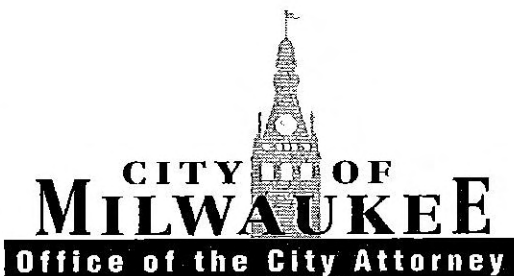


GRANT F. LANGLEY
City Attorney

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



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HEIDI E. GALVÁN
JARELY M. RUIZ
ROBIN A. PEDERSON
DANIELLE M. BERGNER
Assistant City Attorneys

January 6, 2010

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 Tabatha Guajardo
EC 2744

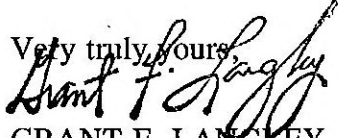
Dear Council Members:

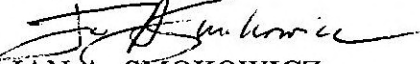
Returned herewith is a document filed by Attorney Jon Cermele for attorney's fees for representing Police Officer Tabatha Guajardo. The claim is in the amount of \$8,454.20 including \$72.20 in disbursements for 76.20 hours of service billed at the rate of \$110.00 per hour. We ask that this matter be 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.

1032-2009-2191:124771v1

MILWAUKEE POLICE DEPARTMENT

December 10, 2009

TO: P.O. TABITHA GUAJARDO
DISTRICT: TWO

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) An incident occurring on: March 11, 2006
- 2) An incident regarding complaint of: Jose PEREZ PEREZ
- 3) A police shooting incident occurring on: N/A

Is this information correct?

YES X NO

Did you receive legal representation
in this matter?

YES X NO

Your signature: PO Tabatha Guajardo 011001

Print your name: PO Tabatha Guajardo

Upon completion, please return this document to the Professional Performance Division at the Police Academy (Room 325) as soon as possible.

DENITA R. BALL
Deputy Inspector of Police
Professional Performance Division

DRB: kjs

1032-2009-2191

CL-2009-0059

CERMELE & ASSOCIATES, S.C.

- ATTORNEYS AT LAW -
WWW.CERMELELAW.COM

JONATHAN CERMELE
SCOTT J. JESS

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

August 4, 2009

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

**RE: Citizen Complaint of Mr. Jose Perez Perez
Against PO Tabatha Guajardo
Complaint No.: 06-25
Date of Incident: March 11, 2006**

CITY OF MILWAUKEE
2009 AUG -6 PM 4:37
RONALD D. LEONHARDT
CITY CLERK

Dear Mr. Leonhardt:

Pursuant to Article 58 of the 2007-2009 Collective Bargaining Agreement between the City and the Milwaukee Police Association, the City should request that this claim be placed on the Common Council Committee agenda within 180 days of its receipt.

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

Consistent with its policy, the City Attorney's Office has refused to represent her and, as she was performing the duties of her office at the time of the events giving rise to the incident, this claim is hereby made on her behalf for the indicated legal fees. This incident involved an accident investigation.

The Fire and Police Commission dismissed the complaint. Attached is a copy of the Findings of Fact, Conclusions of Law and Decision and an itemization of the time and services rendered.

Thank you.

Sincerely,

CERMELE & ASSOCIATES, S.C.

Jon Cermele

/kjs
Attachments
GUAJARDO

CERMELE & ASSOCIATES, S.C.

