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July 14, 2010

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

Re: Communication from Attorney Michael J. Steinle, Terschan, Steinle & Ness, for
legal fees for Police Officer Michael Pendergast

Dear Council Members:

Returned herewith is a document filed by Attorney Michael J. Steinle for attorney's fees for representing Police Officer Michael Pendergast. The claim is in the amount of \$17,432.50, including \$5,357.50 in private investigator expenses. The claim for legal fees is for 40.25 hours of service billed at the rate of \$300.00 per hour, for a total amount of legal fees of \$12,075.00. 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 prosecution. The State of Wisconsin dismissed the charges against Officer Pendergast on February 5, 2008 without prejudice, but has not ever subsequently sought to reopen the matter.

This claim again represents an opportunity for the Common Council to consider such a request under the amended Wis. Stats. §895.35(2). The pertinent language in that statute is the following: "the city...shall reimburse a protective services officer for *reasonable attorney fees* incurred by the officer in connection with a criminal proceeding arising from the officer's conduct in the performance of official duties..." except for certain circumstances that do not apply here. (Emphasis supplied). The amended statute thus removes discretion from the City over whether to pay such claims arising from certain criminal proceedings, but does not specify what are to be deemed "reasonable" attorneys fees.

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We have been able to obtain the agreement between Attorney Steinle and Officer Pendergast regarding this matter. The agreement indicates that Pendergast was required to pay no more than \$15,000 in fees to Steinle, something that is described in the agreement as "the final fee." That, of course, is slightly higher than the \$12,075.00 attorneys' fee bill that Steinle presented to the city.

The agreement, however, also provides for a "minimum hourly charge [of] \$250.00 if hourly billing is requested. The City routinely requests hourly billing from attorneys representing police officers. At \$250.00 per hour, and for 40.25 hours of work, the legal fee here would total only \$10,062.50. The agreement, however, makes clear that costs and services (including, presumably, investigator fees) are separate and, therefore, additional items.

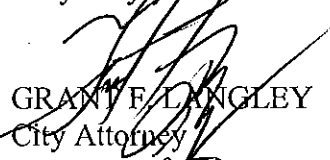
As to the proper definition of "reasonable" attorney fees, such a requirement has been interpreted by the Wisconsin Supreme Court in the past in a comparable context. *Village of Shorewood v. Steinberg*, 174 Wis. 2d 191, 204-5, 496 N.W.2d 57 (1993). In doing so, it referred to one of its rules, SCR 20:1.5, relating to fees that attorneys may charge. The factors prescribed by that rule include: 1) time and labor required, 2) novelty and difficulty of the questions involved; 3) skill required to perform services; 4) apparent likelihood that lawyer will be precluded from other work; 5) the fee customarily charged; 6) amount involved and results obtained; 7) limitations imposed by client or circumstances; 8) nature and length of the relationship; 9) experience and ability of the lawyer; and, 10) whether the fee is fixed or contingent. Given what we know of this situation, none of these factors are of much help but one. The hourly fee, however, was fixed at \$250.00 per hour.

Under all the circumstances, therefore, we would recommend that the City pay \$10,062.50 for attorneys' fees in this matter. As for the investigator's bill of \$5,357.50, the statute by its language does not apparently require payment and such a payment thus remains

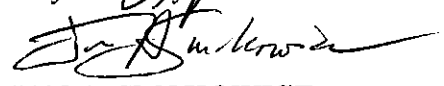
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subject to your discretion. In a past bill submitted by the same firm under the provisions of the new statute, however, the city has declined to pay for investigators bills.

Very truly yours,



GRANT F. LINGLEY
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JAS
Enc.

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