

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: June 25, 2012

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Mark A. Grady, Deputy Corporation Counsel *MAG*

SUBJECT: Mary Castro v. Milwaukee County
ERD Case No. CR2008-00720
U.S. District Court Case No. 10-C-0444

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement. I request authority to settle this case for the total sum of \$50,000.00, plus reinstatement and pension service credit. Wisconsin County Mutual Insurance Corporation will pay the \$50,000.00 sum and apply it to Milwaukee County's deductible.

Ms. Castro worked many years for the Sheriff's office, most recently as an administrative assistant at the House of Correction. In 2007, Ms. Castro began missing work due to mental health issues. She was granted and received FML. Her psychiatrist wrote work excuses indicating that she suffered permanently from posttraumatic stress disorder caused in part by personal issues and in part by an assault she had suffered from an inmate in 1990 that was being aggravated by her work setting. During the fall of 2007, her psychiatrist variously wrote that Ms. Castro could not return to work "at this time" or that there were triggers for her illness that occurred at her work at the HOC and that she would need a different work setting. Ms. Castro began to evaluate the possibility of other work she could perform for Milwaukee County. In November of 2007, Ms. Castro and her attorney began communications with the Sheriff's office and with Corporation Counsel, alleging that she was permanently disabled and required an alternate job to accommodate her disability. Milwaukee County did not believe that it had enough medical information to determine the precise nature of the accommodation that was required and continued to request additional medical information. Much of the medical information that had been received was not clear on whether Ms. Castro was permanently disabled or exactly what triggers needed to be avoided in any job relocation search.

Communications between the parties broke down in late 2007. In early 2008, after being off of work continuously for approximately six months, the Sheriff's office asked Ms. Castro if she had additional medical information or if she was able to

return to her position at HOC. Ms. Castro indicated that she was not ready to return to work and that she had provided all the medical information that she had and that was necessary. As a result, believing that additional medical information was still necessary to trigger the County's obligations under the disability laws, and after consulting with the Corporation Counsel, the Sheriff's office terminated Ms. Castro's employment.

Ms. Castro filed a disability discrimination claim with the State of Wisconsin Equal Rights Division. After the initial investigation, a hearing was held. The Administrative Law Judge issued a decision dismissing the complaint and finding that there was no probable cause to believe that Milwaukee County had violated the law. Ms. Castro appealed to the Labor and Industry Review Commission. The Commission reversed. In a fairly strongly worded decision, the Commission essentially disagreed with the Corporation Counsel's advice to the Sheriff's office. The Commission held that probable cause did exist to believe that Milwaukee County had violated Ms. Castro's rights and remanded the case for a final hearing on the merits of the complaint and appropriate remedies. The Commission held that Milwaukee County had received sufficient medical information to know that Ms. Castro needed another position to accommodate her disability. State law requires that an employer who cannot modify an employee's duties in order to accommodate the employee's disability must then search for alternate employment with the employer that can do so and further provides that an employer must provide "clemency and forbearance" from enforcing its attendance and leave of absence policies while that interactive accommodation process occurs. The Commission held that Milwaukee County unilaterally violated the interactive accommodation process by terminating Ms. Castro's employment rather than granting her additional leave of absence to explore medical information and other options for her.

While the state administrative agency action was pending, Ms. Castro also filed suit in federal court alleging a violation of the ADA.

The parties participated in a mediation session sponsored by the federal court and conducted by U.S. Magistrate Judge Gorence. At the time of the mediation, because of the long duration of the continuing litigation, Ms. Castro had been out of county employment for four and one-half years. Although she had worked part-time in various private positions, her net wage loss claim is in excess of \$100,000.00. She sought recovery of medical expenses she incurred while she was without county health coverage and credit for pension service credit she would have earned had she been accommodated as required. She incurred attorneys' fees of approximately \$60,000 – \$70,000. She also claimed emotional distress damages in the federal court action.

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The proposed settlement reached at mediation provides that Ms. Castro will be administratively granted 3.5 years of pension service credit and will be reinstated to County employment. She will then be immediately eligible to retire and will do so. The Wisconsin County Mutual will pay attorneys' fees totaling \$50,000.00 to Ms. Castro's attorneys: \$45,000.00 to Attorney Tricia Knight and \$5000.00 to Horizons Legal Group. No payment is being made directly for past wage losses or emotional distress damages. The settlement will have no direct tax levy impact.

Corporation Counsel and the Wisconsin County Mutual recommend this settlement for approval.

cc: Amber Moreen
Janelle Jensen
Jennifer Collins