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

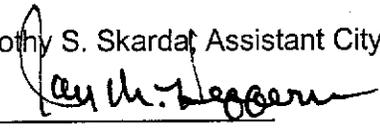
Date: March 31, 2003
To: Ways & Means/Budget Committee
Referral to: None

Subject: Frino Alcenat v. City of Minneapolis, U.S. District Court, 01-1674 DSD/SRN.

Recommendation: That the City Council approve settlement of the lawsuit filed by Frino Alcenat, federal district court file no. 01-1674, in the amount of \$10,500.00, payable \$7,000.00 to Frino Alcenat and \$3,500.00 to his attorney Albert T. Goins, and to authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims, 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

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

<p>Community Impact: Build Community</p>

Background/Supporting Information

This incident involves allegations by the Plaintiff that that his constitutional rights were violated through the use of excessive force, false arrest and by conspiracy between police officers. The Plaintiff also asserts state tort actions and discrimination by the City of Minneapolis.

On August 25, 1999, Minneapolis police officers were dispatched to the US Bank located at 919 East Lake Street. The officers were informed over the radio that a forgery was in progress. The officers entered the bank

with their weapons drawn and identified the Plaintiff as the suspect. The Plaintiff was placed under arrest. One officer took control of the Plaintiff while the second officer stayed to speak with bank personnel.

The first officer asked the Plaintiff to place his hands behind his back. The Plaintiff did not comply with the officer's commands. The Plaintiff was handcuffed and escorted to the squad car. He began to loudly question his arrest. At the squad car, the Plaintiff was placed against the car and the officer began to pat search him. The Plaintiff turned toward the officer several times and was ordered to face the squad car. The Plaintiff was pushed forward against the squad car and held in order to complete the search.

The second officer, who was inside speaking with bank personnel, learned that an error had been made and the check being presented by the Plaintiff was not a forgery. The Plaintiff was released and remained at the scene to complain to supervisors about his treatment.

The Plaintiff alleges that his head was slammed into the squad car when he attempted to speak to the officer about the reason for the arrest and explain that the check was not forged. All parties agree that the Plaintiff was standing quietly in the bank when the officers arrived and made no threatening gesture or attempt to flee the scene. The Plaintiff believes that he was treated differently because of his race, African American. The Plaintiff asserts that a Caucasian suspect who was standing quietly would not have been arrested, handcuffed and placed into a squad car before the officers confirmed the violation with bank officials. The officers indicated that all felony suspects are immediately handcuffed and detained.

The Plaintiff alleges neck and shoulder pain that amounts to an aggravation of a prior injury sustained in a motor vehicle accident. The litigation arises under civil rights statutes that would allow the Plaintiff to collect reasonable attorney's fees if he prevails at trial. We estimate, based on the number of hours spent defending the lawsuit, that the attorney's fees claim was approximately \$20,000 at the time of the settlement.

A settlement conference was held on March 27, 2003, attended by Council Member Barret Lane, Director John Dejung, representing the police department, and the police officer involved. A trial was scheduled to begin on April 14, 2003. The Plaintiff demanded \$45,000.00 in damages and attorney's fees. Contemplating the costs of continued litigation and after extended negotiations, the City made a final offer of \$10,000.00. The Plaintiff rejected the offer, refusing to reduce his demand below \$35,000.00. The settlement negotiations were terminated. The following day, in negotiations between counsel, a proposed settlement was reached in the amount of \$10,500.00. The settlement would include all claims for attorney's fees and costs.

We believe that settling this lawsuit as described would be in the best interests of the City of Minneapolis. Council Member Lane, Director Dejung and the officer involved concur in recommending approval of the tentative settlement. The reasonableness of the use of force and arrest, as well as, whether the Plaintiff was treated differently because of his race are factual disputes for decision by the jury. While there is a good chance of success at trial, the proposed settlement acknowledges the costs of continued litigation to the City, as well as, the possibility of incurring liability for attorney's fees and costs. We believe that the proposed settlement as set forth is in the best interests of the City of Minneapolis.