

GRANT F. LANGLEY
City Attorney

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



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLE
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLE
THOMAS D. MILLER
HEIDI E. GALVÁN
JARELY M. RUIZ
ROBIN A. PEDERSON
Assistant City Attorneys

December 29, 2008

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

Re: Communication from Attorney Jonathan Cermele, Cermele & Associates,
S.C. for legal fees for Police Officers Jessica Felician and Christopher Manney
C.I. File No. 07-L-70; EC No. 2495

Dear Council Members:


Returned herewith is a document filed by Attorney Jonathan Cermele for attorney's fees for representing Police Officers Jessica Felician and Christopher Manney. The claim is in the amount of \$6,387.76, including \$150.76 in disbursements for 56.70 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 officers with the Fire and Police Commission. That portion of the complaint related to this claim 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
Enc.

OFFICE OF THE CITY ATTORNEY

Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551 Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

FILE

CERMELE & ASSOCIATES, S.C.
ATTORNEYS AT LAW

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

July 9, 2007

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

**RE: Citizen Complaint of Ms. Shirley Gilmore
Against PO's Jessica Kowalik and Christopher Manney
Complaint No.: 03-62
Date of Incident: September 25, 2003**

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, this claim is hereby made on their behalf for the indicated legal fees. This incident involved an arrest.

The complainant alleged that Officer Manney used excessive force, but the FPC dismissed that portion of the complaint. The FPC did find that he violated the courtesy rule. Laurie Eggert reviewed the bill and withdrew time spent representing Officer Manney on the courtesy allegation.

Attached is a copy of the FPC Decision dismissing all charges against Officer Kowalik and dismissing the force complaint made against Officer Manney, along with an itemization of the time and services rendered.

Sincerely,

CERMELE & ASSOCIATES, S.C.

Jon Cermele

/kjs

Attachments

KOWALIK and MANNEY

CERMELE & ASSOCIATES, S.C.

ATTORNEYS AT LAW

JONATHAN CERMELE
RACHEL L. PINGS
MATTHEW L. GRANITZ

LAURIE A. EGGERT

- OF COUNSEL -

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SUITE 200
MILWAUKEE, WISCONSIN 53213
(414) 276-8750
FAX (414) 276-8906

July 09, 2007

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

RE: Citizen Complaint of Ms. Shirley Gilmore
Against POs Jessica Felician and Christopher Manney
FPC No: 03-62
Date of Incident: September 25, 2003
Location of Incident:
Professional services

	<u>Hours</u>
12/11/2003 Review documents from PO Felician; correspondence to FPC; CCAP and Municipal Court records checks regarding witnesses; correspondence to MPD Open records and MPD Municipal Court; open file.	2.10
12/15/2003 Office conference with PO Manney; memo to file; correspondence to FPC.	0.80
12/17/2003 CCAP update regarding criminal trial of complainant for same incident; memo to file regarding need to put citizen complaint on hold.	0.20
12/18/2003 Telephone call from Municipal Court; review Fax of three citations regarding witnesses.	0.50
1/5/2004 Telephone call from PO Felician; memo to file regarding incident; review of file.	1.20
1/6/2004 Telephone call from Manney; memo to file.	0.20

	<u>Hours</u>
1/12/2004 Preparation for and appearance at PO's Felician and Manney's PI-21's regarding incident; conference with PO Felician and Manney; memo to file.	1.50
1/13/2004 Review of file; memo to file.	0.20
1/14/2004 Telephone call from FPC; review of file; memo to file.	0.20
2/13/2004 Review of file; correspondence to clients regarding scheduling; review FPC document.	0.30
4/9/2004 Review of file; memo to file; CCAP update regarding criminal case against complainant.	0.30
4/19/2004 Telephone call from FPC; review of file; memo to file.	0.20
4/26/2004 Review of file; update on bench warrants regarding witnesses.	0.30
5/3/2004 Review documents from Milwaukee County open records regarding complainant's criminal charges regarding the same incident.	0.70
5/10/2004 CCAP update regarding complainant's conviction regarding same incident.	0.10
5/17/2004 Telephone call from PO Manney; review of file.	0.10
5/18/2004 Telephone call from clients; review of file; correspondence to MPD personnel.	0.60
5/25/2004 Telephone call from FPC; review of file.	0.10
6/4/2004 CCAP update regarding complainant criminal trial; review closed internal investigation concluding no rule violation.	0.50
6/15/2004 Review of file; review document from FPC; memo to file.	0.20

