



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

Date: June 13, 2005  
To: Ways & Means/Budget Committee  
Referral to: None

**Subject:** Request for Reimbursement of Legal Fees for Officer Victor Mills.

**Recommendation:** That the City Council approve the request of Officer Victor Mills for the reimbursement of attorneys' fees payable to Frederic Bruno and Associates in the amount of \$2,994.64 for representation of Officer Mills 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
- 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 Victor Mills 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 use of force on August 15, 2004, in the vicinity of 2921 Park Avenue South. After a videotape of an incident allegedly showing a handcuffed prisoner being slapped aired on a local news program, an internal investigation was conducted by the police department and the case was referred to the Bloomington City Attorney to review for possible criminal charges. Officer Mills admitted slapping the suspect after being repeatedly spat upon by the suspect. Officer Mills asserted that the suspect's conduct had been edited out of the television presentation. The internal investigation determined that the officer had not used excessive force. The

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Bloomington City Attorney declined to bring criminal charges arising from the incident. Officer Mills, was cleared of any criminal wrongdoing. Frederic Bruno represented Officer Mills throughout the process.

Mr. Bruno submitted itemized bills for the total hours expended in representing Officer Mills to this office for payment under Minn. Stat. § 465.76. Mr. Bruno billed his legal representation at an hourly rate of \$125.00. The total amount of fees and expenses is \$2,994.64. The hours expended were related to the criminal defense of the officer. The hours expended and expenses 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 officer falls within the statute's parameters. The attorney's fees requested arise from a criminal investigation. The matter was investigated by the police department and submitted to the Bloomington City Attorney for potential criminal charges.

The second criterion is also satisfied. The allegations related to on duty law enforcement activities. The officer was on duty and exercising police powers by making an arrest at the time of the incident.

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Regarding the third consideration, the officer acted in good faith. The police department and Bloomington City Attorney determined that the actions of the officer did not violate the law and were within the discretion afforded officers in using force.

Regarding the fourth consideration, we conclude, based upon the police investigation and prosecution decision by the Bloomington City Attorney 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 controversial allegations of misconduct when cleared of wrongdoing.

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