



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

Date: October 2, 2007  
To: Ways & Means/Budget Committee  
Referral to:

**Subject:** *Kathy Davison v. Rocco Forte' and the City of Minneapolis*  
U.S. District Court File No. 04-3399

**Recommendation:** That the City Council approve settlement of the above-referenced matter in the amount of \$65,000, to be divided between a payment representing attorneys fees and costs payable to Plaintiff's attorneys Woodley & McGillivray from Fund/Org. 6900 150 1500 2800, with the remaining portion to be paid-out as back wages to Plaintiff Kathy Davison. Furthermore, that the City Council approve related non-monetary settlement terms including authorizing the Fire Department to promote Plaintiff to the position of full-time fire investigator with a seniority date of March 3, 2003. Lastly, that the City Council authorize the City Attorney's Office to execute all documents necessary to finalize the settlement.

**Previous Directives:**

Prepared by: Joel M. Fussy, Assistant City Attorney Phone: 673-2067

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: \$65,000.00 to be divided at the determination of Plaintiff's counsel between back wages payable to Plaintiff and attorneys fees and costs payable to her attorneys from Fund/Org. 6900 150 1500 2800
- Request provided to the Budget Office when provided to the Committee Coordinator

**Community Impact:**

## **Background/Supporting Information**

This case involves failure-to-promote claims made by Plaintiff Kathy Davison, a captain with the Fire Department, alleging violation of her First Amendment rights based on her labor union speech and associations. Plaintiff applied for the position of fire investigator in 2003 and failed to secure the promotion during any of the three openings that occurred that year although she was ranked first on the eligibility list certified by Human Resources. Plaintiff claimed that her allegedly outspoken union views constituted a substantial and motivating factor in then-Fire Chief Rocco Forte's decisions to promote other qualified candidates into the open positions. The City and Defendant Forte' deny that anti-union animus played any role in the promotional decisions.

In April 2006 United States District Court Judge Ann Montgomery granted summary judgment in favor of the City and Defendant Forte' on all claims. Plaintiff appealed this ruling to the United States Court of Appeals for the Eighth Circuit and in June 2007 the appellate court reversed that portion of Judge Montgomery's decision as it applied to the claims against Defendant Rocco Forte' in his individual capacity. A 2—1 majority of the panel held that material factual disputes remained precluding an award of summary judgment.

A pre-trial settlement conference – which was attended by all parties and their counsel as well as Council President Johnson and Fire Chief Clack – was held on October 1<sup>st</sup> and a conditional settlement was reached along the above-referenced terms and recommended by all parties thereto.

Reasons supporting settlement of this lawsuit include the following:

- The Fire Department currently has an opening for a fire investigator and the settlement would avoid the need for the department to engage in the costly process required to fill the position, inclusive of offering course classes and educational materials and conducting the testing, ranking and interviewing of numerous candidates. The department estimates that the cost savings incurred through filling the open position through the terms of the settlement combined with ancillary overtime savings to be substantially equivalent to the financial payout called for by the settlement.
- Although the City and Forte' deny any wrongdoing or impropriety, a verdict in favor of Plaintiff on any of her claims would trigger a significant award of back wages and compensatory damages along with a right to recovery of attorneys fees. As Plaintiff has been represented throughout these lengthy proceedings by out-of-state counsel retained through the International Association of Fire Fighters, the estimated attorneys' fees would likely exceed \$200,000.

The City Attorney recommends that the finance officer be authorized to issue a settlement check to Plaintiff Kathy Davison's attorneys Woodley & McGillivray, from Fund/Org. 6900 150 1500 2800, in an amount less than \$65,000 to be determined by Plaintiff and her counsel, with the remaining portion of the \$65,000 settlement amount to be paid to Plaintiff as back wages with the standard payroll withholding and contributions. The City Attorney additionally recommends that the City Council authorize the Fire Department to promote Plaintiff to the position of full-time fire investigator with a seniority date of March 3, 2003 and that the City Attorney's Office be authorized to execute any documents necessary to finalize the settlement.

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