

GRANT F. LANGLEY
City Attorney

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



THDMAS O. GARTNER
BRUCE D. SCHRIMPF
SUSAN D. BICKERT
STUART S. MUKAMAL
THDMAS J. BEAMISH
MAURITA F. HOUREN
JDHN 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. HDRWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
HEIDI E. GALVÁN
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 Officer Robert Lacy
C.I. File No. 04-S-376; EC No. 2080

Dear Council Members:


Returned herewith is a document filed by Attorney Jonathan Cermele for attorney's fees for representing Police Officer Robert Lacy. The claim is in the amount of \$2,819.00 including \$25.00 in disbursements for 25.40 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 a criminal investigation. No criminal charges were brought against the police officer on whose behalf this claim was filed.

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
2276

OFFICE OF THE CITY ATTORNEY

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

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. Jan Smokowicz
Milwaukee City Attorneys Office
200 East Wells Street, #800
Milwaukee, WI 53202

RE: AMENDED CLAIM

MPD Criminal Investigation re: Mr. Mannix Franklin, Sr.
Regarding: PO Robert Lacy
Date of Incident: October 31, 2003
Location of Incident: 8056 West Medford Avenue

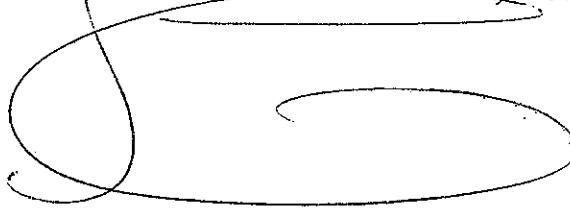
Dear Mr. Smokowicz

I am submitting the amended claim for the above-referenced matter. All reference and time associated with Police Officer Michael Pendergast has been removed, totaling 33.6 hours. This includes:

1. 3.30 hours on 11/01/2003;
2. 0.10 hours on 11/20/2003;
3. 0.20 hours on 12/23/2003;
4. 0.10 hours on 01/30/2004;
5. 0.40 hours on 02/06/2004;
6. 0.70 hours on 02/09/2004;
7. 0.30 hours on 02/26/2004;
8. 0.20 hours on 03/09/2004;
9. 0.10 hours on 03/25/2004;
10. 0.20 hours on 04/06/2004;
11. 0.20 hours on 05/07/2004;
12. 0.20 hours on 05/10/2004;
13. 0.10 hours on 05/12/2004;
14. 0.10 hours on 05/13/2004;
15. 1.50 hours on 05/21/2004;
16. 0.60 hours on 05/27/2004;
17. 2.40 hours on 05/28/2004;
18. 9.10 hours on 06/01/2004;
19. 6.70 hours on 06/02/2004;
20. 5.70 hours on 06/03/2004;
21. 0.20 hours on 06/04/2004;
22. 0.20 hours on 06/25/2004;
23. 0.10 hours on 06/27/2004;
24. 0.20 hours on 06/28/2004;
25. 0.20 hours on 06/30/2004; and ,
26. 0.30 hours on 07/01/2004.

Thank you.

Sincerely,
CERMELE & ASSOCIATES, S.C.

A handwritten signature in black ink, appearing to read 'Jon Cermele'. The signature is fluid and cursive, with a large loop on the left side and a horizontal stroke across the middle.

Jon Cermele

/kjs
Enclosure

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 09, 2007

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

RE: REVISED CLAIM

MPD Criminal Investigation re: Mr. Mannix Franklin, Sr.
Regarding: PO Robert Lacy
Date of Incident: October 31, 2003
Location of Incident: 8056 West Medford Avenue
Professional services

	<u>Hours</u>
11/1/2003 Telephone call to Detective Bureau; travel; conference with PO Lacy; memo to file; attend statement to detectives and DA; PI-21 statements to IAD; return travel; open file.	3.30
11/2/2003 Review news reports regarding incident.	0.30
11/3/2003 Computer search regarding incident and suspect's criminal and municipal records; memo to file; telephone call to client.	3.10
11/5/2003 Review news reports of DA review.	0.10
11/13/2003 Review newspaper article.	0.10
11/18/2003 Telephone call to DA; conference with detective; telephone call to client.	0.60
12/23/2003 Review file; telephone call to Medical Examiner; telephone calls to DA; telephone call to client; telephone call to Dist. #4.	1.00

