

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
PATRICK B. McDONNELL
LINDA ULISS BURKE
Deputy City Attorneys



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DAWN M. BOLAND
KATHRYN M. ZALEWSKI

Assistant City Attorneys

September 14, 2004

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

Re: Communication from Attorney Laurie Eggert, Eggert Law Office
for legal fees for Police Officer Jeffrey Engel
C.I. File No. 98-S-529

Dear Council Members:


Returned herewith is a document filed by Attorney Laurie A. Eggert for attorney's fees for representing Police Officer Jeffrey Engel. The claim is in the amount of \$2,226.34, including \$312.34 in disbursements for 17.40 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 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:enm

Enc.
2295

EGGERT & CERMELE, S.C.

Attorneys at Law

Laurie A. Eggert
Jonathan Cermele

1840 North Farwell Avenue
Suite 303
Milwaukee, Wisconsin 53202
(414) 276-8750
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May 7, 2003

Mr. Jan Smokowicz
Assistant City Attorney
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

**RE: Citizen Complaint of Mr. Michael Lieblein
FPC No.: 97-47**

Dear Atty. Smokowicz:

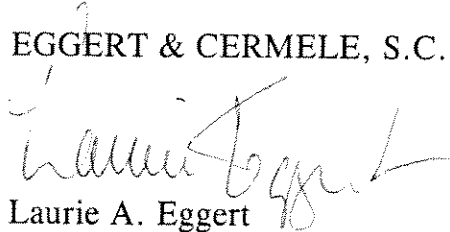
Enclosed is a brief statement from former Milwaukee Police Officer Jeffery Engel indicating that he did not resign from the MPD due to the citizen complaint which had been filed by Michael Lieblein. As you may recall, I have submitted a claim for legal services rendered in representing Officer Engel in Mr. Lieblein's FPC complaint. That complaint languished in the FPC while, among other things, Mr. Lieblein spent some time in custody, rendering him unable to participate in the conciliation process. After an extended amount of time, Officer Engel resigned to continue his law enforcement career elsewhere.

I submit Engel's note only because this seems to have been a matter of interest to you in the past. I have also previously sent you correspondence concerning this claim, and await your response.

Thank you for your thoughtful consideration.

Very truly yours,

EGGERT & CERMELE, S.C.

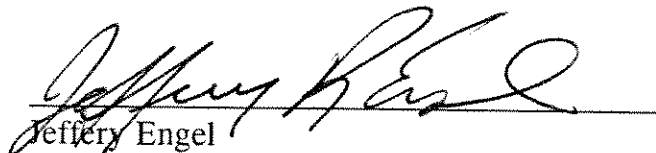

Laurie A. Eggert
Attorney at Law

LAE/ldl
enclosure
CC/ENGEL 5703

To Whom It May Concern:

This is to inform you that I did not resign from the City of Milwaukee Police Department due to the citizen complaint of Mr. Michael Lieblein (Fire and Police Commission complaint number 97-47).

Dated this 9 day of April, 2003.


Jeffery Engel

CITY OF MILWAUKEE

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

THOMAS E. HAYES
PATRICK B. McDONNELL
CHARLES R. THEIS
Special Deputy City Attorneys



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MICHAEL A. VERRILLI
JAY A. UNORA
DONALD L. SCHRIEFER

Assistant City Attorneys

November 12, 1998

Deputy Inspector Dale Schunk
Milwaukee Police Department
749 West State Street, Room 714
Milwaukee, WI 53233

Re: C.I. File No. 98-S-529
Communication from EGGERT LAW OFFICES

Dear Deputy Inspector Schunk:

Enclosed please find a claim filed by attorney Laurie A. Eggert for attorney's fees incurred during his representation of officer Jeffrey Engel.

Please determine whether this officer was in fact involved in the matter described in Ms. Eggert's claim, and have the officer verify Ms. Eggert's representation. Thank you for your anticipated cooperation in this matter.

y truly yours,

[Signature]
A. SMOKOWICZ
Assistant City Attorney

Reason for

Resignation

JAS:beg
Enclosure

9/13/04
o.k.
JBS
Letter 2295

RECEIVED
98 NOV 19 AM 10:40
MILWAUKEE POLICE
INTERNAL AFFAIRS
DIVISION

EGGERT LAW OFFICE, S.C.