- ATTORNEYS AT LAW -
WWW.CERMELELAW.COM

JONATHAN CERMELE
SCOTT J. JESS

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

August 04, 2009

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

RE: Citizen Complaint of Mr. Jose Perez Perez
Against PO Tabatha Guajardo
FPC No: 06-25
Date of Incident: March 11, 2006
Professional services

CITY OF MILWAUKEE
2009 AUG - 5 PM 4:38
RONALD D. LEONHARDT
CITY CLERK

		<u>Hours</u>	<u>Amount</u>
11/7/2006	RLP Office conference with PO Guajardo regarding new citizen complaint; review complaint; Open Records request; review citizen on muni and CCAP; open file.	1.20	132.00
11/29/2006	RLP Receive and review correspondence from FPC regarding Open Records request.	0.10	11.00
12/1/2006	RLP Receive and review Open Records request.	0.20	22.00
12/8/2006	RLP Telephone call from FPC regarding scheduling conciliation; calendar same.	0.10	11.00
12/27/2006	RLP Review and sign correspondence to client regarding conciliation adjourned.	0.10	11.00
2/12/2007	RLP Telephone call from FPC regarding conciliation.	0.10	11.00
2/28/2007	MG Review file; telephone call to client; memo to file.	0.30	33.00

		<u>Hours</u>	<u>Amount</u>
~~3/1/2007 MG~~	~~Telephone call to client; memo to file.~~	~~0.20~~	~~22.00~~
3/6/2007 RLP	Telephone call to FPC; schedule and calendar conciliation; correspondence to client.	0.20	22.00
3/13/2007 RLP	Review and sign correspondence to client with Notice of Conciliation.	0.10	11.00
4/3/2007 RLP	Telephone call from FPC canceling conciliation; telephone call to client; review calendar for regular off-days; correspondence to FPC with available dates for conciliation.	0.30	33.00
4/18/2007 RLP	Review and sign correspondence to client regarding conciliation.	0.10	11.00
4/23/2007 MG	Telephone call to client regarding upcoming conciliation.	0.10	11.00
4/25/2007 MG	Review file for conciliation; Muni. Court and CCAP search for complainant's outstanding warrants.	0.40	44.00
4/26/2007 MG	Telephone call from FPC regarding cancellation of conciliation; several telephone calls to client regarding same.	0.20	22.00
5/7/2007 RLP	Telephone call from FPC; review file; correspondence to FPC.	0.30	33.00
5/22/2007 RLP	Receive and review correspondence from FPC scheduling conciliation; review and sign correspondence to client; calendar conciliation.	0.20	22.00

		<u>Hours</u>	<u>Amount</u>
~~6/26/2007 RLP~~	~~Travel to City Hall for conciliation; conference with client; conference with mediator regarding citizen refusing to permit officer into conciliation; return travel; memo to file.~~	~~2.50~~	~~275.00~~
7/20/2007 RLP	Receive and review correspondence from FPC advising that complaint will be set for hearing; correspondence to client.	0.20	22.00
8/2/2007 RLP	Receive and review client's vacation schedule.	0.10	11.00
8/29/2007 RLP	Review file; e-mail Fronk regarding scheduling.	0.20	22.00
9/27/2007 RLP	Receive and review correspondence from FPC with scheduling order; calendar due date for exchange of Witness and Exhibit Lists.	0.30	33.00
10/18/2007 RLP	Receive and review correspondence from FPC extending scheduling order.	0.10	11.00
11/9/2007 RLP	Telephone call from FPC extending Witness and Exhibit List deadline to 11/16/07.	0.10	11.00
RLP	Receive and review correspondence from FPC; review file as preparation for Witness and Exhibit List; begin same and medical authorizations for complainant; check Muni. website for citations; correspondence to Open Records.	1.00	110.00
11/15/2007 RLP	Continue, complete and send Witness and Exhibit List and correspondence to complainant.	0.30	33.00

