

GRANT F. LANGLEY

City Attorney

RUDOLPH M. KONRAD

LINDA ULISS BURKE

VINCENT D. MOSCHELLA

Deputy City Attorneys



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRLICH
LEDNARD A. TOKUS
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
HEIDI E. GALVÁN
JARELY M. RUIZ
ROBIN A. PEDERSON
DANIELLE M. BERGNER
Assistant City Attorneys

September 10, 2009

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

Re: Communication from Attorney Michael J. Steinle, Terschan, Steinle & Ness,
legal fees for Police Officer Shawn Humitz

Dear Council Members:

Returned herewith is a document filed by Attorney Michael J. Steinle for attorney's fees for representing Police Officer Shawn Humitz. The claim is in the amount of \$50,950.00, including \$14,725.00 in private investigator expenses. The claim for legal fees is for 120.75 hours of service billed at the rate of \$300.00 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 prosecution. Officer Humitz was found not guilty at the conclusion of the trial.

This claim represents the first opportunity for the Common Council to consider such a request under the amended Wis. Stats. §895.35(2). The pertinent language in that statute is the following: "the city...shall reimburse a protective services officer for *reasonable attorney fees* incurred by the officer in connection with a criminal proceeding arising from the officer's conduct in the performance of official duties..." except for certain circumstances that do not apply here. (Emphasis supplied). The amended statute thus removes discretion from the City over whether to pay such claims arising from certain criminal proceedings, but does not specify what are to be deemed "reasonable" attorneys fees.

We have been able to obtain the agreement between Attorney Steinle and Officer Humitz regarding this matter. The agreement indicates that Humitz was required to pay no more than \$20,000 in fees to Steinle (an initial retainer fee of \$5,000 and a final fee of no more than \$15,000). That, of course, is considerably less than the \$36,225.00 attorneys' fee bill that Steinle presented to the city, even though the agreement refers to an hourly fee of

OFFICE OF THE CITY ATTORNEY

Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551 • Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

To the Honorable Common Council
of the City of Milwaukee
September 10, 2009
Page 2

at least \$350.00. The agreement, however, makes clear that costs and services (including, presumably, investigator fees) are separate and, therefore, additional items.

As to the proper definition of "reasonable" attorney fees, such a requirement has been interpreted by the Wisconsin Supreme Court in the past in a comparable context. *Village of Shorewood v. Steinberg*, 174 Wis. 2d 191, 204-5, 496 N.W.2d 57 (1993). In doing so, it referred to one of its rules, SCR 20:1.5, relating to fees that attorneys may charge. The factors prescribed by that rule include: 1) time and labor required, 2) novelty and difficulty of the questions involved; 3) skill required to perform services; 4) apparent likelihood that lawyer will be precluded from other work; 5) the fee customarily charged; 6) amount involved and results obtained; 7) limitations imposed by client or circumstances; 8) nature and length of the relationship; 9) experience and ability of the lawyer; and, 10) whether the fee is fixed or contingent. Given what we know of this situation, none of these factors are of much help but one. The fee was fixed at no more than \$20,000.

Under all the circumstances, therefore, we would recommend that the City pay \$20,000 for attorneys' fees in this matter. As for the investigator's bill, the statute by its language does not apparently require payment and such a payment thus remains subject to your discretion. In the past, however, when such bills for attorneys' fees have been the subject of city discretion, the city has paid for investigators bills, although it has not paid for meal expenses, which total \$30.00 in the investigator's bill here.

Very truly yours,



GRANT F. LANGLEY
City Attorney



JAN A. SMOKOWICZ
Assistant City Attorney

JAS
Enc.

1032-2008-2026:149748