

GIMBEL, REILLY,  
GUERIN & BROWN  
LAW OFFICES

October 12, 2004

04 OCT 15 PM 3:43

CITY ATTORNEY

Mr. Ronald D. Leonhardt  
Attn: **Marian Hartner**  
Milwaukee City Clerk  
800 City Hall  
200 East Wells Street  
Milwaukee, Wisconsin 53202

Re: Sergeant Mark Wagner  
Inquest April 30, 2003

Dear Ms. Hartner:

Mark Wagner, Milwaukee Police Sergeant retained our firm to represent him in connection with a criminal inquest.

Consistent with its ethical obligation and the policy, the City Attorney's office was unable to represent Sergeant Wagner. On December 22, 2002, Sergeant Wagner shot and killed Edward Pundsack after a chase during which Edward Pundsack was attempting to elude police in his Chevrolet Blazer. Subsequently, Sergeant Wagner was subpoenaed to appear before an inquest jury that was investigating possible criminal charges against him. The inquest jury determined that Sergeant Wagner had no criminal culpability and the matter is at an end.

Also enclosed is the printout of time and services rendered regarding Sergeant Wagner. I am also enclosing a copy of Investigator Hess's invoice in the amount of (\$1,898.29) along with his report. I have already paid Investigator Hess for his services.

Thank you for your assistance with this matter.

Yours truly,

  
D. MICHAEL GUERIN

DMG/ker  
Enclosure  
cc: Attorney Jan Smokowicz  
MPSON/Wagner/Marian Hartner 2004-10-12

FRANKLYN M. GIMBEL  
CITY COMMISSIONER

RICHARD E. REILLY

D. MICHAEL GUERIN

THOMAS E. BROWN

DENIS J. REGAN

KATHRYN A. KEPPEL

PATRICK J. KNIGHT

RAYMOND M. DALL'OSTO  
ALSO LICENSED IN ILLINOIS

JENNIFER A. LINO

CHRISTOPHER L. STROHBEHN

BYRON B. CONWAY

OLIVER J. KAUFMAN

PARALEGALS

STEVEN M. LANF

SUE M. SOCZKA

ANGELA D. JANSSEN

JUDITH C. ALBRITTON

BECKY A. DILLER

JEFFREY A. KAUFMAN  
OF COUNSEL

C.R. REILLY (1901-1983)

Gimbel, Reilly, Guerin & Brown  
Two Plaza East, Suite 1170 - 330 East Kilbourn Avenue  
Milwaukee, WI 53202 - www.grglaw.com  
Telephone (414) 271-1440 - Facsimile (414) 271-7680

Family Law, Personal Injury, Criminal Law, Real Estate,  
Business, Estate Planning, Civil & Commercial Litigation  
in State and Federal Courts  
Federal Tax ID 39-1094570

Page: 1  
December 31, 2002  
ACCOUNT NO.: 200303001  
STATEMENT NO.: 1

Milwaukee Police Supervisors Organization  
7120 W. Crawford  
Milwaukee, WI 53220

Criminal - Sgt. Mark Wagner

12/23/02	HOURS	
DMG Travel to scene and to Police Administration Building for interview with crime investigators	6.00	_____
FOR CURRENT SERVICES RENDERED		660.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
D. M. Guerin	6.00	\$110.00	\$660.00
TOTAL CURRENT WORK			660.00
BALANCE DUE			<u>\$660.00</u>

PLEASE RETURN ONE COPY OF THIS STATEMENT WITH YOUR PAYMENT.  
THANK YOU!

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Page: 1  
January 31, 2003  
ACCOUNT NO.: 200303001  
STATEMENT NO.: 2

Milwaukee Police Supervisors Organization  
7120 W. Crawford  
Milwaukee, WI 53220

Criminal - Sgt. Mark Wagner

PREVIOUS BALANCE		\$660.00
01/27/03	HOURS	
DMG Prepare correspondence to client regarding procedure	0.40	_____
FOR CURRENT SERVICES RENDERED		44.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
D. M. Guerin	0.40	\$110.00	\$ 44.00
TOTAL CURRENT WORK			\$ 44.00
BALANCE DUE			<u>\$704.00</u>

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Page: 1  
February 28, 2003  
ACCOUNT NO.: 200303001  
STATEMENT NO.: 3