		<u>Hours</u>	<u>Amount</u>
~~11/16/2007~~	~~RLP Receive and review complainant's Witness and Exhibit List; amend Witness and Exhibit List; review file; correspondence to MPD requesting additional records.~~	~~1.10~~	~~121.00~~
11/19/2007	RLP Receive and review closed internal investigation; amend Witness and Exhibit List.	0.30	33.00
12/13/2007	RLP Receive and review additional internal investigation documents; receive and review Open Records documents.	0.40	44.00
2/11/2008	RLP Receive and review Notice of Hearing; calendar same.	0.10	11.00
2/12/2008	RLP Correspondence to client regarding hearing date.	0.10	11.00
3/3/2008	RLP Review file to confirm necessary MPD witnesses; prepare witness subpoenas and correspondence to each MPD witness with enclosures; travel to Academy to serve subpoenas.	2.10	231.00
3/5/2008	RLP Telephone call from and to client; review file and update Witness and Exhibit List; telephone call from MPD witness (#1); cancel witness subpoena and memo to file regarding same.	0.90	99.00
3/7/2008	RLP Telephone call from client; correspondence to new MPD witness (#2) and issue new witness subpoena; amend Witness and Exhibit List; telephone call from and to MPD witness (#2) and memo to file regarding same.	1.10	121.00

		<u>Hours</u>	<u>Amount</u>
~~3/10/2008 RLP~~	~~Telephone call from MPD witness (#2); memo to file; travel to Academy and serve subpoena; return travel.~~	~~1.20~~	~~132.00~~
3/20/2008 MG	Telephone call from FPC regarding whether Cermele & Associates received complainant's Witness and Exhibit List; review file for same; telephone call to FPC confirming receipt of complainant's Witness and Exhibit List.	0.30	33.00
3/24/2008 RLP	Receive and review correspondence from FPC; receive and review citizen's notice of representation; telephone call from and to Fronk; telephone call from and to MPD witness (#2); telephone call from Fronk.	1.00	110.00
3/25/2008 RLP	Office conference with client; review file as preparation for hearing.	2.10	231.00
3/26/2008 RLP	Prepare for hearing; telephone call from complainant's attorney; travel; attend hearing; return travel; draft Motion to Compel / Motion to Dismiss; correspondence to client.	6.20	682.00
3/27/2008 RLP	Complete and file Motion to Compel / Motion to Dismiss; telephone call from FPC; e-mail to FPC; telephone call from FPC regarding receipt of Motion.	2.70	297.00
4/3/2008 RLP	Telephone call from Fronk regarding status of Motion to Compel; memo to file.	0.20	22.00
4/7/2008 RLP	Telephone call from and to Court Reporter; telephone call to FPC; memo to file.	0.20	22.00

		<u>Hours</u>	<u>Amount</u>
~~4/11/2008 RLP~~	~~Receive and review correspondence from complainant with Affidavit for Translator; correspondence to client; correspondence to Fronk.~~	~~0.50~~	~~55.00~~
4/14/2008 RLP	Telephone call from and to client.	0.20	22.00
4/16/2008 RLP	Receive and review correspondence from Fronk regarding rescheduling hearing.	0.10	11.00
5/2/2008 RLP	Receive and review correspondence from FPC to Atty. Aleman regarding status.	0.10	11.00
5/14/2008 RLP	Receive and review correspondence from Fronk to complainant.	0.10	11.00
5/22/2008 MG	Telephone call from FPC; calendar hearing date/time.	0.20	22.00
5/29/2008 MG	Intra-office conference with Pings; memo to file.	0.10	11.00
6/6/2008 MG	Receive and review correspondence from FPC; calendar hearing date and time; correspondence to client regarding same.	0.30	33.00
7/8/2008 MG	Intra-office conference with Allan regarding citizen complaint and hearing.	0.20	22.00
7/23/2008 MG	Review file; correspondence to MPD witnesses.	1.10	121.00
7/30/2008 CA	Travel; serve subpoenas at Academy.	0.90	99.00
8/4/2008 MG	Telephone call from MPD witness (#3).	0.10	11.00

