GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
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Deputy City Attorneys

CITY OF MILWAUKEE
Office of the City Attorney

THOMAS O. GARTNER
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JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
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MELANIE R. SWANK
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MARYNELL REGAN
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KATHRYN M. ZALEWSKI
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
Assistant City Attorneys

February 11, 2008

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

Re: Communication from Attorney Laurie A. Eggert, Eggert Law Office, S.C. for legal fees for Police Officers Timothy McNair and James McNichol
C.I. File No. 06-S-257 EC 2350

Dear Council Members:

Returned herewith is a document filed by Attorney Laurie Eggert for attorney's fees for representing Police Officers Timothy McNair and James McNichol. The claim is in the amount of $3,133.81 including $97.81 in disbursements for 27.60 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. 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. Sec. 895.35, Stats., Bablitch and Bablitch v. Lincoln County, 82 Wis. 2d 574 (1978).

Very truly yours,

Grant F. Langley

GRANT F. LANGLEY
City Attorney

JAN A. SMOKOWICZ
Assistant City Attorney

JAS:amp
Enc.
1032-2006-2364:124771v1

2350

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM **September 12, 2006**

TO: P.O. TIMOTHY MCNAIR
DISTRICT: THREE

RE: Receipt of Legal Services from Law Firm of
Attorney Laurie Eggert

Attorney Laurie Eggert 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 26-27, 2004
2) A citizen's complaint made by FRANK SUSNIK
3) A police shooting incident occurring on N/A

Is this information correct? YES X NO___

Did you receive legal representation in this matter? YES X NO___

Your signature: _____

Print your name: Timothy A. MCNAIR

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

MARY K. HOERIG
Deputy Inspector
Professional Performance Division

RECEIVED
2006 SEP 21 AM 11:01
CITY ATTORNEY'S OFFICE
CIVIL DIVISION

MKH:kjs

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM **September 12, 2006**

TO: P.O. JAMES MCNICHOL
DISTRICT: THREE

RE: Receipt of Legal Services from Law Firm of
Attorney Laurie Eggert

Attorney Laurie Eggert 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 26-27, 2004
2) A citizen's complaint made by FRANK SUSNIK
~~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: P. McNichol

Print your name: P.O. James McNichol

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

Mary K Hoerig KJS

MARY K. HOERIG
Deputy Inspector
Professional Performance Division

MKH:kjs

CERMELE & ASSOCIATES, S.C.

ATTORNEYS AT LAW

JONATHAN CERMELE
LAURIE A. EGGERT
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1840 NORTH FARWELL AVENUE
SUITE 303
MILWAUKEE, WISCONSIN 53202
(414) 276-8750
FAX (414) 276-8906

August 17, 2006

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

RE: Citizen Complaint of Mr. Frank Susnik
Against PO's Timothy McNair and James McNichol
Complaint No.: 04-52
Date of Incident: July 26 - 27, 2004

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 the arrest of a subject.

The Fire and Police Commission dismissed the complaint and all charges. Attached is a copy of the Decision and an itemization of the time and services rendered.

Sincerely,

CERMELE & ASSOCIATES, S.C.

Jon Cermele

JC/kjs
Attachments
McNAIR and McNICHOL

BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

In the matter of the complaint of

FRANK J. SUSNIK
Vs.
P. O. TIMOTHY McNAIR
and
P.O. JAMES McNICHOL

SUMMARY OF PROCEEDINGS
AND DECISION

FPC Complaint No. 04-52

SUMMARY OF PROCEEDINGS

This complaint proceeded to hearing on April 19, 2006 before Commissioners Richard Cox, Ernesto Baca and Robert Welch with Steven Fronk acting as Hearing Examiner. Complainant Frank Susnik appeared in person, pro se. Police Officers Timothy McNair and James McNichol appeared in person and by Attorney Rachel Pings of Eggert & Cermele, S.C. The complaint in this matter alleged that Officers McNair and McNichol each failed to utilize appropriate courtesy and civility when dealing with Mr. Susnik on July 26 and 27, 2004, in violation of MPD Rule 4, Section 2.060.00.

