

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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MAURITA F. HOUREN
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DAWN M. BOLAND
KATHRYN M. ZALEWSKI

Assistant City Attorneys

May 5, 2004

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

Re: Communication from Attorney Laurie A. Eggert, Eggert & Cermele, S.C.
for legal fees for Police Officers Jesus Ortiz and Tim Behning
C.I. File No. 02-S-391; EC No. 1833

Dear Council Members:

Returned herewith is a document filed by Attorney Laurie Eggert for attorney's fees for representing Police Officers Jesus Ortiz and Tim Behning. The claim is in the amount of \$592.77 including \$9.77 in disbursements for 5.30 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 police officers 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,

Handwritten signature of Grant F. Langley in cursive.

GRANT F. LANGLEY
City Attorney

Handwritten signature of Jan A. Smokowicz in cursive.

JAN A. SMOKOWICZ
Assistant City Attorney

JAS:enm
Enc.

80660/1032-2002-3649

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

November 14, 2002

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

**RE: MPD Criminal Investigation of POs Jesus Ortiz and Tim Behning
Allegations Regarding Misconduct in Public Office
Date of Allegations: January 6, 2001
EC No.: 1833**

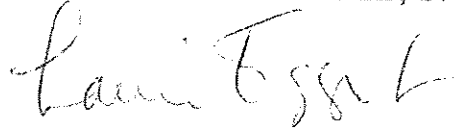
Dear Mr. Leonhardt:

The above-named police officers have retained us to represent them in connection with the above-referenced matter.

Consistent with its policy, the City Attorney's Office has refused to represent them, and as they were performing the duties of their office at the time of the events giving rise to the incident, the claim is hereby made on their behalf for the indicated legal fees. This incident involved the investigation into squad damage. Charges will not be issued against the officers; the matter was resolved as "unfounded." Attached is a copy of the clearance report and an itemization of the time and services rendered.

Sincerely,

EGGERT & CERMELE, S.C.



Laurie A. Eggert
Attorney at Law

5/5/04
O.K.
JAS
Letter # 2276

JC/ldl
ORTIZ BEHNING

11/14/02 10:51 AM
11/14/02 10:51 AM
11/14/02 10:51 AM

EGGERT & CERMELE, S.C.

Attorneys at Law

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November 14, 2002

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

RE: MPD Criminal Investigation re: Misconduct in Public Office
Regarding: POs Jesus Ortiz and Timothy Behning

Professional services

	<u>Hours</u>
03/28/01 Telephone call from PO Behning regarding new criminal investigation; open file; memo to file; telephone call to and from IAD; Fax to IAD; telephone call and Fax to PO Behning.	1.50
03/29/01 Telephone call from PO Behning; memo to file; intra-office conference; telephone call to IAD; Fax to IAD; draft written statement for client.	1.50
04/19/01 Telephone call from MPA; telephone call to and from PO Ortiz; memo to file.	0.60
04/24/01 Several telephone calls to and from PO Ortiz; open file; attend rescheduled PI-21; telephone call to MPA.	0.50
05/28/02 Review of file; Fax to IAD.	0.30
07/02/02 Correspondence to MPD Open Records.	0.30
09/23/02 Telephone call from MPD Open Records.	0.10
10/15/02 Telephone call from and to MPD Open Records; memo to file; close file.	0.50

Mr. Ronald D. Leonhardt

Page 2

	<u>Hours</u>	<u>Amount</u>
For professional services rendered	5.30	\$583.00
Additional charges:		
11/04/02 MPD Open Records request		9.77
Total costs		<u>\$9.77</u>
Total amount of this bill		<u>\$592.77</u>
Balance due		<u><u>\$592.77</u></u>

(Rate: \$110.00 per hour)

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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July 12, 2002

Milwaukee Police Department
2333 North 49th Street
Milwaukee, WI 53210

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NOV 4 2002

EGGERT & CERMELE, S.C.

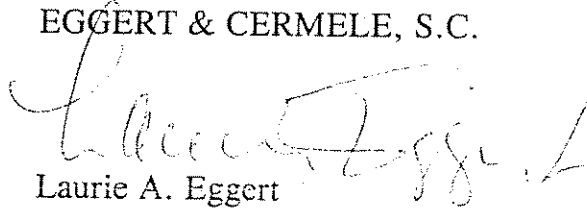
ATTN: Open Records Division

Dear Madam/Sir:

I hereby request copies of all non-privileged Department records, *including the clearance report and investigative summary*, related to ~~the~~ closed criminal investigation of PO Tim Behning, as a result of an allegation that he had knowledge that false reports were made involving department vehicles, specifically a squad accident which occurred in 1999.

Thank you.

EGGERT & CERMELE, S.C.