	<u>Hours</u>
1/2/2004 Telephone call from client; correspondence to district attorney.	0.40
1/9/2004 Review file; telephone call to and from Medical Examiner; memo to file.	0.60
1/13/2004 Review demographic report from Medical Examiner.	0.20
1/29/2004 Telephone call from DA; memo to file.	0.20
1/30/2004 Telephone call to Medical Examiner.	0.10
2/6/2004 Review of correspondence from DA McCann; telephone call to DA; memo to file; telephone call to Medical Examiner.	0.80
2/9/2004 Review autopsy protocol; telephone call to DDA Donohoo; memo to file; telephone call to ADA Sanders.	1.10
2/26/2004 Review file; telephone call to DA; memo to file.	0.30
3/5/2004 Review of correspondence from Assistant Attorney General Korte; telephone call to Korte; review message from Korte.	0.40
3/8/2004 Telephone call from AAG Korte.	0.10
3/9/2004 Telephone call to AAG Korte; memo to file; telephone call to MPD.	0.40
4/6/2004 Telephone call from and to AAG Korte; memo to file.	0.70
4/9/2004 Review of correspondence from AAG Korte.	0.10
5/7/2004 Review of correspondence from AAG Korte; correspondence to Korte; review file.	0.30
5/10/2004 Telephone call to AAG Korte; memo to file.	0.40

	<u>Hours</u>
5/12/2004 Telephone call to Dist. #4; telephone call to warrant squad; telephone call from PO Lacy; correspondence to same.	0.60
5/13/2004 Review document from AAG Korte; correspondence to PO regarding subpoena to inquest; correspondence to AAG Korte regarding PO Lacy's availability.	0.40
5/20/2004 Telephone call from client; obtain and review taped interviews; review file in preparation for statement to AAG Korte.	1.40
5/21/2004 Preparation for and appearance at statement to AAG Korte; memo to file; review documents from AAG Korte.	3.10
5/27/2004 Telephone call from and to AAG Korte; memo to file; review file.	0.40
6/1/2004 Travel; conference with AAG Korte; telephone call to client and conference with client; memo to file; telephone call to CIB; return travel.	1.30
6/2/2004 Conference with client; telephone calls to client; travel; conference with AAG Korte; attend inquest; memo to file; return travel.	3.10
6/18/2004 Review file.	0.10
7/1/2004 Review of correspondence from Attorney General Lautenschlager; correspondence to client; close file.	0.40
	<u>Amount</u>
For professional services rendered	25.40
Additional charges:	\$2,794.00
2/9/2004 Medical Examiner Report	13.00
6/1/2004 Parking	6.00

Mr. Ronald Leonhardt

Page 4

	<u>Amount</u>
6/2/2004 Parking	6.00
Total costs	<u>\$25.00</u>
Total amount of this bill	<u>\$2,819.00</u>
Balance due	<u><u>\$2,819.00</u></u>

(Rate: \$110.00 per hour)

EGGERT & CERMELE, S.C.

Attorneys at Law

Laurie A. Eggert
Jonathan Cermele
Rachel L. Pings

1840 North Farwell Avenue
Suite 303
Milwaukee, Wisconsin 53202
(414) 276-8750
FAX (414) 276-8906

October 8, 2004

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

**RE: MPD Criminal Investigation of POs Michael Pendergast and Robert Lacy
Allegations Regarding Mr. Mannix Franklin, Sr.
Date of Incident: October 31, 2003
Location of Incident: 8056 West Medford Avenue
EC No.: 2080**

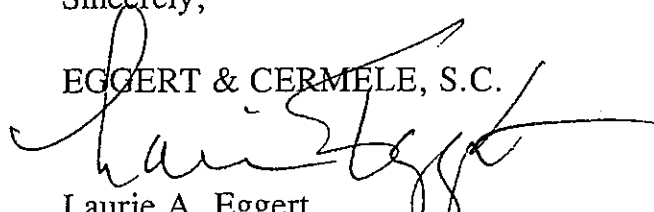
Dear Mr. Leonhardt:

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

Consistent with its policy, the City Attorney's Office has refused to represent him, and as he was performing the duties of his office at the time of the events giving rise to the incident, the claim is hereby made on his behalf for the indicated legal fees. This incident involved an officer-involved shooting. The MPD conducted a criminal investigation and investigated the matter as a critical incident. IAD compelled POs Pendergast and Lacy to give statements after issuing PI-21s. An Inquest followed. Later, the Attorney General concluded that the Officers' action was privileged. Attached is a copy of Attorney General Lautenschlager's letter and an itemization of the time and services rendered.

Sincerely,

EGGERT & CERMELE, S.C.


Laurie A. Eggert
Attorney at Law

LAE/ldl
attachment
PENDERGAST LACY

6/14/07
D.K.
JRS
Letter # 2276

EGGERT & CERMELE, S.C.

