

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: August 21, 2013

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Mark A. Grady, Acting Corporation Counsel *MAG*
Molly J. Zillig, Principal Assistant Corporation Counsel *mjz*

SUBJECT: *Irby Alexander v. Milwaukee County*
E.D. Case No. 12-CV-0329

Please refer this matter to the Committee on Judiciary, Safety, and General Services to be placed on the agenda for its September 12, 2013 meeting. We are seeking settlement approval of the above referenced lawsuit that alleges a violation of the Family and Medical Leave Act ("FMLA") and the Americans with Disabilities Act ("ADA"), which is pending before the U.S. District Court for the Eastern District of Wisconsin, Case No. 12-CV-0329. The lawsuit was defended by Oyvind Wistrom of Lindner and Marsack, S.C., through the Wisconsin County Mutual, with the assistance of the Office of the Corporation Counsel.

Mr. Alexander was a long-term Correctional Officer at the Milwaukee County House of Correction (hereinafter the "HOC") who was diagnosed with a serious health condition in 2001. Mr. Alexander applied for and received intermittent FMLA from 2001 to 2011.

There is evidence in the record that could support a determination that the County violated Mr. Alexander's rights under the FMLA when it denied him FMLA approval for multiple absences that resulted in the filing of written charges against Mr. Alexander seeking his termination on April 29, 2011. If a jury finds in his favor under the FMLA, Mr. Alexander could be entitled to reinstatement, back pay, liquidated damages and attorney fees.

Mr. Alexander also alleges a claim for disability discrimination under Title III of the ADA. He claims he was denied a reasonable accommodation when he was denied leave for his disability and that he was discharged in part because of his disability. If he prevails on the ADA claim, he would be entitled to the same remedies available under the FMLA (except liquidated damages). In addition, he could recover up to \$300,000 in compensatory damages.

The parties have had extensive settlement discussions and have reached a proposed settlement that includes reinstating Mr. Alexander to his former position at the HOC,

without back pay or other monetary damages, with the County's insurer agreeing to pay reasonable attorneys' fees and costs in the amount of \$17,729.30.

Lindner and Marsack, S.C., the Office of Corporation Counsel, and the Wisconsin County Mutual recommend this settlement for approval.

cc: Amber Moreen
Kelly Bablitch
Alexis Gassenhuber
Stephen Cady
Raisa Koltun