Attorneys at Law

Laurie A. Eggert
Jonathan Cermele

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RECEIVED
OCT 28 1998
1:57
CITY OF MILWAUKEE
OFFICE OF THE CITY ATTORNEY

October 28, 1998

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

**RE: Citizen Complaint of Mr. Michael Lieblein
Against Police Officer Jeffrey Engel
Complaint No.: 97-47
Date of Incident: July 7, 1997**

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 arrest of Mr. Lieblein for assault at 734 North Old World Third Street on July 7, 1997. The Fire and Police Commission dismissed the complaint. Attached is a copy of the dismissal notice.

The attached is an itemization of the time and services rendered.

Sincerely,

EGGERT LAW OFFICE, S.C.

Laurie A. Eggert
Laurie A. Eggert
Attorney at Law

1998 NOV -4 PM 3:14
CITY OF MILWAUKEE
RECEIVED
OFFICE OF THE CITY ATTORNEY

LAE/ldl
ENGEL

EGGERT LAW OFFICE, S.C.

Attorneys at Law

Laurie A. Eggert
Jonathan Cermele

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(414)276-8750
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November 2, 1998

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

RE: Citizen Complaint of Mr. Michael Lieblein
Against Police Officer Jeff Engel
FPC No: 97-47
Date of Incident: July 7, 1997
Location of Incident: Old World Third Street

Professional services

	<u>Hours</u>
10/7/97 Telephone call from client; open file.	0.50
10/9/97 Telephone call from client; conference with client; memo to file; correspondence to FPC.	1.20
10/15/97 Review of file; review documents re: incident.	0.60
10/16/97 Preparation for and appearance at conciliation; conference with client; memo to file; draft medical release; correspondence to Eisenberg.	1.60
10/17/97 Review tape; memo to file; correspondence to MPD Open Records; telephone call to witness.	1.50

	<u>Hours</u>
10/18/97 Conference with witness; memo to file.	0.20
10/22/97 Review of correspondence from FPC.	0.10
10/23/97 Telephone call from witness; memo to file.	0.80
10/28/97 Review of correspondence from Lieblein; correspondence to doctors and hospital.	0.30
11/7/97 Memo to file re: FPC action.	0.20
11/11/97 Telephone call from Eisenberg's office; correspondence to doctor; memo to file.	0.20
11/18/97 Telephone call from and to MPD Open Records; memo to file.	0.40
11/26/97 Review documents from MPD Open Records; correspondence to MPD Open Records; correspondence to CJF Open Records.	1.40
12/3/97 Review medical records; memo to file.	0.90
12/12/97 Review FAX from Milwaukee Sheriff's Department; review of file.	0.40
12/15/97 Telephone call from MPD Open Records; memo to file.	0.40
12/18/97 Review of file; telephone call to CJF Open Records; telephone call to and from CJF medical section; correspondence to CJF medical section.	1.10

	<u>Hours</u>
1/7/98 Review booking information from CJF; telephone call to CJF; memo to file.	0.40
1/8/98 Review medical records from Palmer; telephone call to CJF; FAX from CJF; correspondence to Jefferson County; telephone call from FPC; memo to file.	1.30
1/16/98 Review documents from Jefferson County and CJF.	0.40
2/3/98 Conference with investigator; review of file; memo to file.	0.60
2/6/98 Conference with investigator.	0.10
3/6/98 Review witness statements and investigator's report.	0.50
3/25/98 Telephone call from FPC; memo to file.	0.20
7/10/98 Review of file; correpondence to FPC.	0.50
7/27/98 Review of correspondence from Eisenberg.	0.10
9/8/98 Telephone call from FPC; correspondence to client; review of file.	0.30
9/11/98 Telephone call from FPC; memo to file.	0.20
9/22/98 Telephone call from client; review of file; correspondence to FPC.	0.50

