



**Request for City Council Committee Action
From the City Attorney's Office**

Date: June 6, 2005
To: Ways & Means/Budget Committee
Referral to: None

Subject: Request for Reimbursement of Legal Fees for Officers Todd Babekuhl, Francisco Porras, Michael Killebrew, Steven Mosey, Mark Beaupre, Rick Altonen, Carl Blad and Patrick Daly.

Recommendation: That the City Council approve the request of Officers Babekuhl, Porras, Killebrew, Mosey, Beaupre, Altonen, Blad and Daly for the reimbursement of attorneys' fees payable to Rice, Michels & Walther, L.L.P. in the amount of \$9,728.76 for representation of the officers payable from Fund/Org. 6900 150 1500 4000.

Previous Directives: None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: None

Background/Supporting Information

Officers Babekuhl, Porras, Killebrew, Mosey, Beaupre, Altonen, Blad and Daly have requested, through their attorney, the reimbursement of legal fees pursuant to Minnesota Statute §465.76. The fees arose from his representation during an investigation regarding allegations made by Stephen Porter that he had been sexually assaulted during the search of his residence on October 13, 2003. A criminal investigation of the incident was conducted by the United States Justice Department. The Justice Department found no evidence to prosecute anyone, clearing all the officers of any criminal wrongdoing. The officers requesting

reimbursement of attorney's fees are all members of the 4th Precinct Community Response Team who were involved in the execution of the search warrant. James Michels represented the officers throughout the process.

Mr. Michels submitted itemized bills to this office for payment under Minn. Stat. § 465.76. Mr. Michels expended 76.60 hours on legal representation at an hourly rate of \$125.00 and incurred \$233.76 in expenses. The hours expended were related to the criminal defense of the officers. The hours expended appear reasonable.

Minnesota Statute §465.76 provides:

"If reimbursement is requested by the officer or employee, the governing body of a home rule charter or statutory city or county may, after consultation with its legal counsel, reimburse a city or county officer or employee for any costs and reasonable attorneys fees incurred by the person to defend charges of a criminal nature brought against the person that arose out of the reasonable and lawful performance of duties for the city or county, provided if less than quorum of the governing body is disinterested, that such reimbursement shall be approved by a judge of the district court."

In 1984 the City Council appointed a criminal legal fees task force. The task force was directed to consider and recommend appropriate policies for the City to follow with respect to payment of legal fees. The task force examined the statutes, policies of other jurisdictions, the present policy, case law and alternative procedures. In a letter dated June 18, 1984, the task force ratified the existing system in which the City Council, after the advice of the City Attorney upon the reasonableness of the fees and the scope of employment issues, acts formally on a request for reimbursement. Prior to acting, the Council reviews each case with reference to the general principles as follows:

1. Nature of the inquiry or allegations by the investigating authority.
2. Whether the action arose out of the performance of the officer or employee's duties.
3. Whether he or she acted in good faith.
4. Whether there was malfeasance or willful or wanton neglect of duty.
5. Whether he or she was acting pursuant to directions from a superior or pursuant to law.
6. Whether the morale of other City officers and employees would be adversely affected by paying or not paying the claim.

The above criteria were developed under Minn. Sess. Laws 1969, Chapter 790, Section 2, granting the City of Minneapolis authority to reimburse legal fees to employees in criminal proceedings. Minn. Stat. §465.76 was later enacted. The new section is fundamentally the same, except insofar as it adds the requirement that the incident arise from the "lawful" performance of the duties of the employee. It had been the practice under Chapter 790 to approve reimbursement only upon acquittal or failure to charge the employee. Minn. Stat. §465.76 makes this practice mandatory.

With regard to the first consideration set forth in the letter of the task force, the review of the conduct of the officers falls within the statute's parameters. The attorney's fees requested arise from a criminal investigation by the United States Department of Justice.

The second criterion is also satisfied. The allegations related to on duty law enforcement activities.

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Regarding the third consideration, the officers acted in good faith. The Justice Department reviewed all the evidence and determined that there was no basis to believe that officers had acted illegally.

Regarding the fourth consideration, we conclude, based upon the investigation and decision by the Justice Department, that there was no malfeasance or willful or wanton neglect of duty.

As to consideration number five, the officers were acting pursuant to law and exercising their duties as police officers. The actions of the officers were authorized by law and within their legal authority.

Finally, with regard to consideration number six, the denial of the request for attorney fees would have a negative impact on the morale of other City employees. Police officers who were making a good faith effort to enforce the law would be responsible for the payment of attorney's fees arising unfounded allegations of misconduct.

Based on the foregoing it is our recommendation that the officers be reimbursed for reasonable criminal defense fees pursuant to Minn. Stat. §465.76.