	<u>Hours</u>
6/22/2004 CCAP update on complainant's criminal trial on same incident.	0.10
6/30/2004 CCAP update regarding same incident; memo to file; review FPC document.	0.40
7/14/2004 CCAP update regarding complainant's criminal charge in same incident; memo to file.	0.10
7/29/2004 Review document from FPC; review of file; memo to file; telephone call to FPC.	0.40
8/5/2004 Review documents from MPD personnel.	0.60
8/24/2004 CCAP update regarding complainant's postponed criminal trial regarding same incident; memo to file; review of file.	0.20
10/4/2004 CAP update regarding complainant's criminal case in same incident; memo to file.	0.20
11/3/2004 Review document from FPC; CCAP update regarding complainant's criminal charge.	0.20
12/10/2004 Review of file; telephone call to clients; memo to file.	0.20
12/14/2004 Telephone call from PO Manney; CCAP regarding adjournment of criminal trial regarding same incident; memo to file.	0.30
1/10/2005 Conference with FPC.	0.10
1/28/2005 Review of file; CCAP update.	0.30
2/7/2005 Review of file.	0.20
3/4/2005 CCAP update regarding complainant's criminal trial.	0.20

	<u>Hours</u>
3/15/2005 Telephone call from PO Manney; CCAP update regarding complainant's disorderly conduct conviction from same incident; memo to file; correspondence to Circuit Court.	0.80
3/16/2005 Telephone calls to clients; memo to file; correspondence to court reporter; CCAP and Municipal Court review of complainant and witnesses.	1.50
3/22/2005 Telephone call from FPC; memo to file; review of file; obtain and review complainant's sentencing transcript.	1.00
3/25/2005 Review file; telephone call from and correspondence from FPC; memo to file; correspondence to clients regarding notice of conciliation hearing.	0.80
4/4/2005 Review documents from Circuit Court Clerk.	0.10
4/8/2005 Telephone call from PO Felician; telephone call to and from FPC; telephone call to PO Felician; memo to file.	0.80
4/12/2005 Telephone call to PO Manney.	0.10
4/13/2005 Telephone call from FPC; memo to file; receive and review correspondence from FPC.	0.20
6/20/2005 Review of file; telephone call from and to FPC; memo to file.	0.30
7/18/2005 Review of file.	0.10
7/28/2005 Review of file; draft witness and exhibit list and medical releases; correspondence to clients.	1.20
8/23/2005 Correspondence to clients.	0.10
8/30/2005 Review of file.	0.20

	<u>Hours</u>
9/1/2005 Telephone call from PO Manney; memo to file.	0.10
9/8/2005 Review of correspondence from clients; review documents from FPC; Review of file; telephone call to FPC.	0.70
9/19/2005 Review of correspondence from complainant; correspondence to various health care providers.	0.40
9/22/2005 Review medical records from Wisconsin Neurosurgery; memo to file.	1.40
9/27/2005 Review medical records from Dr. Reich.	0.30
10/10/2005 Review medical records from Pain Managements & Treatment Center; memo to file.	0.40
10/24/2005 Review document from FPC; review of file; memo to file; telephone call to FPC.	0.60
11/28/2005 Review medical records from Advanced Pain Management.	0.30
1/17/2006 Review complainant's prior municipal court conviction for obstruction; telephone call to MPD Open Records; review file.	0.50
1/19/2006 Telephone call from MPD Open Records; memo to file.	0.20
3/1/2006 Review file; telephone call to FPC; telephone calls to clients; memo to file.	0.60
3/30/2006 Review file; correspondence to client.	0.20
4/7/2006 Correspondence from client.	0.10
4/10/2006 Receive correspondence from client.	0.10
5/30/2006 Review Scheduling Order from FPC; memo to file.	0.80

