

**GRANT F. LANGLEY**  
City Attorney

**RUDOLPH M. KONRAD**  
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Deputy City Attorneys



THOMAS O. GARTNER  
BRUCE D. SCHRIMPF  
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EDWARD M. EHRlich  
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MARYNELL REGAN  
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BETH CONRADSON CLEARY  
THOMAS D. MILLER  
HEIDI E. GALVÁN  
JARELY M. RUIZ  
ROBIN A. PEDERSON  
DANIELLE M. BERGNER  
Assistant City Attorneys

July 14, 2009

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

Re: Communication from Attorney Jon Cermele, Cermele & Associates, S.C.  
for legal fees for Police Officer Mark Harms  
C.I. File No. 07-L-32-1; EC 2441

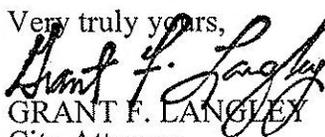
Dear Council Members:

Returned herewith is a document filed by Attorney Jon Cermele for attorney's fees for representing Police Officer Mark Harms. The claim is in the amount of \$8,203.69 including \$635.69 in disbursements for 68.80 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 officer 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. 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:amp  
Enc.

1032-2007-967:124771v1

# 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

March 22, 2007

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

**RE: Citizen Complaint of Ms. Nicole Griffin  
Against PO Mark Harms  
Complaint No.: 03-67  
Date of Incident: September 7, 2003**

CITY OF MILWAUKEE  
2007 MAR 26 PM 3:02  
RONALD D. LEONHARDT  
CITY CLERK

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, this claim is hereby made on his behalf for the indicated legal fees. This incident involved a traffic stop.

Although we also represented Officer Richard Schellhammer in this complaint, we have not included any time spent representing him in the statement since the FPC found him guilty of a rule violation.

The Fire and Police Commission dismissed the complaint. Attached is a copy of the dismissal notice and an itemization of the time and services rendered.

Sincerely,

CERMELE & ASSOCIATES, S.C.

Jon Cermele

CITY OF MILWAUKEE  
RECEIVED  
2007 MAR 26 PM 3:22  
OFFICE OF  
CITY ATTORNEY

/kjs  
Attachments  
HARMS

# CERMELE & ASSOCIATES, S.C.

ATTORNEYS AT LAW

JONATHAN CERMELE  
LAURIE A. EGGERT  
RACHEL L. PINGS  
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March 22, 2007

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

RE: Citizen Complaint of Ms. Nicole Griffin  
Against PO Mark Harms  
FPC No: 03-67  
Date of Incident: September 7, 2003  
Location of Incident: 13th and Atkinson  
Professional services

	<u>Hours</u>
2/3/2004 Telephone call from PO Harms; open file; memo to file.	0.60
2/4/2004 Telephone call to and from FPC; office conference with client; memo to file correspondence to MPD Open Records and FPC; CCAP and municipal court search.	2.20
2/9/2004 Conference with client; observe municipal court trial on same incident; review of file; conference with city attorney; review exhibits; memo to file; travel.	2.10
2/12/2004 Review of correspondence from FPC; review file.	0.30
2/13/2004 Preparation for and appearance at conciliation; conference with client; memo to file; travel.	4.30
2/16/2004 Review of file.	0.20
3/11/2004 Review of correspondence from FPC.	0.10

	<u>Hours</u>
3/15/2004 Review of file.	0.10
3/16/2004 Review document from FPC; memo to file.	0.10
3/19/2004 Review of correspondence from FPC; correspondence to client.	0.20
3/25/2004 Correspondence to FPC.	0.10
5/13/2004 Review of file.	0.30
6/15/2004 Review of file; review document from FPC; memo to file.	0.20
6/18/2004 Telephone call from Kapusta; review of file; telephone call to IAD.	0.50
6/24/2004 Review of file.	0.20
6/25/2004 Telephone call to IAD.	0.10
7/6/2004 Telephone call from and to MPD Personnel; telephone call from and to MPD open records; memo to file; review of file.	0.80
7/8/2004 Telephone call from MPD Personnel.	0.10
7/13/2004 Review documents from MPD Open Records.	0.60
7/29/2004 Review document from FPC; review of file; memo to file; telephone call to FPC.	0.40
7/30/2004 Telephone call from and to FPC.	0.20
9/2/2004 Review of file; prepare Witness and Exhibit List; memo to file; telephone call to client.	2.20
9/3/2004 Telephone call from client; memo to file; revise witness list.	0.80
9/7/2004 Review documents from complainant; memo to file.	0.40