		<u>Hours</u>	<u>Amount</u>
~~8/8/2008 MG~~	~~Review file; hearing preparation; telephone call to MPD witness (#4); memo to file; receive and review correspondence from FPC; telephone call to client; memo to file.~~	~~2.50~~	~~275.00~~
8/11/2008 MG	Telephone call to MPD supervisory witness; telephone call to MPD witness (#4); memo to file; telephone call from Sgt. Keen.	0.50	55.00
8/12/2008 MG	Teleconference with client regarding hearing; hearing preparation; telephone call from FPC; telephone call to MPD witness (#3); create hearing outline; photocopy proposed exhibits.	3.20	352.00
8/13/2008 MG	Hearing preparation; travel; attend hearing.	6.50	715.00
8/14/2008 MG	Intra-office conference with Cermele regarding 08/13/08 hearing; telephone call from FPC; telephone call to client.	0.30	33.00
9/8/2008 MG	Receive and review e-mail correspondence from FPC regarding scheduling follow-up hearing; calendar same.	0.20	22.00
9/10/2008 MG	Receive and review correspondence from FPC regarding hearing; correspondence to client regarding same; calendar same.	0.20	22.00
9/12/2008 MG	Telephone call to FPC; receive and review correspondence from FPC.	0.20	22.00
9/17/2008 MG	Review file for additional necessary MPD witnesses.	0.10	11.00
9/18/2008 MG	Travel; serve subpoenas at Academy.	1.10	121.00

		<u>Hours</u>	<u>Amount</u>
~~9/24/2008~~	~~MG Telephone call to DAAT witness, receive and review correspondence from FPC regarding room change; correspondence to client with same.~~	~~0.30~~	~~33.00~~
9/29/2008	MG Telephone call from and to FPC; telephone call to MPD witness (#3); telephone call to FPC; memo to file.	0.50	55.00
9/30/2008	MG Review file; hearing preparation; telephone call to MPD witness (#3).	2.50	275.00
10/1/2008	MG Review transcript from first hearing; hearing preparation; review file.	3.50	385.00
10/2/2008	MG Travel; attend hearing; return travel.	5.20	572.00
10/3/2008	MG Amend Witness and Exhibit List; meeting with MPA witness regarding same; telephone call to FPC; e-mail from FPC.	0.40	44.00
10/6/2008	MG E-mail to FPC; calendar response objection deadline.	0.20	22.00
10/7/2008	MG E-mail to FPC.	0.10	11.00
10/8/2008	MG E-mail from FPC; e-mail to Atty. Aleman.	0.20	22.00
10/14/2008	MG Review file; review proposed exhibit 9; draft written response to same.	0.30	33.00
10/27/2008	MG Receive and review e-mail from FPC; e-mail in response; telephone call from FPC; telephone call to client.	0.30	33.00
10/30/2008	MG E-mail to FPC.	0.10	11.00

		<u>Hours</u>	<u>Amount</u>
~~11/4/2008~~	~~MG~~	~~0.20~~	~~22.00~~
	Receive and review correspondence from FPC; calendar final hearing date; correspondence to client with same.		
12/2/2008	MG	0.10	11.00
	Telephone call to witness.		
12/10/2008	MG	1.80	198.00
	Prepare for hearing.		
12/11/2008	MG	4.50	495.00
	Travel; attend FPC citizen complaint hearing; return travel; intra-office conference with Cermele regarding same.		
1/13/2009	MG	0.20	22.00
	Telephone call from FPC; review file for transcripts.		
1/20/2009	MG	0.50	55.00
	Receive and review Hearing Examiner's Proposed Findings of Fact and Recommendation; telephone call to client; correspondence to client with same; calendar briefing schedule.		
1/21/2009	MG	0.50	55.00
	Telephone call to FPC; review transcript; begin working on Response Brief.		
1/22/2009	MG	3.50	385.00
	Continued working on Brief.		
1/23/2009	MG	2.50	275.00
	Complete Brief; correspondence to FPC.		
1/29/2009	MG	0.20	22.00
	Receive and review e-mail correspondence from FPC; e-mail to FPC in response; instruction to KS regarding complainant's copy of Brief; reviewed calendar for Brief submission deadline.		
1/30/2009	MG	0.10	11.00
	Correspondence to complainant's legal counsel with Brief.		