	<u>Hours</u>
6/1/2006 CCAP update; review file; revise Witness and Exhibit List; correspondence to Paratech; correspondence to St. Michael's ER.	1.60
6/5/2006 Review Witness and Exhibit List; review file.	0.30
6/7/2006 Review file.	0.20
6/20/2006 Review medical records from Paratech; memo to file; review document from FPC.	0.70
7/14/2006 Review criminal complaint; review of correspondence from complainant; correspondence to FPC.	0.30
7/31/2006 Review file; telephone call from PO Felician; telephone call to FPC.	0.40
8/1/2006 Telephone call from Fronk; memo to file.	0.10
9/8/2006 Receive and review correspondence from St. Michael's Hospital.	0.10
9/12/2006 Review file; telephone call to FPC; memo to file.	0.60
9/15/2006 Telephone call to and from FPC; review file.	0.40
9/18/2006 Review file; telephone call to PO Manney; memo to file.	0.40
9/20/2006 Telephone call from and to PO Manney regarding schedule for hearing; memo to file.	0.40
9/21/2006 Telephone call to FPC; memo to file; correspondence to clients; review file; review additional medical records.	1.30
10/16/2006 Review of correspondence from FPC; review file.	0.20
10/24/2006 Review file.	0.20

	<u>Hours</u>
10/27/2006 Telephone call to clients; telephone call to Sgt. Henry; obtain contact information regarding additional squads; CCAP and Muni court record search regarding complainant's witnesses; correspondence to Dept. of Justice; review medical records; memo to file regarding complaint and witnesses.	2.70
10/31/2006 Telephone call from and to PO Manney; telephone call to PO Kowalik.	0.20
Telephone call from PO Kowalik; telephone calls to Academy; review of correspondence from FPC.	0.30
11/1/2006 Telephone call to and from Sgt. Henry; correspondence to Sgt. Henry; draft and serve subpoena; conference with PO Manney.	2.20
11/3/2006 Review file.	0.20
11/6/2006 Telephone call to Sgt. Henry; memo to file; telephone call to clients.	0.30
11/8/2006 Preparation for and conference with Academy witness; travel; memo to file; prepare exhibits for hearing.	1.80
11/14/2006 Telephone call from and to FPC; receive and review correspondence from FPC; review exhibits; hearing preparation.	1.50
11/15/2006 Preparation for hearing; travel; appearance at hearing; conference with clients; return travel.	4.70
11/16/2006 Review file.	0.20
1/17/2007 Review file.	0.10
1/29/2007 Review file.	0.10
2/22/2007 Review file.	0.10

Mr. Ronald Leonhardt

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	<u>Hours</u>
3/12/2007 Review proposed decision; correspondence to clients.	0.30
3/13/2007 Begin review of transcript.	0.40
3/14/2007 Review portion of transcript; memo to file.	0.40
3/23/2007 Telephone call from and to PO Manney.	0.10
4/9/2007 Review transcript and exhibits; memo to file.	1.30
4/10/2007 Complete review of record; memo to file; begin Brief.	0.80
4/12/2007 Draft and revise Brief to FPC; correspondence to FPC.	1.70
4/16/2007 Telephone call from FPC.	0.10
5/10/2007 Telephone call from and to Fronk; memo to file; intra-office conference with Cermele; telephone call to PO Manney.	1.30
6/25/2007 Telephone call to FPC regarding status of order; memo to file.	0.20
Review file transferred from Eggert; intra-office conference with Eggert; memo to file.	0.20
6/28/2007 Receive and review FPC Order adopting recommendation of Hearing Examiner; correspondence to PO Manney regarding same; telephone call to Fronk requesting formal order of dismissal regarding PO Kowalik.	0.40
7/6/2007 Receive and review Order of Dismissal regarding PO Kowalik; correspondence to client; close file.	0.20
	<u>Amount</u>
For professional services rendered	56.70 \$6,237.00