	<u>Hours</u>
11/3/2004 Review document from FPC; review of file; memo to file.	0.20
1/10/2005 Conference with FPC.	0.10
1/20/2005 Telephone call from client; memo to file; review of file.	0.30
4/4/2005 Review of correspondence from client.	0.10
7/18/2005 Review of file.	0.10
9/8/2005 Review of file.	0.20
10/24/2005 Review document from FPC; telephone call to FPC; memo to file; telephone call to client.	0.60
10/25/2005 Telephone call from FPC; telephone call to client.	0.20
12/9/2005 Review of correspondence from FPC; review of file.	0.30
12/16/2005 Review of file.	0.20
3/30/2006 Review file; correspondence to client.	0.30
4/12/2006 Receive correspondence from client.	0.10
6/1/2006 Review file; telephone call to client; telephone call to IAD; memo to file; telephone call to City Atty.	0.70
6/5/2006 Telephone call from and to Internal Affairs; telephone call to City Atty.; correspondence to client.	0.70
6/20/2006 Telephone call from and to FPC; correspondence to and Fax to Academy; memo to file.	0.80
6/21/2006 Telephone call from FPC; memo to file; review file; update computer search regarding complainant's claim against the City; memo to file.	0.60

	<u>Hours</u>
6/28/2006 Telephone call to and from City Atty.; review personnel investigation; telephone call to and from client; telephone call to and from Dist. #7; telephone call to investigator; memo to file; revise Witness and Exhibit List; computer search for witness; telephone call to FPC; review complainant's exhibits and tapes.	3.80
7/14/2006 Telephone call from Investigator; office conference with same; review e-mail from FPC; correspondence to complainant.	1.20
7/18/2006 Telephone call from investigator.	0.20
7/31/2006 Telephone call from and conference with investigator; review report from investigator; review file; memo to file.	1.20
8/21/2006 Review of correspondence from FPC; review file; telephone call to client; telephone call to Dist. #7; memo to file; review personnel records.	1.40
8/28/2006 Review file; telephone call to and from Schossow, Wilson, Corbett; draft subpoenas; memo to file.	1.50
8/31/2006 Telephone call from and to Academy; telephone call from and to Investigator; subpoenas and correspondence to DOJ.	1.70
9/11/2006 Telephone call to and from Taycheedah; review file; correspondence to witness; computer search regarding license plates.	2.40
9/12/2006 Review documents from Dept. of Justice; CCAP update; review file; telephone call to FPC.	1.40
9/15/2006 Telephone calls to Taycheedah; telephone call to and from client; telephone call to and from FPC; telephone call to Academy; memo to file regarding witness statement; telephone call to and from FPC.	1.50
9/20/2006 Telephone call from and to client; office conference with client; memo to file; telephone call to Dist. #7; Fax to same.	2.40