Laurie A. Eggert
Attorney at Law

LAE/ldl

pc: P.O. Tim Behning
MPA\BEHNING ORI REQ

[Handwritten mark]
23 JUL 02 12 20

1785

ORIGINAL

UNFOUNDED

P-14

MILWAUKEE POLICE DEPARTMENT

REPORT

District No. CIU/Internal Affairs Division

Friday, March 23, 2001

In the matter of: MISCONDUCT IN PUBLIC OFFICE, CIU 00-339

SGT.	#	5
P.O.	#	5
P.O.	#	5

To: Dale T. SCHUNK

Police Commander

Sir:

This report is submitted by Detective Mercedes COWAN, Criminal Investigation Unit/Internal Affairs Division, early shift, under the instruction of Commander Dale T. SCHUNK.

On Saturday, January 6, 2001, at 12:28 a.m., Detective Charles SHEPARD and I, conducted an interview at the Police Training Bureau, located at 6680 N. Teutonia Avenue, third floor interview room. The person interviewed was P.O. Alex NMN LOPEZ Jr., H/M, PR# 65197, D.O.A. 05/12/1997, assigned District #7, late shift.

Officer LOPEZ was interviewed due to numerous allegations made by him against members of the Milwaukee Police Department, particularly the aforementioned officers. A portion of the complaint filed by Officer LOPEZ indicates that sometime in 1999, unknown date or season, Officer #5 (the driver) and #5 were involved in an on duty squad accident (CIU #00-339). Officer LOPEZ went on to relate that the supervisor investigating the accident was Sgt. #5 and that the accident was "fixed". Officer LOPEZ explained that this meant Sgt. #5 altered the facts during the investigation of the accident and that a fictitious report was filed concerning the matter.

Please review additional reports submitted by Detective Charles SHEPARD regarding investigations completed on additional allegations by Officer LOPEZ.

When questioned, Officer LOPEZ related that in 1999, he may have been visiting #5 at his home, when #5 began

discussing "what a stand up guy" Sgt. #5 was and that "he proved being a stand up guy by fixing an accident #5 and #5 had". Officer LOPEZ continued that #5 related Sgt. #5 arrived at the scene of their accident, picked up the damaged squad parts, entered the squad, drove the squad into a snowbank and made it appear as though it was weather related. Officer LOPEZ stated he did not recall #5 mention what occurred with the damaged parts, nor where the accident took place. Officer LOPEZ denied actually witnessing the accident noted here. Officer LOPEZ stated that during the discussion, #5 was trying to emphasize how cool Sgt. #5 was, but did not explain in detail on what actually happened at the accident scene. Officer LOPEZ stated he didn't ask probing questions "because he didn't want to seem like he was prying."

A review of Accident # #5 involving Officers 5 (the driver) and 5 occurring January 6, 1999, at 3:29 a.m. in the area of North 60th Street and W. Spokane Street, revealed the following: Unit 1, while traveling Northbound on N. 60th Street, crossed the centerline into the Southbound lanes, and collided with a frozen plowed snowbank with the left front of the vehicle. Unit 1 is a marked municipal police squad that was enroute to and attempted to park at an emergency assignment. Emergency lights not activated at the time of the collision due to nature of situation. This accident was investigated by Officer Ronald VIRCHOW, PR# 57020 and supervised by Sgt. #5. (A copy of this accident is attached).

[PLEASE NOTE: The circumstances surrounding this accident are similar to the allegations made by Officer LOPEZ concerning an on duty squad accident involving Officer # 5 # 5 (Separated) and # 5, which may have occurred in 1998 or 1999. Officer LOPEZ informed Det. SHEPARD that during that time, (the driver) and #5 were working together on Squad 5 and the accident was to have occurred somewhere in the area of the Westlawn Housing Project during the late shift hours. Officer LOPEZ indicated that Sgt. # 5 was the supervisor who investigated that matter. Officer LOPEZ went on to state that the accident involved the striking of a parked auto or some other

stationary object and when Sgt. S arrived, he made the accident appear to be weather related by moving the debris from the actual accident scene and making it appear as though it was not the fault of the officer operating the squad car. Officer LOPEZ further stated that Sgt. #5 intentionally drove the squad car into a snow bank to further alter the facts of the accident.]

He stated he is a personal friend of both #5 and #5 and has no animosity against them. He is just relating what he heard. Further, he believes most of the officers on the Early and Late shifts "are aware of these fix ups, but no one says anything". Officer LOPEZ went on to relate that he did not report these allegations to his Lieutenant or Captain because he was told that Sgt. #5 "had connections and that they would never take the word of a police officer over a supervisor".

Det. SHEPARD questioned Officer LOPEZ as to whom the shift commanders were during the time of the incidents and he indicated it was either Lt. Keith ECHER or Lt. Anna RUZINSKI. Officer LOPEZ stated Lt. ECHER left sometime in June or July of 1999 and Lt. RUZINSKI replaced him. Officer LOPEZ stated he came forward with this information "because he feels he has nothing to lose because the Department (MPD) has cases pending investigations against him already". Officer LOPEZ elaborated that he has been turned down for three other jobs at three different police departments because of these pending investigations against him "and he has nothing to lose". He stated that he is now unable to leave the police department and seek other employment in law enforcement.

