

**GRANT F. LANGLEY**  
City Attorney

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



THOMAS O. GARTNER  
BRUCE D. SCHRIMPF  
ROXANE L. CRAWFORD  
SUSAN D. BICKERT  
STUART S. MUKAMAL  
THOMAS 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  
VINCENT J. BOBOT  
MIRIAM R. HORWITZ  
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  
Assistant City Attorneys

May 19, 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 David Martinez  
C.I. File No. 07-S-149-2; EC 2455

Dear Council Members:

Returned herewith is a document filed by Attorney Jonathan Cermele for attorney's fees for representing Police Officer David Martinez. The claim is in the amount of \$1,666.00 including \$16.00 in disbursements for 15.00 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 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

  
Assistant City Attorney

JAS:amp  
Enc.

1032-2007-1250:124858v1

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

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

MAY 2, 2007

TO: P.O. DAVID MARTINEZ

DISTRICT: SEVEN

RE: Receipt of Legal Services from Law Firm of  
Attorney Jonathan Cermele

Attorney Jonathan Cermele has made a claim with the City, indicating the attached was provided with legal services arising out of one of the following situations:

- 1) A police shooting incident occurring on JANUARY 12, 2007
- 2) A citizen complaint made by David BOONE

Is this information correct?

YES  NO

Did you receive legal representation  
in this matter?

YES  NO

Your signature: \_\_\_\_\_

*P.O. David Martinez*

Print your name: \_\_\_\_\_

P.O. DAVID MARTINEZ

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  
Deputy Inspector  
Professional Performance Division

MKH: lrc

MILWAUKEE POLICE DEPARTMENT  
PROFESSIONAL PERFORMANCE DIVISION  
MAY 2 2007  
07:41:33 PM  
MAY 2 2007

# CERMELE & ASSOCIATES, S.C.

ATTORNEYS AT LAW

JONATHAN CERMELE  
LAURIE A. EGGERT  
RACHEL L. PINGS  
MATTHEW L. GRANITZ

6310 WEST BLUEMOUND ROAD  
SUITE 200  
MILWAUKEE, WISCONSIN 53213  
(414) 276-8750  
FAX (414) 276-8906

April 23, 2007

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

**RE: MPD Criminal Investigation: Officer-Involved Shooting**  
**Regarding: PO David Martinez**  
**Date of Incident: January 12, 2007**  
**Location of Incident: 2834-2836 North 49<sup>th</sup> Street**

2007 APR 25 PM 3:00  
CITY OF MILWAUKEE  
RONALD D. LEONHARDT  
CITY CLERK

Dear Mr. Leonhardt:

This claim is being submitted under §895.35(2), STATS., which provides that:

Notwithstanding sub (1), 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, unless, in relation to that conduct, any of the following applies:

- a. The officer is convicted of a crime;
- b. The officer's employment is terminated for cause;
- c. The officer resigned for reasons other than retirement before the attorneys fees are incurred;
- d. The officer is demoted or reduced in rank
- e. The officer is suspended without pay for 10 or more working days. §895.35(2), STATS.

Officer Martinez is considered a "protective services officer" under the statute. He has incurred the fees compiled in this claim as a direct result of his being investigated for actions taken within his official capacity, and in the performance of his duties, in connection with the use of deadly force. None of the "exceptions" apply<sup>1</sup>.

The incident resulted in the District Attorney's Office conducting a criminal investigation

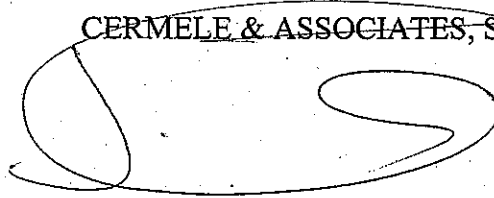
<sup>1</sup> The officer was not convicted of a crime, terminated for cause, resigned prior to incurring the fees associated with this claim, demoted, or suspended without pay for more than 10 days. See 895.35(2)(b), STATS.

into the shooting of David Boone, under Chapter 979, STATS. That investigation qualifies as a "proceeding" which mandates payment under 895.35(2), STATS.

Attached is a copy of District Attorney John Chisholm's letter dated April 12, 2007 confirming that Officer Martinez's actions were privileged and in self-defense.

Sincerely,

CERMELE & ASSOCIATES, S.C.

A handwritten signature in black ink, appearing to be "Jon Cermele", enclosed within a hand-drawn oval border.