Milwaukee Police Supervisors Organization  
7120 W. Crawford  
Milwaukee, WI 53220

Criminal - Sgt. Mark Wagner

	PREVIOUS BALANCE		\$704.00
02/04/03		HOURS	
	DMG Telephone conference with Conrad Ellenberger regarding assistance with investigation.	<u>0.40</u>	_____
02/17/03			
	DMG Review investigation documents; office conference with client and Investigator Hess; telephone conference with Investigator Hess.	<u>2.00</u>	
02/20/03			
	DMG Telephone conference with Investigator Hess regarding deceased.	<u>0.80</u>	

02/26/03

DMG Telephone conference with Laurie  
Eggert regarding administrative  
procedure. 0.50

02/28/03

DMG Review correspondence from Laurie  
Eggert to Officers Gallow & Frank  
requesting they talk to Attorney Guerin 0.30

FOR CURRENT SERVICES RENDERED 4.00 440.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
D. M. Guerin	4.00	\$110.00	\$440.00
TOTAL CURRENT WORK			\$440.00
BALANCE DUE			<u>\$1144.00</u>

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Page: 1  
March 31, 2003  
ACCOUNT NO.: 200303001  
STATEMENT NO.: 4

Milwaukee Police Supervisors Organization  
7120 W. Crawford  
Milwaukee, WI 53220

Criminal - Sgt. Mark Wagner

	PREVIOUS BALANCE		\$1144.00
03/04/03		HOURS	
	DMG Prepare correspondence to client; review correspondence from Laurie Eggert attorney for witnesses	<u>0.40</u>	_____
03/05/03			
	DMG Telephone conference with client; conference with Investigator Hess regarding direction of criminal investigation.	<u>0.90</u>	
03/10/03			
	DMG Telephone conference with client regarding status of investigation.	<u>0.50</u>	

03/11/03  
 DMG Office conference with client and  
 Investigator Hess regarding factual  
 matters. 2.00

03/12/03  
 DMG Telephone conference with Conrad  
 Ellenberger; telephone conference with  
 Investigator Hess; meeting with Brad  
 Debraska; review correspondence from  
 Laurie Eggert regarding Journal  
 releasing wage records of Sgt. Wagner 2.00

03/13/03  
 DMG Conference with Investigator Hess and  
 Police Officer Makowski; investigation  
 locating witness. 3.00

03/14/03  
 DMG Prepare correspondence to client  
 advising of inquest hearing date and  
 time. 0.40

FOR CURRENT SERVICES RENDERED 9.20 1012.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
D. M. Guerin	9.20	\$110.00	\$1012.00
TOTAL CURRENT WORK			\$1012.00
BALANCE DUE			<u>\$2,156.00</u>

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Page: 1  
July 31, 2004  
ACCOUNT NO.: 200303001  
STATEMENT NO.: 5

Milwaukee Police Supervisors Organization  
7120 W. Crawford  
Milwaukee, WI 53220

Criminal - Sgt. Mark Wagner

	PREVIOUS BALANCE		\$2,156.00
04/23/03		HOURS	
	DMG Research regarding inquest rights; telephone conference with client.	<u>1.50</u>	_____
04/24/03			
	DMG Telephone conference with Investigator Hess; review file; office conference with client.	<u>1.60</u>	
04/27/03			
	DMG Research jury instructions/inquest statement; conference with client; investigate scene; consult with former shoot team; conference with Investigator Hess.	<u>5.00</u>	
04/28/03			
	DMG Review witness interviews; attend		



	inquest hearing with Judge Cooper.	<u>8.50</u>
04/29/03	DMG Review file; conference with Investigator Hess in the morning before hearing; attend inquest hearing day 2 before Judge Cooper.	<u>8.20</u>
04/30/03	DMG Consult with Investigator Hess; attend inquest hearing day 3 before Judge Cooper.	<u>8.40</u>
	CLS Research acute stress regarding Sgt. Wagner.	<u>0.30</u>
05/02/03	DMG Prepare correspondence to client regarding procedure to follow.	<u>0.50</u>
05/13/03	DMG Telephone conference with client regarding return to work.	<u>0.40</u>
06/24/03	DMG Telephone conference with client regarding work issue.	<u>0.40</u>
06/25/03	DMG Telephone conference with client; prepare correspondence to client with copy of autopsy report.	<u>0.30</u>
07/30/03	DMG Telephone conference with client; telephone call to district attorney's office.	<u>0.30</u>
08/05/03	DMG Telephone conference with client; prepare draft letter to District Attorney McCann.	<u>0.40</u>
08/06/03	DMG Prepare correspondence to District Attorney	