	<u>Hours</u>	
10/6/98 Review of correspondence from FPC; correspondence to client; close file.	0.50	
		<u>Amount</u>
For professional services rendered	17.40	\$1,914.00
Additional charges:		
10/16/97 Parking and mileage		1.98
11/26/97 Open Records request		26.75
12/3/97 Medical Records - Froedtert Memorial Hospital		80.26
1/8/98 Medical Records - Milwaukee Health Services, Inc.		13.25
3/11/98 Investigator's report		190.10
Total costs		\$312.34
Total amount of this bill		\$2,226.34
Balance due		\$2,226.34

(Rate: \$110.00 per hour)

RECEIVED

OCT 6 1998

EGGERT LAW OFFICE S.C

BOARD OF
FIRE AND POLICE COMMISSIONERS : CITY OF MILWAUKEE : COUNTY OF MILWAUKEE

In Re:
THE CHARGES OF MICHAEL J. LIEBLEIN
AGAINST POLICE OFFICER JEFFREY ENGEL

ORDER OF DISMISSAL

To Attorney Laurie Eggert:

WHEREAS, accused Police Department member Jeffrey Engel resigned from the Milwaukee Police Department effective July 8, 1998, and is therefore no longer under the jurisdiction of the Fire and Police Commission,

IT IS HEREBY ORDERED that the Complaint of Michael J. Lieblein, Complaint No. 97-47, filed with the Board on August 22, 1997, is dismissed, by the

MILWAUKEE BOARD OF
FIRE AND POLICE COMMISSIONERS

AUGUST G. ERDMANN,
CHAIRMAN

BY:



JOSEPH J. CZARNEZKI
EXECUTIVE DIRECTOR

DATED AT MILWAUKEE, WISCONSIN, OCTOBER 5, 1998

EGGERT & CERMELE, S.C.

Attorneys at Law

Laurie A. Eggert
Jonathan Cermele

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

February 11, 2003

Mr. Jan Smokowicz
Assistant City Attorney
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

**RE: Citizen Complaint of Mr. Michael Lieblein
Against PO Jeffrey Engel
C.I. File No.: 98-S-529
ELO File No.: 1201**

Dear Mr. Smokowicz:

In your letter of November 20, 2002 (copy enclosed), you asked for further information regarding the above-captioned Fire and Police Commission (FPC) citizen complaint. As you know, the FPC dismissed the complaint after Officer Jeffrey Engel (Engel) became a police officer for the City of Green Bay, Wisconsin. You have suggested that §895.35, Stats., does not give the Common Council jurisdiction to pay the cost of Engel's defense of the citizen complaint because the complaint was dismissed when the FPC lost jurisdiction over Engel due to his resignation.

I disagree with your analysis and would appreciate an opportunity to discuss this with you and Mr. Langley, unless my letter persuades you without further discussion.

First, the plain language of §895.35, Stats., allows for payment without regard to the reason for the dismissal of the complaint. That section provides that the city may pay for such expenses whenever charges of any kind are filed against an officer in his official capacity, and such charge is "discontinued or dismissed or such matter is determined favorably to such officer. . . ." The FPC order "dismissed" the complaint; it cannot be stated any more clearly.

You have contended that the statute requires that the charges not only be discontinued or dismissed, but that the matter also be determined favorably to the officer. Your interpretation requires the "or" to be read as an "and," and would prohibit payment

unless the officer can demonstrate all three possible criterion for payment, rather than meeting one or more. Such an interpretation adds requirements to the statute that the legislature did not see fit to include. Additionally, such a reading assumes that the legislature listed synonyms in an effort to explain what it was trying to get at, rather than listing various alternatives, each of which provide an independent basis for payment of the expenses.

You have indicated that my interpretation would lead to extreme results, such as where a citizen chooses not to pursue his complaint because he has been harassed or threatened. You also raise the specter of an officer admitting to having beaten a citizen, only to leave the job in order to avoid the punishment or damage to his reputation that would follow a public hearing. In each of these cases, as in each of the cases that comes before the Common Council, the Council would have discretion to decline payment. Your interpretation assumes that the officer is guilty and has fled the FPC's jurisdiction. Rather than allowing the Common Council to exercise its discretion, you have made the decision for the Council.