Officer LOPEZ was questioned regarding possible allegations of misconduct in Accident # #5 (CIU 00-340), involving Officer #5 (the driver), occurring January 2, 1999, at 4:10 a.m., in the area of East 6th Street and West Silver Spring Drive. A review of that accident revealed the following: Unit 1 was Westbound on West Silver Spring Drive when a deer ran across the road, Northbound, in front of Unit 1. Unit 1 braked and began to skid on the snowy icy road, causing him to collide with the stop sign on W. Silver Spring Drive. This accident was investigated by Officer John KLABECHEK, PR# 63236 and supervised by Sgt. #5 (A copy of this accident is attached). Officer LOPEZ stated he had no

knowledge of the accident and could offer no information as to whether that is the way the accident occurred or not.

Officer LOPEZ had no further information at this time.

On Friday, March 23, 2001, at 12:33 a.m., Detective SHEPARD and I, spoke with Officer 5 5, PR# 5 D.O.A. 12/02/1996, assigned District #1, late shift. Officer #5 on duty and in uniform, appeared without legal representation. He was advised of the criminal investigation regarding this matter, which he stated he understood. However, Officer #5 declined to make a statement, and requested time with which to consult with legal counsel. This interview was immediately terminated. Officer #5 had no questions or requests.

On same date, this matter was referred Lt. Gary MEYER, PIU/Internal Affairs Division, for issuance of a PI-21.

On Sunday, April 8, 2001, at 12:40AM, I spoke with Officer #5 5, PR# 5, D.O.A. #5, assigned District #4, early shift. Officer #5 on duty and in uniform, appeared without legal representation. He was advised of the criminal investigation regarding this matter, which he stated he understood. However, Officer #5 declined to make a statement, and requested time with which to consult with legal counsel. This interview was immediately terminated. Officer #5 had no questions or requests.

On same date, this matter was referred to Sgt. Christine REYNOLDS, PIU/Internal Affairs Division, for issuance of a PI-21.

On Monday, May 7, 2001, at 10:25PM, Detective SHEPARD and I spoke with Sergeant #5 PR# #5 D.O.A. #5 assigned District #4, early shift. Sgt. #5 on duty and in uniform, appeared without legal representation. He was advised of the criminal investigation regarding this matter, which he stated he understood and proceeded with a statement.

Sgt. #5 was given the opportunity to review Accident Report # #5 and related he recalled this accident. He indicated that he was not on the scene of the accident when it occurred, but was

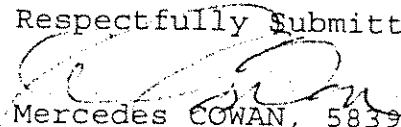
MATTER OF REPORT
CIU 00-339, Misconduct
PAGE 5

informed about it shortly thereafter. He stated he was near the scene because he may have responded to the assignment the officers were on their way to and from there, assigned an officer to complete the reports.

Sgt. #5 stated what the officers told him about how the accident occurred was consistent with his investigation and at no time did he alter or fix the accident to keep the officers out of trouble.

Based on this information, there are currently no sufficient findings with which to substantiate criminal intent or wrongdoing on behalf of the officers involved. This matter is resolved unfounded. Criminal investigation complete.

Respectfully Submitted,


Mercedes COWAN, 58393
Police Detective
CIU/IAD, early shift

MC/mc MO00-339
05/08/2001

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

DECEMBER 10, 2002

TO: P.O. JESUS ORTIZ
WEED & SEED
RE: Receipt of Legal Services from Law Firm of
Attorney

Attorney Laurie Eggert 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 JANUARY 6, 2001
- 2) A citizen's complaint made by MISCONDUCT IN PUBLIC OFFICE
- 3) A police shooting incident occurring on N\A

Is this information correct? YES NO

Did you receive legal representation in this matter? YES NO

Your signature: *Jesus Ortiz*
Print your name: Jesus Ortiz

Upon completion, please return this memorandum to the Internal Affairs Division at the Police Academy (Room 325) as soon as possible.

RECEIVED
02 DEC 23 AM 11:55
MILWAUKEE
INTERNAL AFFAIRS
DIVISION

St. Settingsgaard
Steven M. Settingsgaard *KSS*
Police Commander
Internal Affairs Division

SMS:kjs

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

DECEMBER 10, 2002

TO: DET. TIM BEHNING
CIB

RE: Receipt of Legal Services from Law Firm of
Attorney

MILWAUKEE POLICE DEPARTMENT
INTERNAL AFFAIRS
DIVISION

02 DEC 20 PM 12:02

RECEIVED

Attorney Laurie Eggert 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 JANUARY 6, 2001
- 2) A citizen's complaint made by MISCONDUCT IN PUBLIC OFFICE
- 3) A police shooting incident occurring on N\A

Is this information correct? YES NO

Did you receive legal representation in this matter? YES NO

Your signature: [Handwritten Signature]

Print your name: TIM BEHNING

Upon completion, please return this memorandum to the Internal Affairs Division at the Police Academy (Room 325) as soon as possible.

[Handwritten Signature]
Steven M. Settingsgaard
Police Commander
Internal Affairs Division
KJS

SMS:kjs