

**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

**DATE:** February 6, 2015

**TO:** Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors

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

**SUBJECT:** Request for settlement authority in *Estate of Steven Cole v. Milwaukee County*, Case No. 14-CV-740 (E.D. Wis. federal court)

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a request for settlement authority in the above matter. Authority is requested to serve an Offer of Judgment in the above matter in the amount of \$10,000. This Offer of Judgment includes any attorneys' fee claim.

This lawsuit arises out of Steven Cole's death on June 30, 2011 while he was an in-patient at BHD. Mr. Cole grabbed a discarded sandwich from a garbage can and then subsequently choked to death on it, despite efforts by staff to prevent him from getting the sandwich and to take it from him. The complaint alleges that BHD staff failed to adequately monitor and supervise him. The complaint also contains voluminous allegations of BHD deficiencies over the prior 15 years and claims that those alleged institutional failures were also a cause of Mr. Cole's death. Further details are expected to be provided in closed session.

Claims such as Mr. Cole's are excluded from the County's insurance policy with Wisconsin County Mutual. Therefore, the Office of Corporation Counsel has entered into a contract for legal representation in this case with the firms of Whyte, Hirschboeck & Dudek and Emile Banks & Associates. Both firms are also representing the County in the case of *Johnson v. Milwaukee County et al.*, 14-CV-1408 (E.D. Wis. federal court), involving a traumatic injury of a patient at BHD and also represent the County in other litigation through the County Mutual. Their attorney fees in this case and the *Johnson* case are being paid from Org. Unit 1961, Litigation Reserve.

This situation is different from the usual settlement approval request. In this case, there is no verbal or proposed settlement agreement with the plaintiffs. Instead,

the County's counsel are requesting authority to file with the court a formal Offer of Judgment under Federal Rule of Civil Procedure 68 in the amount of \$10,000. Our office agrees with this request. Once served, the plaintiff can accept the offer and thereby agree to dismiss the case in return for that payment. If that were to occur, no further action by the Committee or the County is required to complete the settlement. If the plaintiff does not accept the offer and receives less than that amount through subsequent litigation or trial, plaintiffs can be required to pay the costs the County incurs in the continuing litigation after their non-acceptance.

Pursuant to section 1.11(4) of the County Ordinances, the Committee on Judiciary, Safety and General Services must approve this request to serve the Offer of Judgment and, because the amount is \$10,000, has the final authority to do so.

cc: Kelly Bablitch  
Alexis Gassenhuber  
Erica Hayden  
Raisa Koltun  
Patricia Schroeder