



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

Date: July 15, 2005
To: Ways & Means/Budget Committee
Referral to: None

Subject: Deborah Upchurch v. City of Minneapolis, et al.
Hennepin County District Court: Served, not filed.

Recommendation: That the City Council approve settlement of the complaint filed by Deborah Upchurch in Hennepin County District Court in the amount of \$18,000.00 of which \$9,000.00 is payable by the City of Minneapolis, payable to Deborah Upchurch and Clair E. Schaff, her attorney, and authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims, payable from Fund/Org. 6900 150 1500 8300.

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 8300
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: Build Community

Background/Supporting Information

This case arises out of the Plaintiffs employment with Minneapolis Emergency Communications ("MECC") as a dispatcher. The Plaintiff was a police officer with the City of Chicago who was hired by the City of Minneapolis in the Finance Department on January 31, 2000. On March 12, 2001, she transferred to the MECC. The Plaintiff reported certain sexually harassing conduct by a male janitor who was an employee of the Municipal Building Commission ("MBC"), including following her into the restroom on two occasions and engaging her in

conversation in the bathroom. An investigation was conducted by the Minneapolis Department of Human Resources. The janitor was given a written reprimand, advised to have no contact with the Plaintiff and referred for additional sexual harassment training. The Plaintiff alleged that the janitor continued to have contact with her while the complaint was under investigation.

In her Complaint, the Plaintiff alleged a series of specific work place harassment unrelated to the incident involving the MBC janitor. She identifies the alleged harassment and harassers in detail. She did not report the alleged harassment, but indicated that it was obvious to supervisors and occurred in the presence of supervisor personnel.

The Plaintiff resigned from employment, asserting that she was constructively discharged as a result of the harassing activity by MECC and MBC employees. The Plaintiff alleges lost wages of approximately \$85,000.00, as well as, emotional distress. The Plaintiff would be entitled to attorney's fees and costs, should she prevail.

The City has defended the litigation asserting that the janitor was not an employee of the City. The City was not able to take any disciplinary action regarding the janitor or remove him from his duties during the course of the investigation because he was not a City employee. However, the City and MBC are likely to be considered joint employers of the janitor, especially considering that the incident was investigated by and discipline recommended by the Minneapolis Department of Human Resources and defense of the MBC would be undertaken by the Office of the City Attorney.

An attempt was made to resolve the matter before engaging in additional discovery and incurring additional costs for either side in the litigation. A proposed settlement was reached in the total amount of \$18,000.00 with the City and the MBC each contributing \$9,000.00 toward the settlement. The proposed settlement has been discussed with John Dejung, Director of the MECC, and Jose' Cervantes, Director of the Municipal Building Commission, who have approved the proposed settlement and recommend its approval. Given the uncertainty and costs of continued litigation, we believe that the proposed settlement is favorable to and in the best interests of the City of Minneapolis and recommend its approval.