Attorneys at Law

Laurie A. Eggert
Jonathan Cermele
Rachel L. Pings

1840 North Farwell Avenue
Suite 303
Milwaukee, Wisconsin 53202
(414) 276-8750
FAX (414) 276-8906

October 08, 2004

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

RE: MPD Criminal Investigation re: Shooting of Mr. Mannix Franklin, Sr.
Regarding: POs Michael Pendergast and Robert Lacy
Date of Incident: October 31, 2003
Location of Incident: 8056 West Medford Avenue
Professional services

	<u>Hours</u>
11/1/2003 Telephone call to Detective Bureau; conference with clients; memo to file; statements to detectives and DA; travel; PI-21 statements to IAD; open file.	6.60
11/2/2003 Review news reports regarding incident.	0.30
11/3/2003 Computer search regarding incident and suspect's criminal and municipal records; memo to file; telephone call to client.	3.10
11/5/2003 Review news reports of DA review.	0.10
11/13/2003 Review newspaper article.	0.10
11/18/2003 Telephone call to DA; conference with detective; telephone call to clients.	0.60
11/20/2003 Telephone call from client.	0.10
12/23/2003 Review of file; telephone call to Medical Examiner; telephone calls to DA; telephone calls to clients; telephone call to District #4.	1.20

	<u>Hours</u>
1/2/2004 Telephone call from client; correspondence to district attorney.	0.40
1/9/2004 Review of file; telephone call to and from Medical Examiner; memo to file.	0.60
1/13/2004 Review demographic report from Medical Examiner.	0.20
1/29/2004 Telephone call from DA; memo to file.	0.20
1/30/2004 Telephone call to client; telephone call to Medical Examiner; telephone call from client.	0.20
2/6/2004 Review of correspondence from DA McCann; telephone call to DA; telephone call to client; memo to file; telephone call from client; telephone call to Medical Examiner.	1.20
2/9/2004 Review autopsy protocol, telephone call to DDA Donohoo; memo to file; telephone call to ADA Sanders.	1.80
2/26/2004 Review of file; telephone call to DA; memo to file.	0.60
3/5/2004 Review of correspondence from Assistant Attorney General Korte; telephone call to Korte; review message from Korte.	0.40
3/8/2004 Telephone call from Korte.	0.10
3/9/2004 Telephone call to Korte; memo to file; telephone call to MPD; telephone call to client.	0.60
3/25/2004 Telephone call from client.	0.10
4/6/2004 Telephone call from and to Korte; memo to file; telephone call to client.	0.90
4/9/2004 Review of correspondence from Korte.	0.10

	<u>Hours</u>
5/7/2004 Review of correspondence from Korte; telephone call to client; correspondence to Korte; review of file.	0.50
5/10/2004 Telephone call from and to client; telephone call to Korte; memo to file.	0.60
5/12/2004 Telephone call to #4; telephone call to warrant squad; telephone call from Lacy; correspondence to clients.	0.70
5/13/2004 Review document from Korte; correspondence to client; correspondence to Korte.	0.50
5/20/2004 Telephone call from Lacy; obtain and review taped interviews; review of file in preparation for statements to Korte.	1.40
5/21/2004 Preparation for and appearance at statements to Korte; memo to file; review documents from Korte.	4.60
5/27/2004 Telephone call from and to Korte; telephone call to and from client; memo to file; review of file.	1.20
5/28/2004 Conference with client; conference with Korte; memo to file; telephone call from client.	2.40
6/1/2004 Preparation for and attend inquest; conference with Korte; telephone call to clients and conference with client; memo to file; telephone call to CIB; travel.	10.40
6/2/2004 Conference with clients; telephone calls to client; conference with Korte; attend inquest; memo to file; travel.	9.80
6/3/2004 Attend inquest; telephone calls to clients; memo to file; conference with Assistant Attorney General; travel.	5.70
6/4/2004 Telephone call from and to Korte; Fax to Korte.	0.20

	<u>Hours</u>		<u>Amount</u>
6/18/2004 Review of file.	0.10		
6/25/2004 Telephone call from client; telephone call to Korte; telephone call to client; memo to file.	0.20		
6/27/2004 Conference with Deputy Chief O'Keefe; memo to file.	0.10		
6/28/2004 Telephone call from Korte; telephone call to client; memo to file.	0.20		
6/30/2004 Telephone call from Korte; telephone call to client; memo to file.	0.20		
7/1/2004 Review correspondence from Attorney General Lautenschlager; correspondence to client; close file.	0.70		
		59.00	\$6,490.00
For professional services rendered			
Additional charges:			
2/9/2004 Medical Examiner Report			
6/1/2004 Parking			
6/2/2004 Parking			
6/3/2004 Parking			
			<u>\$38.00</u>
Total costs			<u>\$6,528.00</u>
Total amount of this bill			<u>\$6,528.00</u>
Balance due			<u><u>\$6,528.00</u></u>



