



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

Date: September 30, 2005

To:

Referral to: Ways and Means

**Subject: Denial of Defense and Indemnification**

**Recommendation:** That the City Council adopt the Findings of Fact, Conclusions of Law and Recommended Decision of Administrative Law Judge Steve M. Milalchick affirming the decision not to defend or indemnify Stanley Capistrant in connection with the lawsuit entitled Darryl Burton v. City of Minneapolis and Stanley Capistrant, Hennepin County District Court file no.: MC 05-003544.

**Previous Directives:**

Prepared by: Assistant City Attorney Mike Bloom

Phone: (612) 673-2038

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):
- Request provided to the Budget Office when provided to the Committee Coordinator

**Community Impact:**

- Neighborhood Notification
- City Goals:
- Comprehensive Plan
- Zoning Code
- Other

**Background/Supporting Information;**

The City of Minneapolis was served with a summons and complaint in the matter of Darryl Burton vs. City of Minneapolis and Stanley Capistrant, Hennepin County District Court file no.: MC 05-003544. The lawsuit references, inter alia, an incident involving Mr. Stanley Capistrant wherein

Capistrant, working as a Minneapolis Police Officer fraudulently "signed out" and subsequently embezzled monies inventoried and stored in the Minneapolis Police Department Property Room.

The City of Minneapolis reviewed the file and determined that Stanley Capistrant is not entitled to defense and indemnification. The decision is based on Minnesota Statute § 466.07 and Article 25 of the Labor Agreement which provide that defense and indemnification are limited to situations where the employee was "not guilty of malfeasance in office, willful neglect of duty, or bad faith."

Capistrant appealed the denial of defense and indemnification and the matter was scheduled for hearing before an Administrative Law Judge. Capistrant defaulted and the ALJ issued his Findings of Fact, Conclusions of Law and Recommended Decision affirming the decision not to defend or indemnify Stanley Capistrant.

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNEAPOLIS CITY COUNCIL

In the Matter of:

Darryl Burton,

v.

The City of Minneapolis and  
Stanley Capistrant.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDED DECISION**

The above-entitled matter came on hearing before Administrative Law Judge Steve M. Mihalchick, acting as hearing officer for the Minneapolis City Council, commencing at 9:30 a.m. on September 19, 2005, at the Office of Administrative Hearings in Minneapolis, Minnesota. There was no appearance by Respondent, and no one appeared on his behalf. With the nonappearance of Respondent, the City requested that the Administrative Law Judge issue a Recommended Decision by default in accordance with Minn. Rule 1400.6000. The OAH record closed at the conclusion of the hearing on September 19, 2005.

Mike Bloom, Assistant City Attorney, 333 South 7<sup>th</sup> Street, Suite 300, Minneapolis, Minnesota 55402-2453, appeared on behalf of the City of Minneapolis.

The last known address for Respondent, Stanley Capistrant, is 896 32<sup>nd</sup> Street N.W., Hackensack, Minnesota 56452-2473.

**NOTICE**

This report is a recommendation and not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions of Law and Recommended Decision. The parties should contact the City Clerk, Council Information Division, 350 South Fifth Street, Room 304, Minneapolis, Minnesota 55415-1382, telephone (612) 673-3136, to learn when the City Council will consider this matter and whether the Respondent will have an opportunity to present argument to the City Council concerning this recommended decision.

## STATEMENT OF THE ISSUE

The issue in this proceeding is whether or not the City of Minneapolis properly decided not to defend or indemnify the Respondent, a former Minneapolis Police Officer, under Minn. Stat. § 466.07 and Article 25 of the Labor Agreement, in connection with a matter resulting in Respondent's conviction for theft, on the grounds that the Respondent was guilty of malfeasance in office, willful neglect of duty, or bad faith.

Based upon all of the proceedings, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. The Respondent, Stanley Capistrant, was employed as a police officer with the Minneapolis Police Department (MPD) from April 1990 to December 2005. He left the employment of City of Minneapolis (City) after an investigation by the MPD's Internal Affairs Unit (IAU). The IAU investigated Respondent for having signed out money from the MPD property room as "federal forfeitures" or "For the court."<sup>1</sup>

2. The IAU determined that Respondent had improperly signed out the money from the property room, in the amount of \$450,970.65, and had engaged in fraud. Respondent was criminally charged due to this conduct. On September 25, 1996, Respondent pled guilty to Theft from a Program Receiving Federal Funds, and was sentenced to 30 months imprisonment, 3 years supervised release, and ordered to pay \$335,000.00 in restitution.<sup>2</sup>

3. The City was served with a summons and complaint in the matter of *Darryl Burton v. City of Minneapolis and Stanley Capistrant*, MC 05-003544, filed with the Hennepin County District Court. That lawsuit seeks the return of some of the money improperly removed from the property room.<sup>3</sup>

4. The City determined that Respondent was not entitled to defense and indemnification. Respondent requested a hearing, and the City issued a Notice of Hearing. The Notice of Hearing included the statement that, "If you fail to appear at the hearing, the allegations against you that have been stated earlier in this notice may be taken as true and your ability to challenge them forfeited."<sup>4</sup> The Notice of Hearing set this matter on before the undersigned Administrative Law Judge to begin on July 27, 2005.<sup>5</sup> The hearing was later rescheduled, at the City's request, to September 19, 2005. The City requested the later date due to the inability to reach Respondent or the Plaintiff, Darryl Burton.<sup>6</sup>

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<sup>1</sup> Notice of Hearing, at 2.

<sup>2</sup> Notice of Hearing, at 2.

<sup>3</sup> Notice of Hearing, at 2.

<sup>4</sup> Notice of Hearing, at 3.

<sup>5</sup> Notice of Hearing.

<sup>6</sup> ALJ Letter, July 25, 2005.

elective or appointive, for damages, including punitive damages, claimed or levied against the officer or employee, provided that the officer or employee: (1) was acting in the performance of the duties of the position; and (2) was not guilty of malfeasance in office, willful neglect of duty, or bad faith.”<sup>8</sup>

6. The City has the burden of proof under Minn. Stat. § 466.07 to establish, by a preponderance of the evidence, that the Respondent is not entitled to defense and indemnification.

7. Respondent’s conviction for theft of property entrusted to him as part of the duties of his position constitutes “malfeasance in office” under Minn. Stat. § 466.07.

8. The City has demonstrated by a preponderance of the evidence that its decision not to defend or indemnify the Respondent was proper.

9. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Minneapolis City Council affirm the decision not to defend or indemnify the Respondent, Stanley Capistrant, in connection with *Darryl Burton v. City of Minneapolis and Stanley Capistrant*, MC 05-003544.

Dated: September 21, 2005.

  
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STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Default.

### NOTICE

The City is requested to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

<sup>8</sup> Minn. Stat. § 466.07, subd. 1.