	<u>Hours</u>
9/25/2006 Review of correspondence from FPC.	0.10
9/26/2006 Draft and serve subpoenas.	0.40
10/13/2006 Telephone call to and from client; memo to file; telephone call to and from FPC; telephone call to and from complainant; telephone call to witnesses; Fax to Dist. #7 and Academy.	1.20
10/16/2006 Telephone call to and from FPC; Fax to same; telephone call to and from client; telephone call to Dist. #7; telephone call to Academy.	0.90
10/17/2006 Review of correspondence from FPC.	0.10
10/24/2006 Telephone call to Academy; telephone call to Dist. #7; telephone call to client; telephone call from Sgt. Corbett; memo to file; telephone call to Fronk.	0.90
10/27/2006 Review message from FPC.	0.10
11/3/2006 Review of correspondence from FPC; correspondence to witnesses; memo to file.	0.30
11/27/2006 Telephone call to Fronk; draft subpoenas and correspondence to witnesses; review file.	0.80
11/29/2006 Review file.	0.30
11/30/2006 Review file; telephone call to Dist. #7.	0.30
12/4/2006 Travel; conference with Sgt. Henry; return travel; review file as hearing preparation; update criminal records of witnesses; telephone call from Sgt. Henry; telephone call to Sgt. Corbett; memo to file.	3.60
12/5/2006 Telephone call from and to Sgt. Corbett; review tapes.	0.80

	<u>Hours</u>
12/6/2006 Telephone call from client; memo to file.	0.30
12/7/2006 Travel; conference with Sgt. Henry; return travel; memo to file; telephone call from Fronk.	2.80
12/8/2006 Conference with client; memo to file.	2.20
12/11/2006 Telephone call to Sgt. Ellis; review documents from FPC; prepare exhibits.	1.50
12/13/2006 Telephone call from and to FPC; preparation for hearing; travel; appearance at hearing; conference with client; return travel.	9.80
2/12/2007 Review FPC's Decision; review file; telephone call to client.	0.50
2/13/2007 Correspondence to client; telephone call to Fronk; close file.	0.60
	<u>Amount</u>
For professional services rendered	68.80
Additional charges:	\$7,568.00
2/9/2004 Parking	6.00
2/13/2004 Parking	6.00
7/13/2004 MPD Open Records request	22.21
8/4/2006 MPD Personnel file	7.00
9/1/2006 Department of Justice	18.00
9/8/2006 Investigator - conference and investigations	552.48
9/27/2006 Subpoenas (2)	12.00

Mr. Ronald Leonhardt

Page 7

12/13/2006 Parking

Amount

12.00

Total costs

\$635.69

Total amount of this bill

\$8,203.69

Balance due

\$8,203.69

(Rate: \$110.00 per hour)

RECEIVED

FEB 09 2007

CERMELE & ASSOCIATES, S.C.

BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE

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In the matter of the complaint of

NICOLE GRIFFIN

Vs.

P.O. RICHARD SCHELLHAMMER  
and P.O. MARK HARMS

SUMMARY OF PROCEEDINGS,  
FINDINGS OF FACT  
AND DECISION

FPC Complaint No. 03-67

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SUMMARY OF PROCEEDINGS

This complaint proceeded to hearing on December 13, 2006 before Commissioners Leonard Sobczak, Ernesto Baca and Richard Cox with Steven Fronk acting as Hearing Examiner on behalf of the Board. Complainant Nicole Griffin appeared in person, pro se. Police Officers Richard Schellhammer and Mark Harms appeared in person and by Attorney Laurie Eggert. The complaint (Exhibit 1) alleged that on September 7, 2003, Officer Schellhammer and/or Officer Harms violated Milwaukee Police Department Rule 4, Section 2/060.00 (Exhibit 2) by failing to be courteous and civil and/or failing to exercise appropriate patience and discretion.

**Testimony of Nicole Griffin:** Shortly after 10:00 p.m. on September 7, 2003, Nicole Griffin was operating a vehicle near the intersection of Capitol Drive and Atkinson Avenue when she was pulled over by a marked squad car. Officer Harms approached Griffin and asked her questions concerning the vehicle and where she was coming from and going to. Griffin answered the questions and Harms asked more questions. At a certain point Griffin felt she was being harassed, pressed the OnStar button in the car, and asked the OnStar operator to call for a police supervisor. Officer Harms had her get out of the car and stand on a nearby corner, effectively denying her the ability to speak further to the OnStar operator. After standing on the corner as directed for several minutes, Ms. Griffin used a cell phone and called 911 to request that a supervisor be sent to the scene. Officer Schellhammer approached her and asked who she had called. When Ms. Griffin said she had called 911, Officer Schellhammer told her to hang up and further advised her that she was being issued a municipal citation for

