

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: November 21, 2012

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

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

SUBJECT: David Brill v. Milwaukee County
ERD Case No. CR2011-00307
EEOC Charge No. 26G201100596C

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 \$25,000.00, plus job placement assistance and six months service credit. Wisconsin County Mutual Insurance Corporation will pay the \$5000.00 in attorneys' fees and Milwaukee County will pay \$20,000.00 in wages.

Mr. Brill was hired as a Correction Officer in June of 2009. On the last day of his training, Brill was injured during training, sustaining a right hand and wrist injury. As a consequence, he was unable to complete his training and could not begin work as a Correction Officer. The County paid him workers compensation benefits while he was treating and recovering from his injury. The next training academy was scheduled for October 5, 2009, but Brill was still recovering and could not participate. In November, Brill was allowed by his doctor to work light duty while he continued to treat. The Sheriff provided him with light duty assignments on various shifts and at various locations. Brill claims that he was penalized with less desirable light duty, but those allegations are not the basis for our recommendation for settlement. Brill was still unable to participate in the next CO training classes in January and April of 2010.

When Brill was unable to begin the April 2010 training class, there were no future scheduled training classes. Brill was still seeking final opinions with respect to whether his injury would prevent him from being able to physically perform the duties of a CO position. One of his physicians thought he would not be able to do so, but he was seeking second opinions. Brill had been on light duty for an extended period by April of 2010 and there was no certainty about whether he would be able to return to work as a Correction Officer. As a result, the Sheriff's office, after consulting with our office, separated him during his probationary period. Approximately two months later, Brill provided documentation of his permanent inability to perform the duties of a correction officer position.

Brill filed a complaint in February of 2011 with the Wisconsin Equal Rights Division (ERD) alleging that he was an individual with a disability and that the County failed to follow the law which requires employers to provide such individuals with assistance locating an alternate vacant job at the employer that would accommodate the disability. The County responded that because Brill's final medical status was not yet determined, and thus the County did not know at the time of his separation whether he was an individual with a disability, it did not have any obligation to provide assistance in locating an alternate County job.

The ERD investigated the complaint. The ERD accepted the County's response, and issued an initial determination in August of 2011 finding that there was no probable cause to believe that the County had violated the Fair Employment Act. Brill then asked the EEOC to investigate his complaint under federal ADA law. The EEOC issued a contrary determination in February of 2012 which found that there is reasonable cause to believe that the County violated the ADA by terminating Brill's employment and not attempting to accommodate him with alternate County employment. The EEOC apparently accepted Brill's arguments that the County had enough information at the time of Brill's separation to reasonably know that Brill was an individual with a disability and/or that the County separated him from employment, knowing that such information was soon forthcoming, in order to avoid its accommodation responsibilities.

The EEOC asked the parties to engage in mediation, which the parties did in June of 2012. Additional settlement communications occurred thereafter through the EEOC mediator. The proposed settlement is the result of those discussions.

The settlement provides that the County will pay Brill \$20,000.00 in wages and the Wisconsin County Mutual Insurance Corporation will pay his attorneys, First, Albrecht & Blondis S.C., \$5000.00 in attorneys' fees. The County will provide him with six months service credit in connection with the wage payment. The County will work with Brill for up to six months to attempt to locate alternate, vacant, non-promotional position that will accommodate his disability, using the County's standard practices and policies for doing so. Brill will withdraw his complaints and release the County from any liability.

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

cc: Amber Moreen
Janelle Jensen
Jennifer Collins