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

Daniel P. Bach
Deputy Attorney General

June 29, 2004

E. Michael McCann
Milwaukee County District Attorney
Safety Building, Room 405
821 West State Street
Milwaukee, WI 53233-1485

RECEIVED

JUL 01 2004

DEPT OF JUSTICE

Re: Inquest into the death of Mannix Franklin

Dear Mr. ~~McCann~~ *Mike*:

I am writing to provide you with the conclusions reached by this office in regard to the inquest held concerning the death of Mannix Franklin, Sr., on October 31, 2003. This office agreed to act as special prosecutor in this matter at your request. As you are no doubt aware, the inquest jury concluded that Milwaukee Police Officer Michael Pendergast shot Mr. Franklin while lawfully exercising a privilege to use deadly force and that there was no probable cause that Officer Pendergast committed any crime. After consideration of all the facts, this office agrees with the verdict reached by the jury.

In order to provide a complete understanding of the jury verdict and my decision, I will summarize and analyze the facts as discovered during the course of the investigation and the inquest proceeding.

BRIEF OVERVIEW

At approximately 8:41 p.m. on October 31, 2003, the Milwaukee Police Department (MPD) received a call from Marnice Franklin reporting that she had a no contact order against her husband, Mannix Franklin, that he had just entered her residence, that he was harassing her and that he needed to be arrested. Mrs. Franklin resided at 7961 West Fond du Lac Avenue. At approximately 8:42 p.m., MPD officers Robert Lacy and Michael Pendergast were dispatched to the scene. The officers arrived at approximately 8:46:04 p.m. At 8:46:49 p.m., it was reported by Officer Lacy that Mr. Franklin had taken off running westbound through yards and described him as wearing a red "Starter" jacket with white lettering. Officer Pendergast followed Mr. Franklin on foot while Officer Lacy began pursuit in his car. Recorded radio calls reflect that shortly before the shooting Officer Pendergast requested that Officer Lacy come over to assist him. At approximately 8:47:35, Officer Lacy reported that shots had been fired. Various other MPD units were dispatched and at approximately 8:48:24 p.m., Officer Pendergast reported that Mr. Franklin had been shot multiple times and requested medical assistance. Additional MPD officers began arriving at 8:49:02 p.m. The shooting occurred in the driveway

of a residence located at 8055 West Medford Avenue, one block west of the Franklin residence. At 8:51 p.m. a medical unit was dispatched from the Milwaukee Fire Department and arrived at approximately 8:55 p.m. Mr. Franklin became pulseless at the scene but was resuscitated. At 9:14 p.m., Mr. Franklin was transported to Froedtert Hospital where he arrived at 9:25 p.m. Mr. Franklin was pronounced dead at 11:00 p.m. Officer Pendergast fired a total of five (5) shots. Mr. Franklin suffered multiple gunshot wounds. Two of the gunshots: a wound to the abdomen and a wound to the head, were fatal shots. Mr. Franklin had a blood alcohol level of approximately 0.19. Mr. Franklin was not armed with a firearm and his personal belongings found at the scene consisted of some papers, a set of car keys and a music CD.

Mannix Franklin was 31 years old and married to Marnice Franklin. At the time of the shooting he was on probation for a disorderly conduct conviction in March of 2003, arising from an incident with his wife, Marnice Franklin. Conditions of probation included that he have no contact with his wife without her consent and the consent of the probation agent, undergo domestic violence counseling and AODA treatment and maintain absolute sobriety. Mrs. Franklin did not have a separate restraining order. Mr. Franklin also had a number of other prior criminal convictions dating back to 1992 for burglary, bail jumping and disorderly conduct. All but one of these offenses were domestic abuse related incidents involving his wife. In September of 2003, Mr. Franklin had been placed on home detention by his probation agent for violating the no contact order. On October 25, 2003, police had responded to calls reporting that Mr. Franklin had broken a window on a door at Mrs. Franklin's residence. Mr. Franklin apparently fled from the scene prior to the arrival of the police on that day. In mid October of 2003, Mr. Franklin had been warned by his probation agent that any further violations of his probation conditions, including the condition of no contact with his wife, would result in revocation of probation and consequently his incarceration. On October 31, 2003, Mr. Franklin did not have consent of his probation agent to have contact with his wife.

FACTUAL SUMMARY

The evidence in this case will be categorized and discussed as follows: A summary of the facts, a discussion of several issues in the case, and an analysis of the evidence.