Additional charges:

	<u>Amount</u>
5/18/2004 MPD Open Records request	18.17
3/22/2005 Transcript of March 15, 2005 proceedings	13.75
Parking	1.00
3/25/2005 Circuit Court request	11.25
9/23/2005 Medical Records - for Shirley Gilmore from Wisconsin Neurosurgery	42.10
10/14/2005 Medical Records - Pain Management & Treatment Center, SC for Shirley Gilmore	8.40
11/7/2005 Complainant Gilmore - Advanced Pain Management medical records	8.40
6/23/2006 Medical Records - Records from Paratech Ambulance for Shirley Gilmore	8.40
9/8/2006 Medical Records from St. Joseph Regional Medical Center; Inv. #: 71956	16.79
11/1/2006 Subpoenas (1)	6.00
11/15/2006 Parking	16.50
Total costs	<u>\$150.76</u>
Total amount of this bill	<u>\$6,387.76</u>
Balance due	<u><u>\$6,387.76</u></u>



RECEIVED

JUL 02 2007

CERMELE & ASSOCIATES, S.C.

Fire and Police Commission

Leonard J. Sobczak
Chairman

Ernesto A. Baca
Vice-Chairman

Woody Welch
Earl A. Buford
Richard C. Cox
Commissioners

David L. Heard
Executive Director

Steven Fronk
Hearing Examiner

June 29, 2007

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

Re: Citizen Complaint of Shirley Gilmore
Complaint No. 03-62

Dear Mr. Cermele:

Enclosed is a copy of the Board's order dismissing all charges against Police Officer Jessica Felician (n/k/a Jessica Kowalik) in the above-captioned matter.

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

Very truly yours,

Steven Fronk
Hearing Examiner

SF:cj

Enclosure

c: Shirley Gilmore
Chief Nannette Hegerty (w/enclosure)
Officer Jessica Kowalik (w/enclosure)
Valarie Williams, Personnel Administrator
MPD Professional Performance Division

BOARD OF
FIRE AND POLICE COMMISSIONERS : CITY OF MILWAUKEE : COUNTY OF MILWAUKEE

In Re:
THE CHARGES OF SHIRLEY GILMORE
AGAINST POLICE OFFICER JESSICA FELICIAN
(n/k/a JESSICA KOWALIK)

ORDER OF DISMISSAL

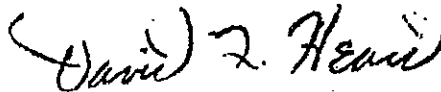
To Officer Jessica Kowalik:

It is hereby ordered that the Complaint of Shirley Gilmore, Complaint No. 03-62, filed with the Board on October 9, 2003, at the request of Complainant, Shirley Gilmore, all charges against Police Officer Jessica Felician (now known as Jessica Kowalik) be and are hereby dismissed.

MILWAUKEE BOARD OF
FIRE AND POLICE COMMISSIONERS

LEONARD J. SOBCZAK, CHAIRMAN

BY:



DAVID L. HEARD
EXECUTIVE DIRECTOR

DATED AT MILWAUKEE, WISCONSIN, JUNE 29, 2007.

c: Attorney Jonathan Cermele

BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

In the matter of the complaint of

SHIRLEY GILMORE

vs.

POLICE OFFICER
CHRISTOPHER MANNEY

DECISION OF THE BOARD

FPC Complaint No. 03-62

Commissioners Richard Cox, Woody Welch and Earl Buford met on May 9, 2007 and, after reviewing the transcript, exhibits, proposed Findings, Recommendation of the Hearing Examiner and the response to that Recommendation as submitted by Attorney Eggert, do hereby make the following Decision:

We accept the Recommendation of the Hearing Examiner and adopt the proposed Findings of Fact as attached hereto and made a part hereof with minor modifications to the language utilized in paragraphs 3, 4, 11 and 12 therein.