misuse of the 911 system. Griffin offered to post whatever forfeiture was required in order to be released, but she was placed in the squad and transported to District 7 where she was left in the locked squad for several minutes and then to District 1 where, after a lengthy wait, she was issued a municipal citation for misuse of the emergency phone system. At District 1 Griffin had a verbal disagreement with another woman who was in custody and later had a verbal disagreement with Officer Schellhammer. During this brief exchange Schellhammer made disparaging comments about Griffin's educational achievements. Despite the fact that Griffin had immediately produced valid identification at the scene and more than once offered to pay whatever bond was necessary for her release during the process, she was not released until after 3:00 A.M., five hours after her initial contact with Officers Harms and Schellhammer. The ticket which Griffin received was dismissed by Municipal Court Judge James Gramling several months later.

**Testimony of Police Sergeant Craig Henry:** Sergeant Henry teaches new recruits at the training academy and had no contact with or involvement in the incident concerning Nicole Griffin. When questioned regarding proper protocol to be utilized when an out-of-state resident is to be issued a citation, Henry said that there was no hard and fast standard operating procedure that he was aware as to where this process was to take place. If a supervisor advises an officer to do it at a district station that is acceptable. If a higher ranking department member thereafter indicates that it should be done downtown at the central Prisoner Processing Section (PPS), then that is where it should be done. Henry also testified that there is no specific policy regarding citizen cell phone use during an investigation. It depends on the circumstances. An officer can prohibit cell phone use by a citizen if it interferes with an investigation.

**Testimony of Police Officer Mark Harms:** Officer Harms testified that he and Schellhammer stopped the Griffin vehicle because it was similar to a vehicle that a citizen had indicated was "suspicious." Harms approached the driver's side; Schellhammer the passenger side. Nicole Griffin spoke very fast in response to their questions, asking several questions of her own about why she was stopped. Officer Harms then heard another woman's voice and realized that Griffin had somehow initiated a call to someone else. Harms asked her to get out of the car and she complied. Griffin seemed very excited, which from past experience led Harms to question whether or not

something was amiss, or that something was being covered up. While standing outside the car Nicole Griffin made a telephone call to 911 to request a supervisor and was told to put the phone away. Sergeant Corbett called Officer Harms and advised that he was on his way. Schellhammer told Griffin that she would be issued a citation for misuse of the emergency phone system, and Sergeant Corbett advised Harms and Schellhammer to process and release her at the District 7 station. At District 7 Sergeant Corbett apparently spoke to the Lieutenant (and possibly Assistant Chief Whiten) before returning and advising the officers that Griffin had to be taken downtown and processed at PPS. Once downtown Griffin was told to sit on a bench with others who were being booked. Griffin made a negative comment about another female in the booking area and this started an argument with that woman. Harms and another officer separated the women to prevent a possible physical altercation.

**Testimony of Police Officer Richard Schellhammer:** Officer Schellhammer corroborated much of what Officer Harms had said about the reason for Nicole Griffin being stopped. At the scene, while Griffin was standing on the sidewalk near her car, Schellhammer determined that she was on the phone with the 911 operator and he told her to hang up. Such calls, in the opinion of Officer Schellhammer, were inappropriate because they bogged down the 911 system unnecessarily and sometimes interfered with on-scene investigations. Schellhammer told Griffin that she would be receiving a citation and that she would have to be conveyed to a district station, booked and released because she was an out-of-state resident. At District 7 the officers were advised to take Griffin downtown for processing. While downtown Griffin and Schellhammer got into a brief verbal altercation when Schellhammer denigrated Griffin's educational accomplishments. Griffin was eventually processed and released approximately 5 hours after being stopped.

