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Assistant City Attorneys

January 28, 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 Robert Ferrell  
EC 2757


Dear Council Members:


Returned herewith is a document filed by Attorney Jon Cermele for attorney's fees for representing Police Officer Robert Ferrell. The claim is in the amount of \$664.50 including \$4.50 in disbursements for 6.00 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.

1032-2009-2832.001:124771v1

CL-C-2009-0067

## CERMELE & ASSOCIATES, S.C.

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September 22, 2009

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

**RE: Citizen Complaint of Mr. Matt Nelson  
Against PO Robert Ferrell  
Complaint No.: 08-30  
Date of Incident: March 10, 2008**

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 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 field interview.

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.

# CERMELE & ASSOCIATES, S.C.

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September 22, 2009

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

RE: Citizen Complaint of Mr. Matt Nelson  
Against PO Robert Ferrell  
FPC No: 08-30  
Date of Incident: March 10, 2008  
Professional services

		<u>Hours</u>	<u>Amount</u>
6/6/2008	MG Office conference with PO Ferrell regarding new citizen complaint; review documents; open file; Open Records request.	1.20	132.00
6/9/2008	CA Office conference with PO Ferrell.	0.50	55.00
6/16/2008	MG Receive and review correspondence from FPC.	0.10	11.00
7/7/2008	MG Receive and review correspondence from FPC concerning mediation; telephone call to FPC regarding same.	0.20	22.00
7/23/2008	MG Telephone call to client; memo to file.	0.20	22.00
7/24/2008	MG Telephone call to client regarding mediation; e-mail to Mediation Center; memo to file.	0.30	33.00
8/6/2008	MG Receive and review records from MPD.	0.40	44.00
10/14/2008	MG Receive and review correspondence from Milwaukee Mediation Center.	0.10	11.00

Mr. Ronald Leonhardt

Page 2

		<u>Hours</u>	<u>Amount</u>
10/15/2008	CA	Correspondence from Mediator; telephone call from FPC; e-mail from Mediator.	0.30 33.00
1/27/2009	MG	Review file in preparation for Mediation.	1.60 176.00
2/10/2009	MG	Review file.	0.20 22.00
8/17/2009	SJJ	Review file; correspondence to client regarding same.	0.30 33.00
9/9/2009	SJJ	Receive and review correspondence from FPC regarding dismissal of complaint; correspondence to client regarding same; close file.	0.60 66.00
		For professional services rendered	✓ 6.00 ✓ \$660.00
		Additional charges:	
8/8/2008	MG	MPD Open Records request	4.50
		Total costs	✓ \$4.50
		Total amount of this bill	\$664.50
		Balance due	✓ \$664.50

(Rate: \$110.00 per hour)



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SEP 09 2009

PERMELE & ASSOCIATES, S.C.

Richard C. Cox  
Chair

Carolina M. Stark  
Vice-Chair

Ernesto A. Baca  
Kathryn A. Hein  
Paoi X. Lor  
Sarah W. Morgan  
Commissioners

Fire and Police Commission

Michael G. Tobin  
Executive Director

September 3, 2009

Mr. Matt D. Nelson  
2008 North Farwell Avenue  
Milwaukee, WI 53202

RE: Complaint No. 08-30  
Matt D. Nelson v. Police Officer Robert L. Ferrell

Dear Mr. Nelson:

As a result of the Fire and Police Commission's investigation of your complaint, the Milwaukee Police Department is revising their policy on requesting social security numbers. I have enclosed a copy of our memorandum regarding our research. This memorandum is an agenda item which will be presented at the Fire and Police Commission's regular meeting this evening. We are closing your complaint at this time.

Thank you for bringing this matter to our attention.

Sincerely,

Michael G. Tobin  
Executive Director

MGT:cj

Enclosure

cc: Scott J. Jess, Esq. (w/enclosure)

## FPC Informational Memorandum: Social Security Numbers

### Issue:

During traffic stops and field interviews, some Milwaukee Police Department (MPD) members may ask citizens for their social security numbers. Requesting a social security number can lead to an adverse confrontation. Citizens are often within their legal rights to refuse to provide the number. In a case brought to the attention of the FPC, an MPD officer is alleged to have insisted that a citizen provide his number. When the citizen in question refused to provide their social security number, they claim they were threatened with a citation and/or arrest<sup>1</sup>. Such encounters may damage police-community relations. This memorandum examines the policy, procedure and customs of the MPD pertaining to the circumstances in which a social security number should be requested by a member.