We dismiss that charge alleging that Officer Manney utilized more force than was reasonably necessary in this instance. The decision to arrest Ms. Gilmore was not unreasonable, and Officer Manney utilized no more force than was reasonable and necessary to effectuate that arrest under the circumstances.

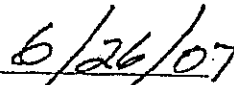
We *do* find, however, that Officer Manney's use of profanity in this instance was unwarranted, unnecessary, unprofessional and in violation of MPD Rule 4, Section 2/060.00 which specifically prohibits "course, violent, profane or insolent language." We do not accept the contention of Officer Manney and/or Sergeant Henry that such language was not a violation of the rule, and we are truly disappointed to learn that there are department members who believe such language is an effective tool in instances such as this. This was an irate, uncooperative citizen and nothing more. Resorting to language as was utilized by Manney, more often than not, only makes a citizen more irate and this places everyone at greater risk. Officer Manney was not justified in addressing Ms. Gilmore in the manner that he did.

We have been informed that Officer Manney has no prior disciplinary record and we therefore see no reason to impose a suspension without pay for this offense. We do, however, believe that Officer Manney would benefit from counseling and/or re-training regarding appropriate communication skills. We so Order and leave it to the Milwaukee Police Department's Professional Performance Division to determine how and when such counseling and/or re-training takes place.

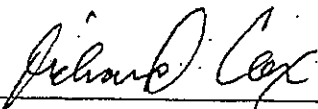
Signed and dated at Milwaukee, Wisconsin.



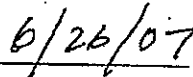
Woody Welch, Commissioner



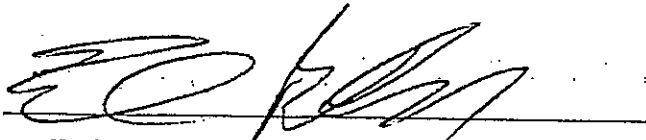
Date



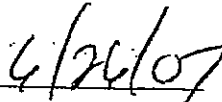
Richard Cox, Commissioner



Date



Earl Buford, Commissioner



Date

**BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE**

In the matter of the complaint of

SHIRLEY GILMORE
vs.
**POLICE OFFICER
CHRISTOPHER MANNEY**

**SUMMARY OF PROCEEDINGS,
FINDINGS OF FACT
AND DECISION**

FPC Complaint No. 03-62

SUMMARY OF PROCEEDINGS

This complaint proceeded to hearing on November 15, 2006 before Steven Fronk acting as Hearing Examiner on behalf of the Board. Complainant Shirley Gilmore appeared in person, pro se. Police Officers Christopher Manney and Jessica Kowalik (formerly known as Jessica Felician) appeared in person and by Attorney Laurie Eggert. The complaint (Exhibit 1) states that on the evening of September 25, 2003 Ms. Gilmore came in contact with the accused police officers, and that during that contact Police Officer Christopher Manney was discourteous (an alleged violation of MPD Rule 4, Section 2/060.00) and utilized more force than was reasonably necessary (an alleged violation of MPD Rule 4, Section 2/445.00). Ms. Gilmore stated at time of hearing that she no longer wished to pursue a complaint against Officer Jessica Kowalik and she asked that the complaint against Officer Kowalik be dismissed.

Testimony of Complainant Shirley Gilmore (pages 1-42): Ms. Gilmore testified that on September 25, 2003, at approximately 8:00 p.m. she returned home after being told that her daughter and her daughter's boyfriend were involved in a physical altercation. Officer Manney shined a flashlight at Gilmore as she walked toward the house, but said nothing to her. Gilmore entered her house, closed the door behind her, and confronted her daughter. Shortly thereafter she heard a loud banging at the door. Gilmore answered the door and attempted to talk to Officer Manney, but he refused to listen and told her to "shut the f--- up and sit down." Gilmore objected to the way that Manney spoke to her, and Manny responded by bending her over the couch and handcuffing her. According to Ms. Gilmore, all of this happened while Officer Felician

(now Kowalik) stood outside on the front porch. Ms. Gilmore was later conveyed to the hospital due to back pain where she was treated and released. According to Gilmore, Officer Manney was rude and insensitive throughout the entire process. Gilmore does not feel that Manney had any reason whatsoever to place his hands on her or to handcuff her or to arrest her. Gilmore also alleges that Manney used profanity unnecessarily and was rude, insensitive and disrespectful.