		<u>Hours</u>	<u>Amount</u>
~~2/10/2009~~	~~MG Review file.~~	~~0.10~~	~~11.00~~
7/30/2009	SJJ Receive and review correspondence from FPC regarding deliberations; correspondence to client regarding same.	0.20	22.00
7/31/2009	SJJ Receive and review FPC Decision dismissing complaint; correspondence to client regarding same; close file.	0.50	55.00
For professional services rendered		76.20	\$8,382.00
Additional charges:			
12/5/2006	RLP MPD Open Records request		7.86
6/26/2007	RLP Parking		7.00
12/21/2007	RLP MPD Open Records request		6.76
3/3/2008	RLP Subpoenas (3)		18.00
3/26/2008	RLP Parking		2.00
7/30/2008	RLP Subpoenas (3)		18.00
8/13/2008	MG Parking		5.00
10/2/2008	MG Parking		5.00
10/3/2008	MG Photocopies - color copies		2.58
Total costs			<u>\$72.20</u>
Total amount of this bill			<u>\$8,454.20</u>

Mr. Ronald Leonhardt

Page 11

Amount

Balance due

\$8,454.20

(Rate: \$110.00 per hour)

**BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE**

In the matter of FPC Complaint No. 06-25

JOSE PEREZ-PEREZ
v.
POLICE OFFICER TABATHA GUAJARDO

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

Hearing Dates: August 13, 2008 and October 2, 2008 and December 11, 2008

Conducted Before: Steven Fronk, Hearing Examiner

*Appearances: Jose Perez-Perez in person and by Attorney Narciso Aleman.
Police Officer Tabatha Guajardo in person and by Attorney
Matthew Grunitz of Cermele & Associates, S.C.*

*Allegations: Violation of MPD Rule 4 Section 2/060.00 (courtesy & civility)
Violation of MPD Rule 4 Section 2/445.00 (use of force)*

SUMMARY OF PROCEEDINGS

Jose Perez-Perez filed a complaint with the Board of Fire and Police Commissioners on April 17, 2006 alleging that on March 11, 2006 Police Officer Tabatha Guajardo was rude and discourteous and utilized excessive force. After more than one procedural delay, evidentiary hearings were conducted on August 13, 2008, October 2, 2008 and December 11, 2008 before Hearing Examiner Steven Fronk. Examiner Fronk issued proposed Findings of Fact, Conclusions of Law and his recommendation on January 15, 2009. The parties were supplied with transcripts as well as the proposed findings, conclusions and recommendation, and were given 30 days thereafter to file a written response if they so desired. Commissioners Sarah Morgan, Kathryn Hein and Paoi Lor, having previously had the opportunity to review the record including transcripts, videotapes, reports and exhibits from the hearings before Examiner Fronk, conducted deliberations on July 30, 2009 in a closed meeting pursuant to Wis.Stats §19.85(1)(a) and reached the Decision which follows hereafter.

FINDINGS OF FACT

We adopt proposed Findings of Fact 1 through 16 as submitted by Hearing Examiner Steven Fronk and make them our Findings of Fact by reference.

CONCLUSIONS OF LAW

We conclude, as a matter of law, find that Complainant Jose Perez-Perez has failed to provide sufficient proof that Police Officer Tabatha Guajardo was rude or discourteous in violation of MPD Rule 4 Section 2/060.00 or that she utilized more force than was reasonably necessary in violation of MPD Rule 4 Section 2/445.00.

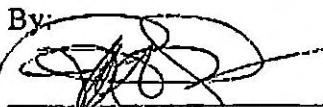
DECISION

After a careful review of the full record in this case, we unanimously find that there is insufficient proof in the record to show that Police Officer Tabatha Guajardo was rude or discourteous or that she utilized more force than was reasonably necessary in arresting Mr. Jose Perez-Perez on March 11, 2006.

It is the unanimous decision of this Board that Complaint No. 06-25 of Jose Perez-Perez and all charges against Police Officer Tabatha Guajardo arising out of that complaint be, and are hereby, dismissed.