### Findings:

MPD Standard Operating Procedure (SOP) 710 – Field Interview/Traffic Warning Cards (February 15, 2000) states that members who initiate contact with suspicious persons, or persons involved in faulty driving habits or minor traffic violations are to submit a Field Interview/ Traffic Warning Card (FI card). It denotes the fields to be entered, which include: Officer's Payroll Number, Date and Time of Stop, Name of Person Stopped, Associates of Person Stopped, Date Of Birth, Age, Sex, Race, Division of Interest (such as Gang, Vice, Homicide, etc.) and Vehicle Information. The information requested for the FI cards include space for a social security number. Although not explicitly stated, there is no requirement to record a social security number. The SOP is silent concerning the circumstances in which the social security number should be requested. The FI card is to be turned in to the member's supervisor as soon as practicable after the contact occurred. The completed FI cards are forwarded to clerical staff on a daily basis for entry into the department's database. The FI cards are kept on file for seven (7) days at the work location after entry into the database, and then destroyed.

The majority of members carry FI cards on their person. Some members may write the information in their memo book and either transfer the information to a FI card at a later time, or enter it directly into the database when they return to their work location.

If a citizen is arrested, he/she is transported to the district station and booked. During the booking process, the member enters the citizen's personal information into the arrest report database. The database includes a field for the social security number.

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<sup>1</sup> In one instance, as a member was investigating a burglary of a business, he came across a citizen in a business in the vicinity of the burglary. As the member motioned to the citizen to come out of the business, the citizen waved the member off and continued closing his business for the day. When the member saw the citizen standing outside the business and watching the investigation, the member spoke with the citizen and allegedly demanded his social security number. The citizen refused to give his social security number and as a result was allegedly threatened with arrest.

law enforcement officer. No state law prior to January 1975 was located that requires disclosure to a law enforcement officer.

Congress enacted the 1998 Identity Theft and Assumption and Deterrence Act<sup>3</sup> and made identity theft a felony. The U.S. Government Accountability Office reported the increased potential for identity theft using social security numbers in a 2006 report. As a result, the President's Task Force on Identity Theft by Executive Order 13402 was established on May 10, 2006. This Task Force subsequently issued its report on identity theft and this influenced many states to limit the inclusion of social security numbers in public records and to explore alternatives to using the numbers as identifiers. Identity theft can occur from police records, through open records requests for police document files, by inadvertent release of records, and by failure to properly redact government records.

### Technology Alternatives:

Since the Field Interview/Traffic Warning Card SOP was last revised in 2000, technological innovations have been developed or improved. These innovations provide members with improved means to confirm the identity of persons that provide correct information and also recognize when persons are likely providing false identification information. None of the technology alternatives rely upon the social security number as an identifier.

MPD has been using the Morpho RapID mobile fingerprint scanner for just over a year. MPD purchased 130 scanners with grant funding and is in the process of deploying them throughout the department. With the citizen's consent, the citizen places his/her index finger onto the scanner screen for the device to read the fingerprint. If the citizen has been fingerprinted by MPD in the past, their name, date of birth, race, gender and Bureau of Identification number appear in approximately 20 seconds.

MPD Standard Operating Procedure 370 – Field Identification (April 13, 2007) states that during a field interview and the citizen's identity is in question, the citizen may consent to use the fingerprint scanner as part of the identification process. If a person does not consent, the member does not have authority to demand fingerprint identification. The scanner provides a quick and accurate confirmation of the citizen's identification, which allows the citizen to be released on the street instead of from a district station or the prisoner processing section. It is an effective method of deterring false identification.

In addition, the Wisconsin Department of Motor Vehicles maintains a database of driver's records and motor vehicle registrations. The database is accessible during any traffic stop or field interview via police radio or Mobile Data Computer in police vehicles. A properly trained member can query a citizen and corroborate the information provided with the Department of Motor Vehicle records to confirm a person's identification. The database also allows an experienced member to establish that false identification is being provided to a reasonable certainty in many instances.

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<sup>3</sup> 18 U.S.C. § 1028.