Testimony of Frank Susnik: Mr. Susnik indicated that on July 26, 2004 at approximately 6:35 p.m. he came upon a vehicle parked in the middle of 25th Street, blocking his way. Susnik tapped his horn, waited, then blew his horn for approximately one second. Officer McNair exited the parked vehicle, approached Susnik's vehicle, opened the door and handcuffed Susnik with little or no explanation. Susnik testified that during the course of the next few minutes Officer McNair was unnecessarily rude and threatening and twice addressed him using profanity in what Susnik believed was a deliberate attempt to intimidate him. Susnik was transported to the district station in a paddy wagon with several arrestees, and was released at the district several hours later. Upon his release Mr. Susnik approached Officer McNichol at the counter and requested copies of documents related to his arrest. When told that he would have to request those items from the records division, Susnik insisted that he be given a copy of the "blue card" which he had seen Officer McNair filling out at the scene. McNichol advised him that he was not familiar with any type of blue card. When Susnik continued to request a copy of the "blue card" McNichol went in another area of the station and later returned to advise Susnik that he could not have a copy of the card. Susnik insisted that he either be given a copy of the card or that McNichol sign a statement indicating that he had refused to provide a copy. McNichol refused and again went to another area of the station. Shortly thereafter Officer McNair came out of a rear area and, with little or no further warning, placed Mr. Susnik under arrest, this time for disorderly conduct. Mr. Susnik testified that he received no warning from McNichol or McNair that he should leave or risk arrest, and that he believed that such a warning was appropriate under the circumstances. Neither officer at the district station used profanity or excessive force.

Testimony of Police Officer Timothy McNair: Officer McNair testified that he was sitting in an unmarked squad writing up a drug-related arrest that he had just made on North 25th Street when a vehicle approached. The two vehicles were facing each other, and when McNair heard a "horn tap" he looked up to see the vehicle apparently wanting to get past him. McNair remained seated in his vehicle and waved at the vehicle in a motion to indicate that the driver should back up and drive away. The driver again blew his horn, this time a 2-3 second blast, and McNair observed the driver make some type of hand gesture. Officer McNair exited his vehicle, approached the other vehicle and opened the driver's door. Mr. Susnik said to Officer McNair "why don't you just move" and McNair placed Susnik in handcuffs while he asked him questions. Susnik gave McNair very limited information in response to questioning, at which point McNair decided to have Susnik transported, cited for unnecessarily blowing his horn and released at the station. According to McNair this was standard practice for the anti-gang unit. They moved into and out of target areas quickly, did not carry citation books, and transported all individuals to be arrested and/or cited to the district station to be processed. McNair denied that he used profanity or was unnecessarily rude to Mr. Susnik at the scene. At the district station Susnik was cited and released. Shortly thereafter Officer James McNichol came to McNair and told him that Susnik was asking about a "blue card". Later McNichol came to him again and indicated that Susnik was being difficult. Officer McNair then went out and said to Susnik "Are you going to leave?" When Susnik said "No", McNair arrested Susnik for disorderly conduct. McNair testified that he took this action based on what he was told and believed to be the case: that Susnik was causing a disturbance and interfering with the conduct of business.

Testimony of Police Officer James McNichol: Officer McNichol was working the counter at District 3 on July 26, 2004 and was on limited duty status due to a work related injury several months earlier. McNichol's first contact with Frank Susnik was when Susnik asked directions while making a phone call to his wife, and thereafter Susnik made several requests for documents and information related to his arrest. According to Officer McNichol, Mr. Susnik was upset about being arrested and repeatedly expressed dissatisfaction when told he could not obtain copies of all relevant documents at that time. Officer McNichol advised Mr. Susnik that the documents that he was requesting, other than the "blue card", could be obtained during normal 8am-4pm business hours, and it was now near midnight. Mr. Susnik became "more and more upset" and his tone "heated – but not yelling." A female entered at one point, saw the exchange, and left without actually approaching the counter area. McNichol "did not feel comfortable" attempting to deal with Mr. Susnik due to his limited duty status and sought assistance from other officers, including Timothy McNair. McNichols admitted that he never warned Susnik to "leave or be arrested." McNichol did not believe such a warning was required.

Testimony of Sergeant Jason Mucha: Sergeant Mucha was not in any way associated with the events involving Mr. Susnik. Mucha had, however, been involved in "Safe Streets" initiatives that involved a "zero tolerance" policy regarding minor offenses in high crime areas. During these initiatives all offenders were conveyed to the district station, photographed, fingerprinted and released.

Testimony of Police Officer Angela Juarez: Officer Juarez was on counter duty at District 3 with Officer McNichol on the night in question. According to Juarez, Susnik was "not taking no for an answer" was "loud and boisterous" and "continued to yell" and "pounded his fist" on the counter more than once. Such testimony was, in large part, not supported by that of other witnesses. Juarez also testified that she personally asked him to leave the district station.

