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

Date: August 16, 2004
To: Ways & Means/Budget Committee
Referral to: None

Subject: Request for Reimbursement of Legal Fees for Officer Charles Storlie.

Recommendation: That the City Council approve the request of Officer Charles Storlie for the reimbursement of attorneys' fees payable to Frederic Bruno and Associates in the amount of $1,571.00 for representation of Officer Storlie 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
_X_ 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

Officer Charles Storlie has requested, through his attorney, the reimbursement of legal fees pursuant to Minnesota Statute §465.76. The fees arose from his representation during an investigation regarding the shooting of Officer Duy Ngo on February 25, 2003, by Officer Storlie. A criminal investigation of the incident was conducted. The findings from the investigation were presented to Office of the Hennepin County Attorney who cleared Officer Storlie of any criminal wrong doing. Frederic Bruno represented Officer Storlie throughout the process. Mr. Bruno's representation was limited to the criminal proceedings and has not been involved in any subsequent civil proceedings. Mr. Bruno submitted itemized bills to this office for payment under Minn. Stat. § 465.76. Mr. Bruno expended approximately 12.5 hours on legal representation at an hourly

rate of $125.00 and incurred $8.50 in expenses. The hours and costs were related to the criminal defense of the officer. 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.

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

Regarding the third consideration, the officers acted in good faith. The Hennepin County Attorney reviewed all the evidence and determined that the actions were not illegal or improper.

Regarding the fourth consideration, we conclude, based upon the investigation and decision by the Hennepin County Attorney and internal police department investigations, that there was no malfeasance or willful or wanton neglect of duty.

As to consideration number five, the officer was acting pursuant to law and exercising his duty as a police officer. The actions of the officer were authorized by law and within his 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 from mandatory investigations into conduct.

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