me refers to the supreme court rules of professional conduct. SCR 20:1.7(a) provides in pertinent part that any "lawyer shall not represent a client if the representation of that client will be directly adverse to another client. . ." (emphasis supplied). There are exceptions which may not be at play in this matter. In any event, the rule is quite clear that no representation may be undertaken or should be undertaken if there is a conflict of interest.

It is my understanding that other counsel will or have submitted claims for representing those officers for which your office had a conflict of interest. They of course had to familiarize themselves with the case, and your bill in this matter seeks reimbursement for a substantial amount of work. My concern is quite simple. If this conflict of interest was apparent at the outset of this matter, then no representation should have been undertaken and it would not be proper for me to represent to the Common Council that the legal expenses claimed were either reasonable in amount or necessary. At the same time, while I understand that conflicts of interest can develop at some substantial time after initially undertaking representation, a lawyer has a duty to withdraw from representation as soon as such a conflict becomes apparent. In my experience in private practice representing numerous insurance companies, no client has ever agreed to pay a bill for legal representation when a conflict should have been apparent or had become apparent, but the firm, nonetheless, continued to represent the client.

Contrary to Ms. Eggert's letter of June 7, 1995, I am not seeking any information which would be protected by privileged

attorney-client communications. I am simply seeking verification from your firm that the conflict of interest either did not exist when representation was initially undertaken or that your firm withdrew from representation as soon as such a conflict became apparent. Please advise me as to whether or not your firm can make such a representation so that I can substantiate any position which may be appropriate with respect to your claim to the Common Council.

9. Citizen Complaint of Alton Hays Against Police Officers Levi Watts.

This matter has also been the subject of questions about conflict of interest, and a letter from Ms. Eggert from your firm dated June 7, 1995. I understand that letter to be a representation that the conflict of interest did not and could not have become apparent until the time at which your law firm withdrew from representing the officer. If that is not correct, please advise me immediately. Under the assumption that it is correct, I have recommended the approval of your claim and have forwarded it to the City Attorney and the Common Council for their review and approval.

I have also previously forwarded the following claims for review and approval by the City Attorney and the Common Council:

92-L-144 Officer Boylan, et al.
92-L-176 Officers Fritz and Orlowski
92-S-325 Officer Lodde
92-S-324 Officer Hodnett, et al.

I have also forwarded the following 1994 claims with the above noted claims:

Officer Sullivan and Officer Mischewski and Officer Snyder

10. Shooting Incident Regarding Officer Moises Gomez

This claim predates any of my involvement in these matters, and was initially processed by Assistant City Attorney Scott Thomas. He received information from the Department from Officer Gomez confirming that your office had provided him with legal services. Consistent with prior practice, however, your office did not indicate the nature of this matter. Was this a criminal investigation? Did it result in a favorable determination to the officer? Please advise me on these two matters as soon as possible so that I can complete this in an expeditious manner.

Attorney Kenneth Murray
February 2, 1996
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11. Criminal Complaint of Nigel Pittman Against Police Officers Mark Robinson, Paul Zientek, Brian Wysocki and Ronald Linzmeier.

For whatever reason, we have no record of having received confirmation from the officers through the Department that they received representation from your firm in this matter. We have once against requested that the Department obtain that information.

12. Criminal Investigation of Luther Tate Regarding Police Officers Gary Raymond, Christopher Aguilar, et al.

As with respect to the preceding matter, we do not have any information from the Police Department necessary to confirm legal representation in this matter. I have no explanation as to why we have not received such information. I have renewed my request for such information from the Department.

To the best of my knowledge, this correspondence then addresses all of the claims which you discussed in our recent meeting in my office. If I have inadvertently missed any claim, please contact me immediately.

Very truly yours,



Jan A. Smokowicz
Assistant City Attorney

JAS:enm

emorri/Murray