The City Attorney has recognized that §895.35, Stats., allows the Council to deny payment for the unusual case, even if the statute would allow the Council to pay the fees. In the February 4, 1982 CAO, the City Attorney recommended that §895.35, Stats., not be amended in a way which would make such payments mandatory. The City Attorney noted, "In the event there are extenuating circumstances surrounding the dismissal or discontinuance of charges or a favorable outcome of charges, the Common Council should reserve the right to refuse payment of public funds for legal expenses." It is noteworthy that the City Attorney recognized that the horror stories you raise – the officer who quits because he knows he used unnecessary force, and fears that he might be disciplined or embarrassed in a citizen complaint hearing – can be dealt with under the statute by declining payment; the City Attorney does not claim that the Council lacks jurisdiction to exercise its discretion, and make its own determination of whether "there are extenuating circumstances" such that the Council should deny payment.

Second, the City Attorney's office has routinely allowed payment for such claims in the past.

Third, the inherent conflict between the city attorney's obligation to represent the FPC and its obligation to represent officers active in their official capacity leaves cops out in the cold. The City Attorney's office has declined to represent police officers who have been charged with a FPC citizen complaint, in part because of that inherent conflict. As a result, the City Attorney has concluded that officers should be apprised that they must retain counsel if they want to be represented in such matters, and that the City may

reimburse them for such expenses under §895.35, Stats., provided the charges are discontinued or dismissed, the matter is determined favorably to the officer, the officer is reinstated, or the officer is subjected to liability without fault on his part. (CAO, December 4, 1968) It is fundamentally unfair for the City to force police officers to find for themselves against such charges, particularly where the FPC as a matter of policy allows complaints to go forward without demonstrating probable cause or other evidentiary hurdle.

Fourth, the Common Council has authority independent of §895.35, Stats., to pay for the representation of officers. The Wisconsin Supreme Court has determined that the Common Council may spend public moneys, without a specific statutory authorization such as §895.35, Stats. In Curry v. Portage, 195 Wis. 35 (1928), the Wisconsin Supreme Court concluded that the Common Council had authority to reimburse the chief of police for the cost of defending himself against a FPC proceeding to remove him from office. The Court concluded that there were two separate reasons why the City could choose to pay for such costs out of public funds. First, the Court drew the analogy to payment of legal fees for state officers; even though there was no statute which allowed the payment of legal fees for state officers defending themselves in legal proceedings brought against them, growing out of the discharge of their official duties, such expenditures were a legitimate expenditure of public funds. The Court noted that such payment “is good public policy and encourages a faithful and courageous discharge of duty on the part of public officers.” Despite the lack of a statute providing for such reimbursement, the Court determined that the legislature had made such payments for so many years that it is now an entrenched public policy, affording “scarcely less assurance” than a specific statutory provision would provide. A history of payments demonstrates that use of the funds for such purpose is a necessary and proper use of government funds, whether state or municipal.

The Court provided a separate basis for concluding that the payment of such expenses was a permissible use of public funds. The Court stated:

“But more than this, it is now well settled that public moneys may be appropriated for claims founded in equity or justice, in gratitude or charity. [citations omitted] The claims of public officers to reimbursement for expenditures reasonably incurred by them in defending themselves against groundless charges or litigation arising out of faithful discharge of duty are founded in equity and justice, and, in all fairness, should be paid by the public.”

The Court noted that while the law does not grant a right to such payment, the law confers a discretionary power to the council: “Manifestly the common council need

entertain no further doubt concerning its power in the premises.”

The City Attorney relied on Curry in concluding that the Common Council had authority to spend public money to reimburse two police officers who had reversed a decision of the FPC suspending them for 20 days as a result of discipline imposed by the Chief of Police. (CAO 12/30/64) The City Attorney concluded that the Common Council had the authority to exercise its discretion in determining whether to reimburse the officers for the cost of their successful reversal of the 20-day suspension in circuit court; the court had reversed the suspension because testimony in the FPC used to uphold the suspension came at least in part from testimony which disclosed information from a John Doe proceeding which was required to remain confidential. {Note that the City Attorney concluded that the Council had authority to pay if it chose to do so, despite the fact that the fees were incurred in the defense of a discipline imposed by the chief of police, and further, despite the fact that the officers were discharged in a separate FPC proceeding on related charges.}

Other City Attorney Opinions similarly recognize that the Common Council may authorize payment for certain proceedings “based upon a moral obligation.” See CAO dated February 4, 1982 and January 29, 1982.