Jon Cermele

/kjs  
Enclosures  
MARTINEZ

# CERMELE & ASSOCIATES, S.C.

ATTORNEYS AT LAW

JONATHAN CERMELE  
LAURIE A. EGGERT  
RACHEL L. PINGS  
MATTHEW L. GRANITZ

6310 WEST BLUEMOUND ROAD  
SUITE 200  
MILWAUKEE, WISCONSIN 53213  
(414) 276-8750  
FAX (414) 276-8906

April 23, 2007

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

RE: MPD Criminal Investigation re: Officer-Involved Shooting  
Regarding: PO David Martinez  
Date of Incident: January 12, 2007  
Location of Incident:  
Professional services

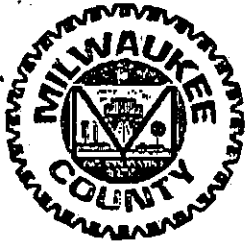
	<u>Hours</u>
1/12/2007 Open file; travel to scene, Froedtert Memorial Lutheran Hospital and PAB; interview PO Martinez and PO Graber; provide PO's to DA and CIB for statements; return travel; memo to file; correspondence to clients.	5.00
1/13/2007 Telephone call from and to CIB.	0.10
1/15/2007 Several telephone call from and to CIB regarding DA / DCI "walk-through" of scene; intra-office conference with Cermele; conference with MPD; telephone call to PO Martinez; correspondence to clients.	1.40
1/16/2007 Conference with MPD.	0.20
1/17/2007 Several telephone call to and from PO Martinez; telephone call from and to CIB regarding walk-through.	0.50
1/18/2007 Telephone call to and from CIB regarding walk-through; memo to file; telephone call to and from PO Martinez regarding same; schedule and calendar same.	0.30

	<u>Hours</u>
1/19/2007 Travel to CIB; walk-through scene with client, DA, CIB, DCI agent; return travel; memo to file.	3.00
2/7/2007 E-mail to DA Investigator regarding status.	0.10
2/8/2007 Receive and review e-mail from DA Investigator regarding medical records; intra-office conference with Cermele regarding same; respond to e-mail; draft and send medical authorization; correspondence to client; telephone calls from client; telephone call to DA's Investigator; telephone call to and from CIB; memo to file.	1.20
2/14/2007 Telephone call from CIB; memo to file.	0.20
2/15/2007 Telephone call from and to PO Martinez.	0.10
3/12/2007 Telephone call from and to DA's Investigator.	0.20
3/13/2007 Telephone call to and from PO Martinez; memo to file.	0.20
3/16/2007 Telephone call from PO Martinez.	0.10
3/21/2007 Telephone call from PO Martinez; memo to file.	0.20
3/22/2007 Intra-office conference with Cermele; telephone call to PO Martinez.	0.30
3/29/2007 Telephone call from and to PO Martinez.	0.20
4/3/2007 Office conference with PO Martinez; review medical records.	0.30
4/4/2007 Review and redact medical records; correspondence to DA's Investigator enclosing same; e-mail to same.	0.50
4/5/2007 Receive and review e-mail from DA Investigator; revise correspondence to DA with medical records.	0.30

	<u>Hours</u>
4/11/2007 Telephone call from DA Investigator regarding status; memo to file regarding same.	0.20
4/16/2007 Receive and review correspondence from DA Chisholm with determination that no charges will be issued because PO Martinez's actions were privileged and in self-defense; correspondence to PO Martinez; correspondence to PO Graber; close file.	0.40

	<u>Amount</u>
For professional services rendered	15.00
Additional charges:	
1/12/2007 Parking	8.00
1/19/2007 Parking	8.00
Total costs	<u>\$16.00</u>
Total amount of this bill	<u>\$1,666.00</u>
Balance due	<u><u>\$1,666.00</u></u>

(Rate: \$110.00 per hour)



## OFFICE OF DISTRICT ATTORNEY

# Milwaukee County

JOHN T. CHISHOLM • District Attorney

April 12, 2007

Chief Nannette Hegerty  
Milwaukee Police Department  
951 N. James Lovell St., Room 705A  
Milwaukee, WI 53233

RE: Milwaukee Police Officer David Martinez, PS No. 010259

Dear Chief Hegerty:

I reviewed the investigation related to the use of force by City of Milwaukee Police Officer David Martinez. My investigation shows that on January 12, 2007, Officer Martinez and his partner Officer John Graber attempted to stop a person later identified as the decedent, David Boone. Boone ran from Officer Graber and was later encountered by Officer Martinez at 2825 North 48<sup>th</sup> Street.

Mr. Boone resisted arrest and struggled with Officer Martinez. Boone attempted to disarm officer Martinez, and at one point in that struggle, Boone discharged a round from Martinez's pistol. A bullet was recovered from the ground where the struggle took place and was matched by the Wisconsin Crime Lab to Officer Martinez's gun. In addition, clothing from Mr. Boone and items from Officer Martinez (a pen and a button from his shirt) were recovered from the location. Officer Martinez stated he feared for his life during the struggle, and had injuries consistent with a struggle.