After being dispatched to 7961 West Fond du Lac Avenue, Officer Robert Lacy parked the marked squad on the corner of West Fond du Lac and Sheridan Avenue. The squad was parked on the south side of Sheridan Avenue facing west. Both officers were in uniform. After leaving the squad they spoke with Mrs. Franklin. Mrs. Franklin stated that she had called the police about her husband a couple of times in the past few days. During this conversation Mrs. Franklin pointed west and stated, "There he is" or words to that effect. Officer Pendergast observed Mr. Franklin walking in a westerly direction about one half or one quarter block away on the south sidewalk of Sheridan. Either Mrs. Franklin or Officer Pendergast stated that Mr. Franklin was going to run. Officer Pendergast began to follow Mr. Franklin on foot while Officer Lacy got back into the squad. Officers Pendergast and Lacy stated that Officer Pendergast called out to Mr. Franklin stating he

wanted to talk. When Mr. Franklin reached the next corner, Sheridan and West Medford Avenue, he glanced back at the direction of the officers and then cut through the southwest corner of a yard and sped up and Officer Pendergast lost sight of him. Officer Pendergast then began to run in order to maintain sight of Mr. Franklin. When Officer Pendergast turned the corner onto West Medford, he observed Mr. Franklin walking up the driveway of a residence across the street at 8055 West Medford. Officer Lacy then moved his squad west on Sheridan, and Officer Pendergast motioned with his hand for Officer Lacy to proceed with his squad in the direction Mr. Franklin was headed. Officer Lacy then drove to the next block west, which ran parallel with West Medford, and exited his squad.

There were two vehicles in the driveway at 8055 West Medford, a pickup truck and a van. The van was in front of the pickup truck. The truck was located closer to the street. There was a closed four-foot-high chain link fence in front of the van which blocked access to a garage and the backyard. The distance from the fence to the street was approximately 67 feet. The distance from the back of the truck to the street was 26 1/2 feet. The driveway and the yard sloped down towards the street.

Officer Pendergast stated that when he observed Mr. Franklin begin to walk up the driveway he yelled, "Hey, come here. I just want to talk with you for a minute," or words to that effect. Mr. Franklin did not look back or respond. As Officer Pendergast followed Mr. Franklin up the driveway he observed Mr. Franklin in front of the van. Mr. Franklin was originally on the front left corner of the van and then walked in front of the van and disappeared from view. Officer Pendergast proceeded to walk to the back of the truck. He then observed a foot on the ground near the front left corner of the van. Officer Pendergast believed that Mr. Franklin was attempting to conceal himself under the front of the van. Officer Pendergast then walked in between the truck and the van and continued to walk up the right side of the van where he stopped about half way to the front of the van. As Officer Pendergast was walking to the right side of the van he stated, "Milwaukee Police. I want to talk with you," several times but received no response. Officer Pendergast then saw a portion of Mr. Franklin's head under the right front corner of the van. Officer Pendergast then stated, "Milwaukee Police, come out. We just want to talk." Mr. Franklin did not respond so Officer Pendergast repeated his request. After the second request Mr. Franklin stood up by the right front corner of the van and faced Officer Pendergast. Neighbors across the street also heard officer Pendergast repeatedly command Mr. Franklin to come out. The neighbors described Officer Pendergast's tone as commanding but not panicked.

When Mr. Franklin stood up he was approximately five feet away from Officer Pendergast. Officer Pendergast stated that Mr. Franklin stared at Officer Pendergast's chest area, did not look him in the eye and did not say anything. Officer Pendergast stated that Mr. Franklin's eyes were wide, red and bloodshot. Mr. Franklin then quickly placed his right hand inside his jacket as if he were reaching for something on his left side and appeared to be attempting to pull something out from inside the jacket. Officer Pendergast stated that he then drew his service weapon and pointed it at Mr. Franklin. One of the neighbors across the street testified that it was after Officer

Pendergast ordered Mr. Franklin to come out that Officer Pendergast reached towards his service weapon.

Officer Pendergast repeatedly commanded Mr. Franklin, "take your hand out of your pocket. Let me see your hand." These commands were heard by Officer Lacy. Mr. Franklin did not comply with the commands. As Officer Pendergast made these commands he also began to disengage by walking backwards towards the street. Mr. Franklin began walking towards Officer Pendergast and kept pace with the officer's backward movement. One of the homeowners at 8055 West Medford reported seeing a man matching Mr. Franklin's description walk by her kitchen window while she was doing dishes and that the person was walking from the gate towards the direction of the street. Officer Pendergast repeatedly commanded Mr. Franklin to take his hand out of his coat, to get down and to stop, but Mr. Franklin did not respond. A neighbor across the street heard some of these commands as did other witnesses nearby. All of these witnesses who reported hearing these commands stated that they were loud. While he was walking backwards Officer Pendergast bumped into the side of the truck and then called for Officer Lacy to "get over here." Officer Pendergast continued to walk backwards towards the street and Mr. Franklin continued to appear to attempt to pull an object from inside his jacket with his right hand. At some point officer Pendergast started walking faster and once he was past the back of the truck he was six or seven feet away from Mr. Franklin. The physical evidence indicates that Officer Pendergast was ten feet or less away from Mr. Franklin when he fired.