DECISION

At the conclusion of the evidence Mr. Susnik indicated that he now believed that Police Officer McNichol had not intentionally been discourteous to him on the date in question, and asked the Board to dismiss the complaint as to McNichol. The Board granted this request, accordingly dismissing all charges against Officer McNichol.

As to Police Officer Timothy McNair, it is Complainant Susnik's burden to show by a preponderance of the evidence that Officer McNair violated Police Department Rules, Procedures and Standards. In this case that would require Mr. Susnik to show by a preponderance of the evidence that Officer McNair knowingly and intentionally failed to utilize an appropriate level of courtesy when dealing with him on July 26/27, 2004. We find that Mr. Susnik has not done this, and accordingly dismiss this complaint and all charges against Officer Timothy McNair.

This is not to say, however, that we believe that Officer McNair handled this matter as well as he could have and should have. The blowing of a car horn and a non-profane gesture of frustration by a citizen need not result in an arrest or even a citation in every instance. Discretion is permitted and should have been exercised in this case. We fully understand that a drug related arrest had just taken place and that Officer McNair had other law enforcement related activities to complete. Although it would appear that Mr. Susnik was less than fully cooperative when asked for basic information, there is nothing in the record to indicate that Susnik appeared to be anything more than a frustrated motorist. Officer McNair made little or no attempt to explain to Mr. Susnik why he had to turn the truck around and go back the way he came before placing him under arrest. Given the circumstances a warning is not specifically required, but it certainly would have been a more effective use of Officer McNair's time than an arrest and municipal citation. Susnik became further upset by this turn of events, and we believe that this set the stage for a subsequent incident at the district station.

Upon his release several hours later, Mr. Susnik wanted some answers. When Officer McNichol could not give him what he wanted, Susnik again became obstinate and McNichol called upon Officer McNair to intercede. McNair came out of a rear area of the station, asked Susnik if he was going to leave, and when Susnik said "No" he was arrested without further explanation or warning. Although our role is not to determine whether or not an arrest was lawful, we find the underlying basis for this arrest to be questionable. There were other, more effective methods of resolving the situation which Officer McNair should have explored.

We pay police officers not just to act, but to think before they act. A good officer is much more than someone who can place handcuffs on a subject and take him into custody. A good officer is firm when necessary but flexible when circumstances permit. A good officer is able to recognize situations when verbal skills and persuasion will result in cooperation, and does not immediately resort to hands-on compliance techniques. Training programs utilized by the Milwaukee Police Department include development of verbal skills, not just defense and arrest tactics. It is time that we insist that our officers use the full range of skills that they have been taught, and that supervisors monitor every officer's progress in these areas.

We suggest that the Department look at this particular incident to determine if additional training will benefit Officer McNair. We also suggest that the Department set up a tracking system for instances involving arrests related to simple municipal violations. Prior to an arrest such as this, did the officer consider citing and releasing the person at the scene or simply issuing a warning? Are officers required to explain to a supervisor why an arrest for a municipal offense was/is necessary? Are arrests for minor offenses an effective use of police resources? Does the Department require supervisors to review arrests for minor offenses such as this and counsel officers regarding what other options might have been available? If not, why not?

IT IS HEREBY ORDERED that this complaint and all charges against Police Officers James McNichol and Timothy McNair be and are hereby dismissed.

Signed and dated at Milwaukee, Wisconsin this 18th day of May, 2006

Board of Fire and Police Commissioners
Of the City of Milwaukee

By: _____
Commissioner

CERMELE & ASSOCIATES, S.C.

ATTORNEYS AT LAW

JONATHAN CERMELE
LAURIE A. EGGERT
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1840 NORTH FARWELL AVENUE
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(414) 276-8750
FAX (414) 276-8906

August 18, 2006

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

RE: Citizen Complaint of Mr. Frank Susnik
Against POs Timothy McNair and James McNichol
FPC No: 04-52
Date of Incident: July 26-27, 2004
Professional services

		Hours
10/21/2004	Conference with PO McNair; open file; memo to file.	0.50
10/22/2004	Memo to file; review complainant's municipal and circuit court records; MPD Open Records request.	0.70
10/25/2004	Correspondence to FPC.	0.10
11/9/2004	Review of correspondence from FPC.	0.10
11/12/2004	Telephone call from PO McNichol; memo to file.	0.50
11/15/2004	Fax to PO McNichol.	0.10
11/22/2004	Receive and review Fax from client; correspondence to FPC.	0.20
1/11/2005	Telephone call from FPC.	0.20
1/12/2005	Review of file.	0.10
1/18/2005	Correspondence to clients.	0.10