**Testimony of Sergeant John Corbett:** Corbett was called to the scene at the request of Ms. Griffin. He tried to speak to Ms. Griffin upon his arrival but Griffin, according to Corbett "didn't want to hear what I had to say." Corbett agreed that the citation was warranted and told her she would be booked and released at District 7. When at District 7 Corbett was advised by the Lieutenant as well as Assistant Chief Whiten that the processing would have to take place downtown at PPS. Corbett advised Griffin of this fact while she sat in the squad at the district, and did not see her thereafter.

Findings of Fact as to  
Police Officer Mark Harms

1. Commissioners Sobczak and Baca believe that Complainant Griffin has failed to introduce sufficient evidence that Police Officer Mark Harms violated Milwaukee Police Department Rule 4, Section 2/060.00 in any respect and therefore have voted not to sustain the charges against Officer Harms.
2. Commissioner Cox believes that there is sufficient evidence in this record to show that Police Officer Mark Harms violated MPD Rule 4, Section 2/060.00 and he has, for the reasons specifically outlined in the Decision portion of this document, voted to sustain the charges against Officer Harms.
3. By a vote of 2-1, it is the finding of this Board panel that the charges against Officer Mark Harms are not sustained. All charges against Police Officer Mark Harms are accordingly dismissed.

Findings of Fact as to  
Police Officer Richard Schellhammer

1. Police Officer Richard Schellhammer, as a veteran member of the Milwaukee Police Department, could reasonably have been expected to have knowledge of MPD Rule 4, Section 2/060.00, which requires courtesy, civility, patience and discretion of all department members when performing their duties. Officer Schellhammer could reasonably have been expected to know that discourteous or derogatory comments directed at a citizen, or a failure to exercise appropriate patience and discretion, could result in discipline.
2. Milwaukee Police Department Rule 4, Section 2/060.00 is reasonable. Law enforcement officers are, first and foremost, peacemakers. They must not participate in unnecessary confrontations, physical or verbal, but must instead seek to be as calm and professional as circumstances permit at all times, and avoid the use of inflammatory language or demeaning comments. They must

exercise an appropriate amount of patience and discretion when the situation allows for it, and must not subject individuals to any greater indignity than circumstances require. These are common sense, minimum standards if law enforcement officers are to maintain the respect of those whom they are sworn to serve and protect.

3. The process utilized in investigating and deciding this matter has been reasonable, fair and objective. The record in this case includes testimony from Nicole Griffin, Officer Schellhammer, Officer Harms and Sergeant Corbett. Officer Schellhammer has had access to the complaint and police reports related to the incident, and has been represented by legal counsel and given a full opportunity to present evidence, call and cross examine witnesses, and testify in his own defense at time of hearing. The process has been reasonable, fair and objective.
4. Substantial evidence has been discovered to show that Police Officer Richard Schellhammer failed to utilize appropriate courtesy and civility when dealing with Nicole Griffin and that he failed to exercise the utmost patience and discretion as required by MPD Rule 4, Section 2/060.00. There were several points during this matter when patience and discretion could have, and should have, been exercised. Once it became apparent that Griffin was not involved in any discernable illegal activity and was an out-of-state resident, she could have been cautioned and released at the scene with a warning. Subsequently, after the decision had been made and Griffin was in custody, there was absolutely no need to have her held for several hours or for Officer Schellhammer to make negative comments about her education or anything else. Officer Schellhammer exhibited less professionalism, less patience and less discretion than circumstances required.
5. This Board panel unanimously finds that the preponderance of the evidence presented in this case supports Complainant Griffin's contention that Officer Richard Schellhammer engaged in an unnecessarily confrontational verbal exchange and failed to exercise an appropriate level of courtesy, patience and discretion in this case, and we therefore find him in violation of Milwaukee Police Department Rule 4, section 2/060.00.