	McCann regarding reinstate Sgt. Wagner to the road.	<u>0.40</u>	
08/11/03	DMG Telephone conference with District Attorney McCann; set up appointment.	<u>0.40</u>	
08/12/03	DMG Telephone conference with client updating him regarding the meeting with District Attorney McCann.	<u>0.40</u>	
08/15/03	DMG Attend meeting with District Attorney McCann, he cancelled; telephone conference with client advised meeting cancelled; travel to Safety Building.	<u>1.80</u>	
08/19/03	DMG Telephone conference with District Attorney McCann regarding set new date.	<u>0.30</u>	
08/20/03	DMG Telephone call to client, left message with his girlfriend regarding return to duty.	<u>0.20</u>	
10/08/03	DMG Telephone conference with client; telephone conference with District Attorney McCann regarding final decision.	<u>0.70</u>	
10/17/03	DMG Prepare correspondence to client enclosing District Attorney McCann's correspondence to Chief Jones.	<u>0.80</u>	
	FOR CURRENT SERVICES RENDERED	40.8	4488.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
D. M. Guerin	40.50	\$110.00	\$4455.00
C. L. Strohbehn	0.30	\$110.00	\$ 33.00
TOTAL CURRENT WORK			\$4488.00
BALANCE DUE			<u>\$6644.00</u>

PLEASE RETURN ONE COPY OF THIS STATEMENT WITH YOUR PAYMENT.  
THANK YOU!

**CMC INVESTIGATIONS & SECURITY SERVICES**

P.O. BOX 320052  
FRANKLIN, WI 53132  
(414)855-0715

**INVOICE**

Gimbel, Reilly, Guerin & Brown  
Attorney D. Michael Guerin  
Two Plaza East, Suite 1170  
330 East Kilbourn Avenue  
Milwaukee, WI 53202

Investigator:	Charles R. Hess	Invoice date:	5/1/03	
Client:	SERGEANT MARK WAGNER	Invoice No.:	X03-16	
City of Milwaukee				
<b>DATE OF SERVICE</b>	<b>DESCRIPTION</b>	<b>HOURS</b>	<b>RATE</b>	<b>AMOUNT</b>
2/17/03 thru 4/30/03	Investigative Service	33.7	\$ 55.00	\$ 1,853.50
	Expenses - Mileage Voucher	220 miles	\$ 0.32	N/C
	Expenses - Expense Voucher			\$ 44.79
				=====
	TOTAL:			\$ 1,898.29
(Copies of receipts provided upon request)			Retainer:	\$0.00
			<b>TOTAL DUE:</b>	<b>\$ 1,898.29</b>

February 2003  
(Period)

EXPENSE VOUCHER

Arch. Bureau Case

Charles F. Fess  
(Name)

X03-16

(Mark Wagner)

MILEAGE

(CODE 360)

COPY

DATE	START	END	CMC	(Basis) PERS.	TOTAL
2/21/03	19436	19453		17	17
2/27/03	20017	20053		36	36

EXPENSES

DATE	DESCRIPTION	CODE	AMOUNT
2/28/03	MAILBOXES ETC. (copies)		7.79

MILEAGE \_\_\_\_\_ + EXPENSES 7.79 = TOTAL 7.79

CHECK # \_\_\_\_\_ CHECK DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

MARCH 2003  
(Period)

EXPENSE VOUCHER  
Michael Guerin  
X03-16

Chas Raffers  
(Name)

MILEAGE  
(CODE 360)

(Guerin)

DATE	START	END	CMC	PERS.	TOTAL
3/11/03	20775	20810		41	41
3/13/03	21033	21053		20	20

EXPENSES

DATE	DESCRIPTION	CODE	AMOUNT
3/11/03	med. exam. Officer (autopsy Report)		9.00
3/11/03	GOLD STAR Restaurant (Business meeting with Officer Michael Michalski)		4.00

MILEAGE \_\_\_\_\_ + EXPENSES 13.00 = TOTAL 13.00

CHECK # \_\_\_\_\_ CHECK DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

April 2003  
(Period)