Boone broke contact with Martinez when Officer Graber arrived on site to assist and Boone ran to the rear of 2834/36 North 49<sup>th</sup> Street. Officer Martinez re-encountered Boone in the rear of that residence and Boone again approached Officer Martinez. Officer Martinez stated that he could see by Boone's eyes that he was focused on his gun again, and Officer Martinez stated to me that he believed that Boone intended to disarm him again and stated that he felt, based on the previous struggle, that he did not have the strength to prevent Boone from obtaining his weapon a second time. Officer Martinez fired his weapon twice at Boone, striking him once to the chest and once to the face. The coroner determined the fatal round to be the shot to the chest.

I observed the autopsy and am satisfied that the fatal round struck Mr. Boone while he was standing.

I want to mention that early in the investigation your staff presented me information I determined required investigation by an independent agency. I contacted the Wisconsin Department of Justice, Division of Criminal Investigation, and they assigned an agent to assist me, leading to a

Jon N. Reddin  
James J. Morin  
Patrick J. Kenney  
Lovell Johnson, Jr.  
Kent L. Lovern  
Thomas A. Schurz  
Alexander G. Skienarz  
William J. Molitor  
Donald S. Jackson  
Gale G. Shelton  
Gary D. Mahlum  
David Robles


Peg Tarrad  
Douglas J. Simpson  
Cynthia G. Brown  
Nicholas A. Osho  
Stephanie Glinski Rothstein  
Cari E. Jenick  
Rebecca H. Glatim  
Mary Anna Smith  
Mark S. Williams  
Linda Johnson  
John M. Stober  
Thomas L. Fottor  
David Falck  
Foyann Chandler Stychinski  
Cecile Manchester  
Kerrielle R. Berg  
Warren D. Zief  
Timothy J. Cotter  
Carol Barry Crowley  
Steven V. Lioata  
Brad Vorpahl  
Paul Timm  
Mittam S. Falk  
Phyllis M. DeCarvano  
Dennis P. Murphy  
Philip A. Anoff  
Thomas J. McAdams  
Bruce J. Landgraf  
David J. Ringl  
David M. Lorman  
Janet C. Prokacowicz  
DeAnn L. Hoar  
Patricia A. McGowan  
Irene C. Parrish  
Karen A. Ludwig  
Nancy Blumstein  
Ronald B. Dague  
Lori B. Komkun  
Kathie O'Dyino  
Mara Dorsey  
James W. Frison  
Kurt B. Benkoy  
James C. Gmita  
William P. Papp  
Audrey Skwarzewski  
Joanne L. Hordiko  
Christopher A. Lioata  
Megan P. Carmody  
Laura A. Chycko  
Shawn Pompo  
Kevin R. Shorin  
Jonathan Maloca  
Beth D. Zingel  
Karen A. Vaspienc  
Stephanie F. Dellei  
Mark A. Santora  
Paul C. Dadrnsky  
Darin T. Malone  
Kelly L. Hedpa  
Jeffrey J. Allenhuys  
Richard Stanol  
Patti Wehlich  
Bruce W. Beckler  
Monica T. Mahoney  
Mary M. Gowinski  
Kathryn K. Somer  
Joanette Corbett  
Jeffrey P. Gropp  
David Meas  
Daniel J. Gabor  
Sara P. Scudder  
T. Christopher Dee  
Lisa E. Frikker  
Timothy J. Harris  
Donal R. Humble  
Jacob D. Carr  
Joy Hammond  
Trevor A. Gisk  
Andrew J. Miler  
Heidi L. Galvan  
Nancy A. Nweh  
Elizabeth Mueller  
Megan J. Poulson  
Grant I. Hiebner  
Stephan Eduardo Nelson  
Christina M. Quinn  
Michelle Ackerman Havas  
Adam J. Levin  
Jennifer M. Rhoyle  
Christine Stirling  
Zach Whitney  
Rebecca A. Kieker  
Matthew J. Turbenoch  
Kathryn L. Chize  
Caren Maloney  
Gilbert Usher  
Jerome Marlet  
Anthony White  
Anthony Apollo  
Julio Diaccio  
Nicole Dondinger  
Tina Karsman  
Lucy Konikow  
William Anthony Bell, Jr.  
Erin Dineen  
Maureen A. Drakott  
Monica J. Awe  
Michael J. Lonski  
Paul M. Hauer  
Sara Beth Lewis  
Lauren A. Blumenthal  
Aron L. Hall  
Kerry Kennedy  
Janice Spica  
Lauren Platon  
David M. Stogall  
Annette Kibbenki



quick resolution of the concern. I deeply appreciate the professionalism and sound judgment used by your investigators in presenting this information as soon as they encountered it.

Based upon my personal review and information gathered through investigation of this incident, I am satisfied at this time that Officer David Martinez committed no crime and his actions were privileged by self-defense under 939.48, Stats. I respectfully request that Officer Martinez be allowed to return to full duty.

Very truly yours,



John Chisholm  
District Attorney

JC:ss  
cc\Deputy Chief Brian O'Keefe  
Atty. Jon Cermele