## DECISION

On September 7, 2003, Nicole Griffin's vehicle was pulled over not because she had committed a traffic violation, but because that vehicle, in some respects, fit the description of a different vehicle that an unnamed individual said was parked in an alley for a period of time. The officers did not articulate what, if any, specific inappropriate activity that other vehicle may have engaged in, and in fact there may not be an answer to this question. There was then (and is now) no indication that Nicole Griffin had violated any law or ordinance or that she was engaged in any illegal activity whatsoever. She immediately supplied proper identification and vehicle registration upon request, and answered questions well beyond the scope of what was legally required of her. When she began to feel that she was being harassed she used the OnStar feature in her vehicle in an attempt to have a police supervisor called to the scene. She was ordered out of her vehicle and told to stand on the curb, which she did. After standing there for several more minutes, Griffin again tried to call for a supervisor by using her cell phone to call 911. This may not have been the most appropriate thing to do, but it was certainly not the type of action that required taking her into custody for the next several hours.

Milwaukee Police Department Rule 4, Section 2/060.00 requires that officers exercise the utmost patience and discretion. We see very little evidence of patience, and no exercise of discretion. Given the fact that there was no evidence of wrongdoing on her part other than the call to 911, Ms. Griffin could have been cautioned and released at the scene with a warning. Instead we had two police officers and a citizen tied up for several hours regarding a very minor offense committed by an otherwise cooperative and law abiding citizen. This was neither an efficient use of time and resources nor an appropriate exercise of patience and discretion.

As to Officer Harms, Commissioners Sobczak and Baca have voted not to sustain the charges. Majority rules, and by a 2-1 margin all charges against Officer Harms are hereby dismissed. It should be noted, however, that it is the opinion of Commissioner Cox that there is sufficient evidence in this record to show that Police Officer Mark Harms violated MPD Rule 4, Section 2/060.00 by failing to exercise "the utmost patience and discretion" as required by the rule and that Officer Harms was as much a part of the

"prisoner shuffling" as was Officer Schellhammer. This process resulted in Ms. Griffin being held for several hours and processed through the jail for a municipal citation, and this subjected her to "greater indignity than necessary" which is prohibited by the rule. Commissioner Cox would like it understood that he is of the opinion that an officer cannot sit idly by while another officer takes inappropriate action which will, in all likelihood, lead to an individual being unnecessarily inconvenienced, embarrassed or humiliated, and that any officer who knowingly fails to intercede at this point is guilty of violating the rule by failing to prevent the violation and should be held accountable.

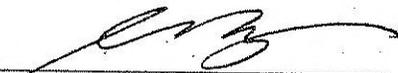
As to Officer Schellhammer, we are unanimous in finding a rule violation. We have reviewed his record of service with the Department, and with 22 years of experience on the force he can and should make better decisions and act more professionally.

We do hereby find that Police Officer Richard Schellhammer was unnecessarily discourteous and uncivil, that he failed to exercise appropriate patience and discretion, and that his actions subjected Nicole Griffin to greater indignity than was necessary. This is in violation of MPD Rule 4, Section 2/060.00. After reviewing Officer Schellhammer's record with the Department we believe that what is most appropriate in this case is a disposition which will specifically address what we see as a failure on the part of Officer Schellhammer to exercise patience and discretion and to maintain a professional attitude at all times. We do not believe that it would be effective to suspend him from the force, but we do believe that it is appropriate that Officer Schellhammer be required to examine the need for improving his interpersonal skills when dealing with citizens who pose no threat and are, for the most part, cooperative. To this end we do hereby Order that this matter be remanded to Chief Hegerty and that Police Officer Richard Schellhammer be required to participate in re-training regarding Professional Communications and Conflict Resolution to be conducted by the Professional Performance Division within 30 days of the date of this Decision. Upon completion of the re-training of Officer Schellhammer, the Professional Performance Division shall submit a letter to the Board of Fire and Police Commissioners indicating that such re-training has been completed.

A copy of the aforementioned letter and this Decision shall also be made a part of Officer Richard Schellhammer's permanent personnel file.

Board of Fire and Police Commissioners  
Of the City of Milwaukee

By:

  
\_\_\_\_\_  
Commissioner Ernesto Baca

01.31.07  
Date

  
\_\_\_\_\_  
Commissioner Leonard Sobczak

2/1/07  
Date

  
\_\_\_\_\_  
Commissioner Richard Cox

2/1/07  
Date