

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: February 16, 2018

TO: Theodore Lipscomb, Sr., Chairman, County Board of Supervisors

FROM: James M. Carroll, Assistant Corporation Counsel

SUBJECT: *State of Wisconsin v. Milwaukee County*
Milwaukee County Case No. 2017CX7
State of Wisconsin v. Milwaukee County
Milwaukee County Case No. 2017CX8

I request that these matters be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement. I request authority to settle these claims for the total sum of \$3,000.00, which will be paid by Wisconsin County Mutual Insurance Corporation as a forfeiture for delays in responding to personnel record requests pursuant to Wis. Stat. § 103.13. The full terms of the proposed settlement are set forth below.

The proposed settlement resolves two separate actions filed by the State of Wisconsin against Milwaukee County in August 2017:

- Case No. 2017CX7 alleges that: (a) Milwaukee County violated Wis. Stat. § 109.03 by failing to pay a former employee back wages owed him after his County employment concluded, and (b) Milwaukee County violated Wis. Stat. § 103.13 by failing to timely provide requested personnel documents to a former employee. The State of Wisconsin commenced this action within its authority to enforce these statutes and sought payment of back wages and accompanying penalties totaling \$4,856.20, forfeitures of between \$10 and \$100 per day for delays in providing personnel documents, and costs.
- Case No. 2017CX8 alleges that Milwaukee County violated Wis. Stat. § 103.13 by failing to timely provide requested personnel documents to a former employee. The State of Wisconsin commenced this action within its authority to enforce this statute, and sought forfeitures of between \$10 and \$100 per day for delays in providing personnel documents, as well as costs.

After evaluating both cases and concluding that the County had significant potential exposure, defense counsel recommended that the wages and penalties sought in Case No. 2017CX7 be paid to the former employee as soon as possible, thus negating any ongoing wage claim. These payments were made by payroll in October 2017. Additionally, defense counsel began discussions with plaintiff's counsel (the Wisconsin Department of Justice) regarding a possible global resolution of both cases. The terms of the agreed-upon resolution are as follows:

- 1) Voluntary dismissal of Case No. 2017CX7, with prejudice and with no costs to either party.
- 2) Voluntary dismissal of Case No. 2017CX8, with prejudice and with no costs to either party, subject to the following terms as set forth in the dismissal stipulation filed with the court:
 - a. State of Wisconsin agrees that the former employee has been provided with copies of all personnel documents as required by Wis. Stat. § 103.13.
 - b. Milwaukee County agrees that designated Human Resources staff will attend Wisconsin Department of Justice and/or Department of Workforce Development training regarding record-keeping practices, public access to records, and employee access to personnel documents.
 - c. Milwaukee County agrees to pay a forfeiture of \$3,000.00 for delays in providing requested personnel records. This is considerably less than the maximum potential forfeiture sought by the plaintiff, which could have exceeded \$10,000.00.
 - d. Milwaukee County agrees that if circumstances exist which require the DOJ/DWD to enforce the provisions of Wis. Stat. § 103.13 against Milwaukee County via court action and the DOJ/DWD demonstrates to the court that relief is appropriate, the County will: pay the maximum statutory forfeiture amount (\$100.00 per day) for any violation found by the court that occurs/begins within one year of the DOJ/DWD training (starting from the date after the training discussed in Paragraph 2, above, is completed); and pay a minimum forfeiture of \$50.00 per day (or, as the court may order, up to the maximum statutory forfeiture amount) for any violation found by the court that occurs/begins within the second year after the DOJ/DWD training is completed. This provision will terminate after two years have elapsed

from the date the training discussed in Paragraph 2, above, is completed.

- e. State of Wisconsin agrees that for two years following the date after the training discussed in Paragraph 2, above, is completed, the DWD will direct to the County's Human Resources director, with a copy to the Milwaukee County Office of Corporation Counsel: (1) any initial notice that a complaint under Chapters 103 or 109 of the Wisconsin Statutes has been filed with the DWD against Milwaukee County; and (2) any initial determination from DWD that Milwaukee County is in violation of any provision of Chapters 103 or 109 of the Wisconsin Statutes. This provision will terminate after two years have elapsed from the date the training discussed in Paragraph 2, above, is completed.

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

/s/ James M. Carroll

James M. Carroll, Assistant Corporation Counsel

cc: Kelly Bablitch
Shanin Brown
Erica Hayden
Raisa Koltun