Testimony of Police Officer Christopher Manney (pages 43-104): Officer Manney and Officer Felician were dispatched to what was reported as a large fight involving 20-30 people, possibly some with guns. The officers arrived on the scene, parked at the end of the block, and first interviewed a male a couple of doors down from of the Gilmore residence. They could hear a lot of yelling from inside the Gilmore home, and Officer Felician stayed with the male while Officer Manney went to the door. A female answered the door and stepped out - leaving the door open - as Officer Manney spoke to her. Shortly thereafter an older female (later identified as Shirley Gilmore) drove up, parked her car and approached the house. Officer Manney attempted to ask her if she lived there and she responded by swearing at him before entering the home and slamming the door. The screaming inside escalated once again and Officer Manney pounded on the door. Shirley Gilmore opened the door and Manney attempted to determine what was going on. Gilmore responded with profanity and racially derogatory terms. As a last resort Manney responded by using profanity as "stun language" in an attempt to get her to sit down and calm down. It did not work. Gilmore threatened to "kick his ass". Manney grabbed Gilmore by the arm, bent her over the couch, handcuffed her, and handed her off to Officer Felician. According to Officer Manney, Shirley Gilmore was loud and profane and threatening throughout the process; at the house, while being transported and even when addressing personnel at the hospital.

Testimony of Sergeant Craig Henry (pages 104-149): Sergeant Henry was the patrol supervisor at District 4 on the night in question and arrived at the scene when Ms. Gilmore was standing outside of the wagon before being transported. According to Sergeant Henry, Ms. Gilmore was "very verbally abusive and upset toward the officers" including the use of profanity and references to race. Gilmore was also "verbally uncooperative" and used profanity when addressing the EMTs and ambulance driver.

Sergeant Henry traced the history of the calls received regarding the incident, spoke about what those calls would have meant to police personnel and how officers would have been expected to respond to the scene, and then outlined how officer training regarding the use of "stun language" at the time differs from what is currently being taught and utilized by department members. It was Sergeant Henry's opinion, based upon what he knew of the circumstances at the scene, that neither the minimal use of force in placing Gilmore under arrest nor the use of profanity by Officer Manney in an attempt to stun Gilmore into compliance were in violation of department rules as they existed in September, 2003.

Testimony of Police Officer Jessica Kowalik (f/k/a Felician): Officer Felician arrived with Officer Manney and almost immediately stopped a young male who appeared to be fleeing the scene. Felician began to interview the male while Manney went to what later was identified as the Gilmore residence. A car pulled up and a female (later identified as Shirley Gilmore) "got out and ran into the house and slammed the door." Eventually the door was opened and Manney entered. Felician stayed outside with the male subject, moving to where she could see most of what was going on but could make out little of what was being said. Felician saw Manney motion Gilmore to "stop" or "stay back". Felician then saw Manney place handcuffs on Gilmore and pass her out the door. Felician took control of her and escorted her to the squad, but Gilmore complained of back pain and would not get in the squad. She was placed in a paddy wagon and later moved to an ambulance which transported her to the hospital. Officer Felician rode in the ambulance with Gilmore, during which time Gilmore repeatedly said she would have Officer Manney's badge and referred to the officers as "f----- crackers." At the hospital Gilmore was examined and released without restrictions. Gilmore was loud and disorderly at the hospital, but Felician does not recall hearing Gilmore refer to anyone at the hospital using profanity or racially derogatory terms.