EXPENSE VOUCHER

ATTY General Investigator

X03-12

MILEAGE

(CODE 360)

Charles R. Fess  
(Name)

DATE	START	END	CMC	PERS.	TOTAL
4/28/03	140998	141038		35	35
4/29/03	141042	141078		36	36
4/30/03	141079	141114		35	35

(WAGNER)

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EXPENSES

DATE	DESCRIPTION	CODE	AMOUNT
4/28/03	Courthouse Parking		5.00
4/29/03	Courthouse Parking		10.00
4/30/03	Courthouse Parking		9.00

MILEAGE — + EXPENSES 24.00 = TOTAL 24.00

CHECK # \_\_\_\_\_ CHECK DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

2/17/03

Date

page 1

(Special assignment)

ACTIVITY REPORT

Attorney Guerin

X03-16

.1 = 6	.6 = 36
.2 = 12	.7 = 42
.25 = 15	.75 = 45
.3 = 18	.8 = 48
.4 = 24	.9 = 54
.5 = 30	1.0 = 60

Mileage	Time	Narrative
	(.0)	2/17/03 A.M. met Attorney Guerin and the Milwaukee Police Officer at the Law Firm. Obtain autopsy protocol and criminal history on EDWARD FUNDACK DOB: 12/22/02 20 years old
	(.0)	2/17/03 (1500) at the coroners office. Request for FUNDACK Autopsy - Autopsy in a do not release status. Cannot obtain at this time.
	(.0)	2/19/03 (1600) at the criminal courts. Looked up the name of Edward Fundack. There is background, however, the age is quite different. Must follow up with Atty Guerin.
	(.0)	2/20/03 (0930) a telephone call to Atty Guerin.
	(.0)	(Lm) with Kathy, for Atty to call.
	(.0)	2/20/03 (0950) discussion with Atty Guerin by telephone on decedent Fundack. Told Chf to call MARK WAGNER (414) 327-0623. He lives at 7120 W. Crawford. (1010) call to MARK. (Am) (Lm) for him to call Chf.
	(.1)	2/20/03 (1020) returned a page to Richard Guerin. He found info. critical to investigation. Forward on.
	(.0)	2/20/03 (1355) at the Milw. Police Department



2/21/03

ACTIVITY REPORT

Arny Guerin  
X03-16

.1 = 6	.6 = 36
.2 = 12	.7 = 42
.25 = 15	.75 = 45
.3 = 18	.8 = 48
.4 = 24	.9 = 54
.5 = 30	1.0 = 60

Date

Page 2

Mileage	Time	Narrative
		3 <sup>rd</sup> District. obtained arrest report and various reports involving FUNDACK.
	(.25)	2/21/03 (1130) a telephone page from MARK WAGNER. Called him. Discussed. He will send copies of materials in his possession to CATH.
19436 19453	(2.2)	2/21/03 (1500) ENROUTE to and at the Public Safety Building. was able to review and have copied several of the case files/court on FUNDACK. the felony case had to be ordered from storage available next week. another case is misfiled and unavailable at this time. Check next week. at its conclusion returned to one (1710) N/C on the copies from the court
20017 20053	(1.3)	2/27/03 (1400) ENROUTE to and at the Milwaukee County Courthouse. Requested and reviewed FUNDACK CASE 92CF920655. Copies made of the case for Arny Guerin. The one misd. case is still missing from the court system. will have to re-scan at a later date. (1520) 2/28/03 (1515) at the MAILBOXES ETC. STORE. <del>2/28/03</del> Reduced size copies made of all documents for the INVESTIGATIVE case files. Notebook
	(.0)	2/28/03 (1745) a telephone call to the residence

(17)

(36)

ACTIVITY REPORT

Date

Page 3

Arly Guerin  
X03-16

.1 = 6	.6 = 36
.2 = 12	.7 = 42
.25 = 15	.75 = 45
.3 = 18	.8 = 48
.4 = 24	.9 = 54
.5 = 30	1.0 = 60