Officer Pendergast stated that as he backed up near the sidewalk he paused and Mr. Franklin began moving faster towards Officer Pendergast and continued to appear to be vigorously attempting to withdraw something from his jacket and continued not responding to Officer Pendergast's commands. Officer Pendergast stated he continued walking backward and was approaching the street. As Mr. Franklin continued to approach with his hand inside his jacket and appearing to be attempting to withdraw something, as Mr. Franklin did not respond to any commands and as Officer Pendergast did not have any available cover, Officer Pendergast believed Mr. Franklin was armed and posed a threat to his safety. Officer Pendergast stated that he then fired three or four times and Mr. Franklin fell face first. Officer Pendergast believes he was near the end of the driveway when he began to shoot and believes he continued to shoot while walking backwards into the street. Five spent shell casings from Officer Pendergast's weapon were found in an area near the sidewalk and road in front of the residence at 8055 West Medford. The location of the spent casings indicates that Officer Pendergast was walking backwards while he was shooting and ended up in or very near the street. Officer Pendergast stated that he fired his weapon with one hand but did not recall if he had a flashlight in his other hand.

Officer Pendergast heard Officer Lacy report over the radio that shots had been fired and Officer Lacy then emerged from the backyard of 8055 West Medford. Officer Lacy approached the location and walked down the driveway at 8055 West Medford toward the street and observed Officer Pendergast with his weapon drawn standing over Mr. Franklin. Mr. Franklin was laying face down with his head facing the street and his arms and hands underneath his body. Mr. Franklin

was not armed with a weapon. Officer Pendergast told Officer Lacy that Mr. Franklin had his hands in his pockets and refused to take them out and kept coming at him. One of the homeowners at 8055 West Medford came outside right after hearing shots and heard an officer yelling to Mr. Franklin, who was on the ground, to throw the gun down or get rid of the gun. Another neighbor heard a similar statement directed at Mr. Franklin, after the shots were fired and while he was laying on the ground, regarding having his hands in his pockets. Officer Lacy did not fire his weapon. An ambulance was requested and Officer Pendergast reported that Mr. Franklin had been shot.

ANALYSIS

Many facts in this case are not in dispute. When Officer Pendergast responded to the 911 call he was lawfully performing his duties, had an obligation to pursue Mr. Franklin, and had a basis to arrest Mr. Franklin. Officer Pendergast did not immediately draw his weapon and only did so after Mr. Franklin did not comply with the officer's commands. Mr. Franklin was not heard to make any statements or responses to Officer Pendergast's commands. Officer Pendergast attempted to disengage by backing up down a driveway approximately 50 feet before firing. Mr. Franklin was within ten feet or less of Officer Pendergast on the driveway when he was shot and fell forward. Mr. Franklin had the option of attempting to flee either west, north or south but instead directly approached the officer. Officer Pendergast was moving backwards when he began shooting and continued to back up until he was in the street, a total of 67 feet from where Mr. Franklin was originally located. Some additional details will be discussed below.

Location of Mr. Franklin's hands: Officer Pendergast reported that when he shot, Mr. Franklin's hand, or a portion thereof, was inside of his coat. Officer Lacy also observed that Mr. Franklin's hands and arms were located underneath his body at the scene. One witness, who was located about 150 feet south of the shooting scene and who was facing the right side of Mr. Franklin, stated that she observed Mr. Franklin's right hand inside his jacket as he approached the officer. The witness stated that Mr. Franklin kept his hand inside his jacket and kept approaching the officer until he was shot. In a later interview the witness reported that Officer Pendergast fired one shot, which missed, and then commanded Mr. Franklin to remove his hand at which time he complied and that his hands were by his side when shot. However, the witness also reported that Mr. Franklin continued to advance towards the officer and ignored repeated commands to freeze at which time the officer fired a number of other shots. The witness was unavailable to testify at the inquest. While the witness was in a position to observe some of the events and movements of Mr. Franklin, her opportunity to do so was very brief and it was dark. More importantly, no other witness reports hearing any pause between shots and in fact almost uniformly describe the shots as sounding like firecrackers. The statement also is not supported by the autopsy findings because Mr. Franklin's injuries were consistent with having at least one hand near his chest area at the time he was shot. Therefore, the witness's statement that the officer fired one time and missed, that Mr. Franklin then removed his hands and that the officer then shouted various other commands before shooting again is simply not plausible. It is likely that the witness may have

observed Mr. Franklin's hand come out of his jacket after being shot and while he was falling forward.

