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DATE: July 9, 2012

TO: Marina Dimitrijevic, County Board Chairwoman

FROM: Molly Zillig, Principal Assistant
Milwaukee County Corporation Counsel

SUBJECT: Ostrowski, et al. v. Milwaukee County, et al.
United States Eastern District Case No.: 11 C 0311

I request that this matter be referred to the Committee on Judiciary, Safety and General Services to be placed on the agenda for its next meeting to approve the payment of \$20,000.00 to MacGillis and Wiemer, LLP, to settle in full the lawsuit of the Milwaukee County Deputy Sheriffs Association, Robert Ostrowski and Casey Perine, Jr.

FACTS ALLEGED IN THE COMPLAINT

Deputies Ostrowski and Casey Perine, Jr. (“Ostrowski and Perine”) filed a lawsuit under the Family Medical Leave Act (“FMLA”) against Milwaukee County and John Nelson, a former Lieutenant with the Milwaukee County Sheriff’s Office, for interference in exercising their FMLA rights. Both of these men were working for the Milwaukee County Sheriff’s Office (“MCSO”) in June 2010 and were assigned to the Milwaukee County Detention Services Bureau – Courts Division (“Courts Division”). Ostrowski suffers from two (2) serious health conditions. He has received medical treatment and FMLA approval for these health conditions. Perine suffers from one serious health condition and has received medical treatment and FMLA approval for this health condition. Both of these men requested and used FMLA leave in 2010.

According to the Complaint, former Lieutenant John Nelson told Plaintiffs that they were being transferred from the Courts Division to the County Correctional – Central (“Jail Division”) because of the fact that they were using too much FMLA time. Inspector Richard Schmidt allegedly directed Lt. Nelson to prepare a list of names of deputies who use too much FMLA and sick time. He then transferred these individuals from their assignments in Courts to the jail, in violation of the FMLA. **Former Lieutenant John Nelson denies all allegations.**

SETTLEMENT

Federal regulations allow temporary transfers to alternative jobs to better accommodate recurring periods of FMLA leave under very narrow circumstances. There is a question as to whether the facts of this case fit into those narrow circumstances (See, 29 CFR § 825.204). After negotiations, a

Chairwoman Marina Dimitrijevic
Milwaukee County Board of Supervisors
July 9, 2012
Page 2 of 2

tentative agreement was reached to pay \$20,000.00 for all of Ostrowski and Perine's actual attorneys' fees as the Plaintiffs have nominal damages, if any. This amount will be paid by Wisconsin County Mutual Insurance Company and applied to the County's deductible. Corporation Counsel along with Wisconsin County Mutual Insurance Company's Litigation Manager and the Milwaukee County Sheriff's Office, support this settlement based upon the facts established through three (3) witness interviews completed of former Lt. John Nelson, former Capt. Richard Gellendin and Inspector Richard Schmidt, who were involved with this incident, along with completed discovery.

Molly J. Zillig
Principal Assistant Corporation Counsel

MJZ/JD

Cc: Janelle Jensen
Amber Moreen
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