41

Mileage	Time	Narrative
		of MARK WAGNER. Answer machine left detailed message as to the status of findings to date
	1.0	3/10/03 (2000) Constructed INVESTIGATIONS CASE file notebook for Attorney Guerin (through 3/10/03 at CMC
20775	2.3	3/11/03 (0810) ENROUTE to and at the LAW FIRM. met with Attorney Guerin and MARK WAGNER. A Strategy meeting held. Eff to obtain medical Examiners report and attempt to interview Officer Michael Michalski. Eff WAGNER to contact Michalski. ENROUTE to and at the medical Examiners Office. obtained the medical Examiners reports. Returned to LAW FIRM - copies made of the report. Spoke with Arly Guerin by telephone. Final details prior to interview with Michalski (10
20816		
	.1	3/11/03 (1100) spoke with Mark Wagner by telephone obtained information on Michalski and where he will meet Eff.
	1.8	3/11/03 (1140) ENROUTE to and at the Goldstar RESTAURANT 65th Street and Oklahoma Ave. met and interviewed Officer Michael Michalski. End (1330)
	.1	3/12/03 (0920) a telephone call to Arly Guerin. Voice mail. Left detailed message.
	.2	3/12/03 (1045) a telephone call with Attorney

3/12/03

Date

(page 4)

ACTIVITY REPORT

ATTY Guerin  
X03-16

.1 = 6	.6 = 36
.2 = 12	.7 = 42
.25 = 15	.75 = 45
.3 = 18	.8 = 48
.4 = 24	.9 = 54
.5 = 30	1.0 = 60

Mileage	Time	Narrative
		Attorney Guerin updated him on the ofc. Michalski interview. SET up to meet the officer.
	(-1)	3/12/03 (1220) telephone calls with Officer Michael Michalski and voice mail of Atty Guerin. meeting 12:45 P.M. at Goldston Rest. 3/13/03
21033	(1.75)	3/13/03 (1300) ENROUTE to and at the Goldston Restaurant. met with Atty Guerin and Michael Michalski - (the time of meeting had been changed)
21053		Review of the case (1445)
	(1.0)	4/27/03 (1800) ENROUTE to and at Atty Guerin's residence per request. obtained the KSA RADIS tape from attorney for review. Returned to CMC after discussions with Attorney - reviewed the Radis tape and took notes for follow-up. a telephone call to Sergeant Wagner at his residence - final discussions leading into tomorrow's court hearing.
140998	(8.75)	4/28/03 (0830) ENROUTE to and at the Milwaukee County Courthouse. met Atty Guerin and Mark Wagner in the cafe of the Courthouse. Review of materials. The persons eventually moved upstairs to the conference room and court room
141033		first day of testimony began. at its conclusion returned to CMC (1715)

(20)

(35)

4/29/03

ACTIVITY REPORT

Date

(page 5)

ATTORNEY GUEVIN INVESTIGATION  
X03-16

.1 = 6	.6 = 36
.2 = 12	.7 = 42
.25 = 15	.75 = 45
.3 = 18	.8 = 48
.4 = 24	.9 = 54
.5 = 30	1.0 = 60

Mileage	Time	Narrative
141042	(5.75)	4/29/03 (0915) ENROUTE to and at the Milwaukee County Courthouse - Judge Casper's courtroom. met with Attorney Guerin and MARK WAGNER.
141078		DAY TWO of proceedings 0900 - 1130 1400 - 1600 at its conclusion returned to auc (1630)
141079	(7.0)	4/30/03 (0930) ENROUTE to and at the Courthouse of Judge Casper. met with Atty Guerin and MARK WAGNER. Day 3 of hearing. At its conclusion returned to
141114		1000 - 1200 1330 - 1545 auc (1630)
	(.10)	4/30/03 (1745) a telephone call from Atty. Guerin. The jury returned a verdict - MARK WAGNER NOT guilty.

36

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MILWAUKEE POLICE DEPARTMENT

RECEIVED

04 NOV -2 AM 9:52  
October 28, 2004

MEMORANDUM

TO: SGT. MARK WAGNER  
DISTRICT: THREE

RE: Receipt of Legal Services from Law Firm of  
Attorney

Attorney Michael Guerin 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 DECEMBER 22, 2002
- 2) A citizen's complaint made by
- 3) A police shooting incident occurring on DECEMBER 22, 2002

Is this information correct?

YES   X   NO           

Did you receive legal representation  
in this matter?

YES   X   NO           

Your signature:           *SGT Mark D Wagner Jr*          

Print your name:           SGT Mark D Wagner Jr          

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

*Mary K Hoerig*  
MARY K. HOERIG *KHS*  
Captain of Police  
Professional Performance Division

MKH:kjs