Commands: In addition to Officers Pendergast and Lacy, a total of five other witnesses reported hearing Officer Pendergast make repeated commands for Mr. Franklin to show his hands, get down or stop or freeze. It is logical to assume that these commands were repeated because Mr. Franklin was not complying. The commands were audible by the witnesses who were all some distance away. One witness who was about 150 feet away or more stated that she clearly heard the commands and in fact complied herself. Two witnesses reported that Mr. Franklin was not moving when he was shot. However, the statements of these witnesses regarding the location of Mr. Franklin at the time of the shooting are not supported by the ultimate location of Mr. Franklin's body. The statements also contradict each other and are further contradicted by a third witness who was in a closer location. It must be remembered that the shooting occurred very rapidly and was not expected by the witnesses who were making observations under nighttime conditions. One of the witnesses reported peeking out from behind the corner of her house. The other indicated her attention was divided between the event and watching her daughter who was outside. These witnesses also have given contradictory statements. The totality of the evidence indicates that Mr. Franklin was in close proximity and approaching Officer Pendergast on the driveway when the shots were fired.

Number of shots fired: Various witnesses reported varying numbers of shots fired. However, all but one witness reported that the shots were fired very rapidly without any pause. Outside of the residence at 8055 West Medford Avenue five spent .40 caliber Smith and Wesson casings from a Glock model service weapon were recovered. The Wisconsin State Crime Lab, Milwaukee, examined the casings and determined that they came from Officer Pendergast's weapon. Officer Pendergast stated that his weapon held fourteen rounds in a magazine and one in the chamber for a total of fifteen rounds. After the shooting, Officer Pendergast's weapon was examined and found to contain nine unfired cartridges in the magazine and one unfired cartridge in the chamber for a total of ten unfired cartridges. Officer Pendergast also possessed two other magazines, each of which contained fourteen unfired cartridges. Officer Lacy's firearm was also examined and found to contain fifteen unfired cartridges: fourteen in the magazine and one in the chamber. Officer Lacy also had two full magazines each containing fourteen unfired cartridges. The number of rounds in Officer Pendergast's and Lacy's firearms is consistent with MPD policy. Therefore, based on witness statements, evidence recovered at the scene, and the examination of Officer Pendergast's weapon, he fired a total of five shots.

Wounds: An autopsy was performed by Dr. K. Alan Stormo, Assistant Medical Examiner for Milwaukee County, on November 1, 2003. Dr. Stormo concluded that Mr. Franklin died from a loss of blood as a result of a gunshot wound to the abdomen. Dr. Stormo described the gunshot wounds in his autopsy report. The gunshot wound to the abdomen was located in the center chest area and entered from the front. The bullet was located in Mr. Franklin's body. A second gunshot wound was to Mr. Franklin's head that also entered from the front. Both of these wounds were fatal.

The other wounds consist of the following: gunshot wound to left shoulder exiting the back; gunshot wound to left forearm; through and through gunshot wound to left little finger; and gunshot wound to left buttock. The autopsy also noted abrasions to the web space on right thumb and a knee. However, no firm conclusions could be reached as to the origins of these injuries. A number of conclusions can be drawn from the autopsy findings. First, all of the gunshot wounds received by Mr. Franklin entered from the front. Therefore, Mr. Franklin was shot while facing Officer Pendergast and was neither moving away or down on the ground. Second, the wound to Mr. Franklin's back was in all probability fired while Mr. Franklin was falling forward. The wound also came from the front. No witness reported any shots fired after Mr. Franklin fell forward. Third, the wounds indicate that one bullet caused more than one injury. The wounds to Mr. Franklin's left side also indicate that his left arm was near his chest area at the time those wounds were received.