FINDINGS OF FACT

Alleged Use of More Force than Reasonably Necessary

In Violation of MPD Rule 4, Section 2/445.00

1. Police Officer Christopher Manney was, on September 25, 2003 and at all other times pertinent hereto, a member of the Milwaukee Police Department and bound by the rules and regulations thereof.
2. On September 25, 2003, Officer Manney responded to a report of a fight involving as many as 20-30 people, one or more possibly armed with a gun.
3. Upon arrival on the scene Officer Manney found that the fight was no longer in progress. People in the area, most of whom were in the house, were loud but not combative or uncooperative when Officer Manney arrived.
4. Shirley Gilmore, the owner of the residence, arrived shortly after Officer Manney. Ms. Gilmore almost immediately became loud, uncooperative, verbally abusive and profane in response to questions from Officer Manney.
5. Officer Manney, in what he states was an attempt to "stun" Ms. Gilmore and thereby gain her cooperation, directed profanity at Ms. Gilmore. This tactic was not successful. Shirley Gilmore continued to be loud, uncooperative, verbally abusive and profane.
6. As a result of her conduct and in an attempt to gain and/or maintain control of the scene, Manney arrested Gilmore and placed her in handcuffs.
7. Complainant Shirley Gilmore has failed to show that the amount of physical force utilized by Officer Manney in arresting, handcuffing and transporting her was intended to cause her unnecessary pain or that it was more than a reasonable police officer would have deemed necessary given the same circumstances and information.
8. Complainant Shirley Gilmore has failed to show that Officer Manney violated MPD Rule 4, Section 2/445.00 regarding the use of force.

FINDINGS OF FACT

Alleged Failure to Utilize Appropriate Courtesy and Civility

In Violation of MPD Rule 4, Section 2/060.00

9. Police Officer Christopher Manney was, on September 25, 2003 and at all other times pertinent hereto, a member of the Milwaukee Police Department and bound by the rules and regulations thereof.
10. On September 25, 2003, Officer Manney responded to a report of a fight involving as many as 20-30 people, one or more possibly armed with a gun.
11. Upon arrival on the scene Officer Manney found that the fight was no longer in progress. People in the area, most of whom were in the house, were loud but not combative or uncooperative when Officer Manney arrived.
12. Shirley Gilmore, the owner of the residence, arrived shortly after Officer Manney. Ms. Gilmore almost immediately became loud, uncooperative, verbally abusive and profane in response to questions from Officer Manney.
13. Officer Manney, in what he states was an attempt to "stun" Ms. Gilmore and thereby gain her cooperation, directed profanity at Ms. Gilmore. This tactic was not successful. Shirley Gilmore continued to be uncooperative, loud, verbally abusive and profane.
14. As a result of her conduct and in an attempt to gain/maintain control of the scene, Officer Manney arrested Shirley Gilmore and placed her in handcuffs.
15. Officer Manney knew or should have known that the unnecessary use of profanity toward citizens was in violation of MPD rules and that such violation could result in a complaint and or disciplinary action. Rule 4, Section 2/060.00 specifically states that officers must be "civil and orderly" and "exercise the utmost patience and discretion" and that they "must refrain from using coarse, violent, profane or insolent language."
16. The rule is reasonable. In essentially all instances people have a right to expect police officers to be as courteous and civil as circumstances permit, and to refrain from using gratuitous or unnecessary profanity. Officers who

engage in discourteous behavior and utilize profanity unnecessarily often do little more than increase the level of conflict, making the situation more difficult and dangerous for everyone involved.

17. This hearing process, in an attempt to determine whether or not a rule has been violated, has been fair, reasonable and objective. Complainant Gilmore and Officer Manney have each been given the opportunity to offer testimony and evidence in support of their respective positions.
18. There is substantial evidence in this record to show that the use of profanity by Officer Manney was unnecessary and discourteous in this instance, and as such was in violation of MPD Rule 4, Section 2/060.00. In very rare instances it may be reasonable for a police officer to use profanity to gain compliance, (e.g. when attempting to convince someone to drop a weapon) but no such exigent circumstances existed in this instance.
19. Police Officer Christopher Manney, in utilizing profanity in this instance, acted in violation of MPD Rule 4, Section 2/060.00 which requires officers to be civil and orderly, exercise the utmost patience and discretion, and to refrain from using coarse, violent, profane or insolent language.