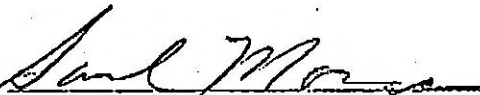
Board of Fire and Police Commissioners
Of the City of Milwaukee

By:


Paul Lor, Commissioner

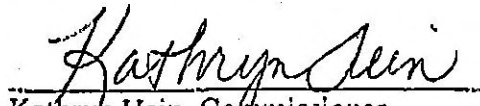
7/30/09

Date


Sarah Morgan, Commissioner

7/30/09

Date


Kathryn Hein, Commissioner

7/30/09

Date

**BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE**

In the matter of the complaint of

PROPOSED

**JOSE PEREZ PEREZ
V.
POLICE OFFICER TABATHA GUAJARDO**

**FINDINGS OF FACT,
AND RECOMMENDATION**

FPC Complaint No. 06-25

Hearing Dates: August 13, October 2 and December 11, 2008

Conducted Before: Steven Fronk, FPC Hearing Examiner

*Appearances: Jose Perez Perez in person and by Attorney Narciso Aleman
Tabatha Guajardo in person and by Attorney Matthew Granitz*

*Allegation # 1: That Police Officer Tabatha Guajardo, on March 11, 2006,
failed to be appropriately courteous, civil and patient and, as a
result, subjected the complainant to greater indignity than was
necessary in violation of MPD Rule 4, Section 2/060.00; and,*

*Allegation # 2: That Police Officer Tabatha Guajardo, on March 11, 2006,
utilized more force than was reasonably necessary in violation of
MPD Rule 4, Section 2/445.00.*

SUMMARY OF PROCEEDINGS

On August 13, 2008 testimony was received from Police Officer Tabatha Guajardo and Police Officer Donald Murray. On October 2, 2008 testimony was received from Mr. Patrick Murray, Mr. Pedro Dalcccio and Police Officer David Waliszewski. On December 11, 2008 testimony was received from Mr. Jose Perez-Perez. Translation services on August 13, 2008 were provided by Dawn Maldonado. Translation services on December 11, 2008 were provided by Daniel Lopez. Transcripts from the hearings will be made available to the parties and the Commissioners who will decide this matter. A summary of testimony from each witness will not be provided.

PROPOSED
FINDINGS OF FACT

1. Police Officer Tabatha Guajardo was, at all times pertinent hereto, a member of the Milwaukee Police Department and bound by the rules and procedures thereof.
2. At approximately 4:00 p.m. on March 11, 2006, a vehicle driven by off-duty police officer Donald Murray collided with a vehicle driven by Jose Perez Perez at the intersection of 6th and Bruce Streets in the City of Milwaukee.
3. Mr. Murray identified himself to Mr. Perez Perez as an off-duty police officer and called 911 for a squad to respond to the scene.
4. Police Officers Tabatha Guajardo and David Waliszewski were dispatched to what they were told was a PDO (property damage only) accident involving two vehicles, one of which was driven by an off-duty police officer.
5. While awaiting the arrival of the squad, Mr. Perez Perez opened the rear of his vehicle despite being ordered not to do so by off-duty Officer Murphy. Murphy pulled Perez Perez away from the vehicle by the hood or collar of his jacket, causing Perez Perez to fall to the ground.
6. While continuing to await the arrival of the squad, Mr. Murphy became convinced that Mr. Perez Perez intended to leave the scene. Murphy repeatedly identified himself as a police officer and advised Perez Perez to remain at the scene.
7. At some point Murphy grasped Perez Perez by the arm in order to restrain him. Mr. Perez Perez then struck Mr. Murphy's arm in what appeared to Murphy to be an attempt to force him to relinquish his grasp.
8. Officers Guajardo and Waliszewski saw Mr. Perez Perez strike Mr. Murphy on the arm as they arrived on the scene.
9. Officer Guajardo exited the squad, seized Mr. Perez Perez, pushed him against a nearby closed door and placed him in handcuffs. Officer Guajardo said very little if anything to Mr. Perez Perez prior to or while placing him under arrest.
10. Mr. Perez Perez offered no physical resistance, said very little and made no complaint of injury as he was arrested and placed in the squad car.