Officer options: Mr. Franklin refused to comply with Officer's Pendergast's commands to show his hands. A person's conduct in conspicuously ignoring an officer's commands is a recognized risk factor strongly suggesting a risk to the officer's safety. Mr. Franklin also concealed one hand and appeared to be reaching for something concealed in his jacket. It is reasonable for any officer to believe that such conduct indicated the reasonable possibility that Mr. Franklin was reaching for a weapon. Officer Pendergast did not draw his weapon until the circumstances indicated that there was a risk to his safety. Officer Pendergast repeatedly provided Mr. Franklin with opportunities to comply with commands that would reduce the danger of the situation but Mr. Franklin ignored those commands and continued to engage in threatening behavior. Officer Pendergast also attempted to deescalate the situation by withdrawing. However, Officer Pendergast's options were limited by the unavailability of sufficient cover to protect himself. It is not reasonable to expect an officer, in the situation that was presented in this case, to turn or lower his weapon as that would expose the officer to a substantial and immediate risk of being shot. There was also no time for Officer Pendergast to try other use of force alternatives such as a baton, physical force or pepper spray. To do so would have placed the officer in an even more dangerous situation. Such options would have required the officer to get even closer to Mr. Franklin thus increasing the level of risk. It may also have required the officer to holster his weapon which would also place the officer in a situation where he would have been unable to protect himself from an armed assault. Attempts at verbal persuasion and physical presence, two key components of controlling a situation, had failed. There is no requirement that an officer actually attempt all other use of force options. Some situations develop so quickly that no use of alternatives is feasible without substantial risk to the officer. In addition, Mr. Franklin continued to approach Officer Pendergast and at all times was within a recognized zone of danger even if he was not armed with a firearm. Officer Pendergast had no reasonable options available to him. This conclusion was supported by the testimony of expert witnesses on the use of force by law enforcement officers.

The above facts and analysis support the conclusion that Officer Pendergast acted reasonably and consistently with his training in the use of deadly force.

CONCLUSION

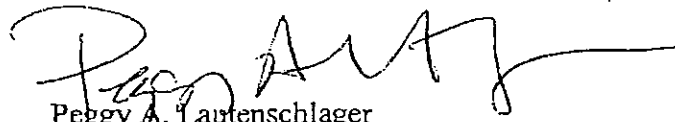
Police officers are lawfully allowed to use deadly force when they have an objectively reasonable belief that such force is reasonably necessary to protect themselves or others from the risk of serious bodily injury or death. Police officers are provided continuing training regarding the use of force and Officer Pendergast underwent such training.

It is beyond dispute that Mr. Franklin's death was tragic. It will never be known to a certainty what prompted Mr. Franklin to make the choices he did on October 31, 2003, or to what extent those choices were affected by his intoxication. Regardless of Mr. Franklin's motives, the issue is whether Officer Pendergast acted appropriately and consistently with legal principles governing the use of deadly force by law enforcement officers.

The inquest jury determined that the conduct of Officer Pendergast was privileged by either the privilege of self-defense or the privilege of a police officer to use deadly force to accomplish an arrest and/or prevent an escape. This office has concluded that the verdict rendered by the inquest jury was correct. Thus, it is the opinion of this office that Officer Pendergast did not commit any criminal wrongdoing and that he was justified in using deadly force when he shot Mr. Mannix Franklin, Sr. I therefore conclude that the shooting, although regrettable, was in fact justified under the circumstances. Therefore, no criminal charges will be brought against Officer Pendergast.

If you have any questions regarding the above discussion, please do not hesitate to contact me.

Very truly yours,


Peggy A. Lautenschlager
Attorney General

c: Chief Nanette H. Hegerty
Attorney Laurie Eggert
Attorney Jerome Konkel

MILWAUKEE POLICE DEPARTMENT

RECEIVED

04 NOV 11 AM 10:01
October 28, 2004

MILWAUKEE POLICE
INTERNAL AFFAIRS
DIVISION

MEMORANDUM

TO: P.O. MICHAEL PENDERGAST
DISTRICT: FOUR

RE: Receipt of Legal Services from Law Firm of
Attorney

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 OCTOBER 31, 2003
- 2) A citizen's complaint made by
- 3) A police shooting incident occurring on OCTOBER 31, 2003

Is this information correct? YES X NO _____

Did you receive legal representation in this matter? YES X NO _____

Your signature: *Michael Pendergast*

Print your name: Michael Pendergast

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
Captain of Police
Professional Performance Division

MKH:kjs

RECEIVED

MILWAUKEE POLICE DEPARTMENT

04 NOV -8 AM 11:32

MEMORANDUM

October 28, 2004

MILWAUKEE POLICE
TO: P.O. ROBERT LACY
DISTRICT: INTELIGENCE DIVISION

RE: Receipt of Legal Services from Law Firm of Attorney

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 OCTOBER 31, 2003
- 2) A citizen's complaint made by
- 3) A police shooting incident occurring on OCTOBER 31, 2003

Is this information correct? YES *φ* NO

Did you receive legal representation in this matter? YES *φ* NO

Your signature: *Robert Lacy*

Print your name: Robert Lacy

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
Captain of Police
Professional Performance Division

MKH:kjs