Equity and fairness dictate not only that the Council has authority to pay the costs of this claim, but that it should exercise its discretion to do so. The complainant was arrested on July 7, 1997, and filed a complaint with the FPC six weeks later. The FPC held a conciliation on October 16, 1997, after which the complainant (through his attorney) claimed that he wanted to amend his complaint. By January of 1998, the FPC warned the complainant that he needed to pursue his complaint; on or about March 25, 1998, the FPC gave the complainant one final chance to amend the complaint. On July 13, 1998, I asked the FPC to dismiss the complaint for lack of prosecution; 10 days later, the complainant asked to go forward with the original complaint.

Unbeknownst to me, Officer Engel had taken a job as a police officer in Green Bay on June 18, 1998. The FPC dismissed the complaint on October 5, 1998, after I learned that Engel had left the MPD and requested that the matter be dismissed.

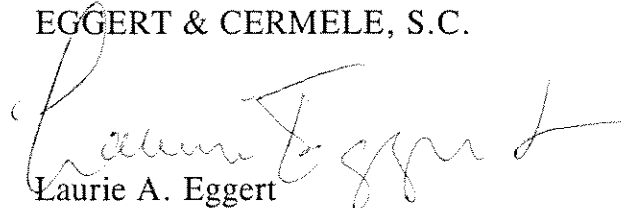
It is patently unfair to deny payment for these services where the complainant needlessly delayed the resolution of the complaint, and where the complaint languished for approximately nine months while his attorney claimed to be amending the complaint, before ultimately deciding not to bother with any amendment. One cannot reasonably expect Engel to put his life on hold until the complainant is finally forced to pursue his complaint so that the FPC can conclude its process.

While this letter addresses the specifics of Engel's citizen complaint, I would suggest to you that the analysis applies equally to other officers who have left the job for other job opportunities, or through retirement or death.

Thank you for your thoughtful consideration of this issue.

Sincerely,

EGGERT & CERMELE, S.C.



Laurie A. Eggert
Attorney at Law

LAE/ldl
enclosure
SMOKOWICZ 21003 ENGEL

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

THOMAS E. HAYES
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LINDA ULISS BURKE
Special Deputy City Attorneys



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November 20, 2002

BEVERLY A. TEMPLE
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MARYNELL REGAN
G. O'SULLIVAN-CROWLEY

Assistant City Attorneys

Ms. Laurie A. Eggert
Eggert Law Office, S. C.
1840 North Farwell Avenue, Ste. 303
Milwaukee, WI 53202

RE: Citizen Complaint of Mr. Michael Lieblein Against PO Jeffrey Engel
C.I. File No.: 98-S-529
Citizen Complaint of Marcus McKee, Frances McKee and Lindy Banks Against
POs Christopher Guiliani and Daniel Bell
C.I. File No.: 98-S-523

Dear Ms. Eggert:

With respect to the above-noted matters, I am concerned about these two claims because the officers in both of these instances resigned prior to a determination by the Fire and Police Commission of the citizen complaint lodged against them. As we have discussed this informally during our recent telephone conversation, our office is concerned that such claims cannot meet the criteria of the statute for a disposition that is favorable to the officer.

With regard to the first claim, I note that the only officer involved in the complaint, Officer Engel, resigned prior to the disposition of the complaint. With regard to the latter claim, I note that only one of the two officers resigned prior to the disposition. I do note that the complaint against the other officer did apparently result in a favorable disposition.

If you can provide me with further information regarding either of these complaints, perhaps we can continue further if either of them meet the statutory criteria. In the event that no such information can be provided, however, I would nonetheless like a further break down on the second claim so that we can make some recommendation regarding partial payment of that claim.

OFFICE COPY

Ms. Laurie Eggert
November 20, 2002
Page 2

Thank you for your continuing cooperation and assistance with regard to these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jan A. Smokowicz". The signature is fluid and cursive, with the first name "Jan" being the most prominent.

JAN A. SMOKOWICZ
Assistant City Attorney

JAS:iae
60481