11. Neither Officer Guajardo nor Officer Waliszewski questioned Mr. Perez Perez at the scene or asked him about how the auto collision had taken place.
 12. Neither Officer Guajardo nor Officer Waliszewski threatened Perez Perez or used profane or demeaning language toward him at the scene or at any time thereafter.
-
13. MPD Rule 4, Section 2/060.00 requires department members to be courteous and civil, to control their tempers, to exercise the utmost in patience and discretion, and to never subject a person to any greater indignity than is necessary.
 14. Mr. Perez Perez alleges that by pushing him against a door and placing him in handcuffs and not ever asking him what had taken place prior to her arrival, Officer Tabatha Guajardo violated MPD Rule 4, Section 2/060.00.
 15. MPD Rule 4, Section 2/445.00 permits a police officer to utilize force in the performance of duty, but requires that the degree of force used shall be only that which a reasonable police officer would deem necessary given the same circumstances and information.
 16. Mr. Perez Perez alleges that a reasonable police officer, given the same circumstances and information that Officer Guajardo had at the time that she pushed him against a door and handcuffed him, would not have deemed such action necessary, and that the force utilized by Officer Guajardo was therefore excessive and in violation of MPD Rule 4, Section 2/445.00.

APPLICABLE LEGAL STANDARDS

In order to prevail, a complainant must show by the preponderance of the evidence that the accused Department member acted inappropriately and in violation of Milwaukee Police Department rules and procedures. The Board of Fire and Police Commissioners, in order to sustain a complaint, must find that the member violated Department rules or standard operating procedures as alleged in the complaint and that a preponderance of the evidence supports a finding of just cause as defined in section 62.50 (17)(b) Wis.Stats.

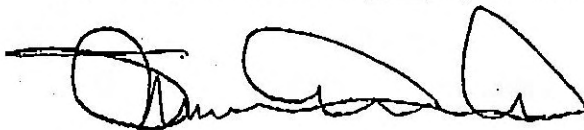
RECOMMENDATION OF HEARING EXAMINER

On March 11, 2006 an automobile collision took place involving Jose Perez Perez and Donald Murray. It is not for the Board to determine who was at fault or whether or not Mr. Perez Perez was under the influence of an intoxicant at the time. What the Board must determine is whether or not Police Officer Tabatha Guajardo, given the circumstances and information available to her at the time, acted appropriately in dealing with Mr. Perez Perez upon her arrival on the scene. As a result it is extremely important to determine what information Officer Guajardo received prior to her arrival on the scene and what she saw once she arrived.

Donald Murray testified that he called and advised the dispatcher that he was an off-duty City of Milwaukee police officer who had been involved in an automobile accident with an individual whom he believed to be intoxicated and appeared to be attempting to leave the area. This information, according to both Officer Guajardo and Officer Waliszewski, was given to them while they were en route to the scene. Mr. Perez Perez denies it, but Mr. Murray testified that Mr. Perez Perez struck him in the arm just as the squad pulled up, and both Officer Guajardo and Officer Waliszewski testified that they saw Perez Perez strike Murray in the arm. Everyone agrees that Officer Guajardo immediately got out of the squad, grabbed Mr. Perez Perez, "directed" him up against a closed door and handcuffed him without taking the time to talk to Murray or Perez Perez or ask either of them any questions. There is no allegation of additional force being used. There is also no allegation that Officer Guajardo threatened Mr. Perez Perez at any time or used profanity or made disparaging or racially insensitive remarks.

Given the circumstances and information that was available to her at the time of this incident, I fail to see how the actions taken by Police Officer Tabatha Guajardo in any way constitute a violation of MPD Rule 4, Section 2/060.00 or MPD Rule 4, Section 2/445.00. I would accordingly recommend that the complaint of Jose Perez Perez be dismissed.

Respectfully submitted this 15th day of January, 2009



Steven Fronk
Hearing Examiner