GRANT F. LANGLEY
City Attorney

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

**CITY OF
MILWAUKEE**
Office of the City Attorney

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July 23, 2007

Captain Mary K. Hoerig
Milwaukee Police Department
Professional Performance Division
6680 North Teutonia Avenue, Rm. 325
Milwaukee, WI 53209

Re: C.I. File No. 07-L-70
Communication from CERMELE & ASSOCIATES, S.C.

Dear Captain Hoerig:

Enclosed please find a claim filed by attorney Jonathan Cermele for Attorney's fees incurred during his representation of officers.

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

Very truly yours,



JAN A. SMOKOWICZ
Assistant City Attorney

JAS:beg
Enclosure

1032-2007-1874:121611

CERMELE & ASSOCIATES, S.C.

ATTORNEYS AT LAW

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

July 9, 2007

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

RE: Claim

Dear Mr. Leonhardt:

Enclosed is the following claim:

OFFICER(S):

KOWALIK, Jessica
MANNEY, Christopher

OUR NO.:

2495

Thank you.

Sincerely,

CERMELE & ASSOCIATES, S.C.

Jon Cermele

/kjs
Enclosure

2007 JUL 11 PM 3:06
MILWAUKEE
CITY CLERK
RONALD D. LEONHARDT
CITY CLERK

Memo

To: Police Officer Jessica Kowalik
From: Deputy Inspector Mary K. Hoerig
Date: 8/8/2007
Re: Receipt of Legal Services from Law Firm of Cermele & Associates, S.C.

Attorney Jon Cermele has made a claim with the City, indicating that you were provided with legal services, outlined in the attached letter and arising out of the following situation:

- An incident which occurred on September 25, 2003
- A citizen complaint of Ms. Shirley Gilmore

Is this information correct?

YES NO

Did you receive legal representation in this matter?

YES NO

Your Signature: ^{PO} Jessica Kowalik

Print Your Name: PO Jessica Kowalik

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

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
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Very truly yours,

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JAS:beg
Enclosure

1032-2007-1874:121611

OFFICE OF THE CITY ATTORNEY

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July 9, 2007

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Milwaukee City Clerk
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

**RE: Citizen Complaint of Ms. Shirley Gilmore
Against PO's Jessica Kowalik and Christopher Manney
Complaint No.: 03-62
Date of Incident: September 25, 2003**

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, this claim is hereby made on their behalf for the indicated legal fees. This incident involved an arrest.

The complainant alleged that Officer Manney used excessive force, but the FPC dismissed that portion of the complaint. The FPC did find that he violated the courtesy rule. Laurie Eggert reviewed the bill and withdrew time spent representing Officer Manney on the courtesy allegation.

Attached is a copy of the FPC Decision dismissing all charges against Officer Kowalik and dismissing the force complaint made against Officer Manney, along with an itemization of the time and services rendered.

Sincerely,

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Jon Cermele

/kjs

Attachments

KOWALIK and MANNEY

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Print Your Name: _____

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Jon Cermele

/kjs

Attachments

KOWALIK and MANNEY

September 13, 2007

ACA Jan Smokowicz
City Hall Rm. 800
200 E. Wells Street
Milwaukee, WI 53202

Sir,

Per your request dated July 23, 2007, I am supplying you with the officers responses to the Cermele & Associates claim. Your file number 07-L-70. If you have any additional questions don't hesitate to call me.

A handwritten signature in black ink, appearing to read "Det. Kurt J. Sutter". The signature is stylized and written in a cursive-like font.

Kurt J. Sutter
Detective
Professional Performance Division