		Hours
1/26/2005	Review of correspondence from FPC; telephone calls to PO McNichol and PO McNair.	0.20
1/27/2005	Telephone call to PO McNair; memo to file.	0.20
2/1/2005	Telephone call from FPC.	0.10
2/9/2005	Review and sign correspondence to client.	0.10
2/16/2005	Telephone call from and to PO McNichol.	0.10
2/28/2005	Review of file; telephone call from PO McNair; travel to and perform conciliation; memo to file regarding conciliation.	2.00
3/8/2005	Receive and review Open Records; file same.	0.30
3/15/2005	Review Complaint and Appeal Report regarding status.	0.10
5/20/2005	Receive and review correspondence from FPC; review and sign correspondence to client regarding same.	0.10
10/11/2005	Receive and review correspondence from FPC; calendar Witness and Exhibit List deadline.	0.10
10/27/2005	Review of file.	0.40
10/31/2005	Review of file; intra-office conference with Pings.	0.40
	Receive and review complainant's Witness and Exhibit List; review FPC rules; correspondence to Fronk; review municipal court website regarding status of citations issued to complainant; telephone call to and from PO McNair; work on Witness and Exhibit List; telephone call to Fronk.	1.00
11/1/2005	Finalize Witness and Exhibit List.	0.50

		Hours
11/3/2005	Telephone call from Fronk; memo to file.	0.10
11/21/2005	Receive and review citizen's amended Witness and Exhibit List.	0.50
12/9/2005	Telephone call from FPC; memo to file.	0.10
2/21/2006	Review file; telephone calls to clients for updated vacation dates; telephone calls to and from Fronk regarding possible #2 hearing date.	0.30
2/23/2006	Telephone call from Fronk; calendar hearing date.	0.10
2/27/2006	Telephone call from FPC; memo to file.	0.20
3/1/2006	Telephone call from and to Fronk regarding scheduling; memo to file.	0.20
3/13/2006	Telephone call to Fronk; telephone calls to clients (messages); review file; telephone call to potential witness (message).	0.50
3/14/2006	Telephone call to potential witness (message).	0.10
3/15/2006	Telephone calls from witness; Fax to same; memo to file; receive and review Notice of Hearing; correspondence to clients.	1.00
3/22/2006	Telephone call from and to witness (messages); telephone call from PO McNichol.	0.30
3/23/2006	Telephone call from and to PO McNair; memo to file.	0.20
3/27/2006	Various telephone calls to and from potential witnesses.	0.30
3/29/2006	Telephone call from potential witness.	0.10
3/30/2006	Telephone call from witness; memo to file.	0.30

		Hours
4/3/2006	Review subpoenas; travel to Academy to serve Civil Litigation Division.	1.40
4/4/2006	Telephone call from Fronk.	0.20
4/5/2006	Receive and review correspondence from Fronk; intra-office conference regarding personnel records requests.	0.30
4/10/2006	Telephone call from MPD personnel regarding personnel files ready for review.	0.10
4/11/2006	Travel to PAB and review personnel file.	1.00
4/12/2006	Intra-office conference with Pings.	0.40
4/17/2006	Telephone call from PO McNichol; calendar conference with client; telephone call from PO McNair; calendar conference with client.	0.20
4/18/2006	Conference with PO McNair; prepare for hearing.	3.00
4/19/2006	Continue preparing for Hearing; telephone call from witness; conference with PO McNichol; travel to and perform Hearing; return travel.	8.00
5/25/2006	Receive and review FPC decision; correspondence to clients.	0.50
		Amount
	For professional services rendered 27.60	$3,036.00
	Additional charges:	
2/28/2005	Parking	6.00
3/7/2005	MPD Open Records request	7.81

		Amount
3/31/2006	Subpoenas (4)	24.00
4/11/2006	Parking	3.00
4/12/2006	Subpoenas (1)	6.00
4/19/2006	Parking	6.00
4/28/2006	Investigator - service of subpoena for witness	45.00
	Total costs	$97.81
	Total amount of this bill	$3,133.81
	Balance due	$3,133.81

(Rate: $110.00 per hour)