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Date: July 18, 2016

To: Honorable Supervisors of the County Board

cc: County Clerk Joseph Czarnetzki (c/o Janelle Jensen)
County Executive Chris Abele
County Sheriff David A. Clarke, Jr.
Deputy Corporation Counsel Paul Kutglitsch
Interested Parties

From: Interim Corporation Counsel Colleen Foley 

Re: Referral of File 16-341

At its June 23, 2016 meeting, your honorable body referred File 16-341 to the office of corporation counsel pursuant to MCO 1.15. That ordinance allows a one-third minority of the County Board to refer a matter to corporation counsel for a “written opinion ... as to the legality of the resolution or ordinance offered, or the recommendation made in any report presented to the county board for adoption.” File 16-341 is as follows:

From the Office of the Sheriff, submitting a passive review contract amendment with the Law Offices of Michael A.I. Whitcomb, in the amount of \$50,000, from \$99,999 to \$149,999, to serve as legal counsel to Sheriff David A. Clarke, Jr.

File 16-341 sought review by the Committee on Finance, and Audit (pursuant to Wis. Stat. § 59.52(31)(b)) to amend the professional services contract executed March 26, 2014 between Milwaukee County Sheriff David A. Clarke, Jr. and Attorney Michael A.I. Whitcomb in *MDSA & Sheriff Clarke v. Milwaukee County*, Milwaukee Circuit Court case number No. 15-CV-786. Specifically, the amendment seeks a \$50,000 increase in funding from \$99,999 to \$149,999 for Attorney Whitcomb to request Wisconsin Supreme Court review of the underlying dismissal by the Milwaukee Circuit Court and affirmation of that decision by the Wisconsin Court of Appeals. The Sheriff’s Office framed its request as involving “a declaration of the authority for establishing a budget for the Office of the Sheriff of Milwaukee County for the Sheriff to adequately staff his agency in order to maintain and perform all constitutional and statutory duties and responsibilities required as the elected Sheriff of Milwaukee County.” The related fiscal note states that the “2016 Adopted Operating Budget includes adequate funds to absorb this increase of \$50,000 within the adopted budget of the Agency”.

Under passive review rules, Finance Committee action is final unless the Board approves a contract within 30 days. See Wis. Stat. § 59.52(31)(b)(2). On June 16, 2016, the Finance Committee voted to reject the contract amendment. At its June 23, 2016 meeting, the Board referred the matter to corporation counsel for a written opinion on the resolution, particularly regarding appellate costs. The Board’s next meeting is July 28, which is beyond 30 days from the

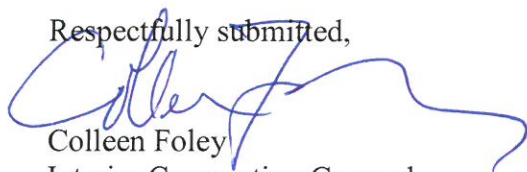
Finance Committee's rejection of the item. Since the 30 day period lapsed, the contract amendment fails. However, though the specific resolution is now moot, the general question is not.

What are typical attorney's fees related to appellate actions?

Determination of appellate fees is not an exact science, but there is a usual range involved. Suffice it to say that the Office of Corporation Counsel expects and requests discounted rates from an attorney's usual and customary hourly rate. Many firms that perform legal services for the County discount those rates up front. Larger scale operations that conduct business statewide (such as the Wisconsin County Mutual Insurance Corporation ("WCMIC")) obtain a volume discount from firms due to provision of a greater amount of work. WCMIC's representative advises that the vast majority of firms charge hourly rates in the \$160 to \$185 per hour range for a partner and \$50 to \$85 per hour range for a paralegal. There are of course variations. Firms from rural areas tend to charge lower rates in the \$130 to \$150 range. Firms with special expertise and a reputation for managing difficult, complex cases charge a higher rate in the \$250 to \$325 per hour range, dependent upon whether a partner or associate is involved. Attorney Whitcomb's usual and customary rate is \$325 per billable hour, with lesser rates "to be established" for associate work according to the file 16-341 submissions.

In terms of appellate costs at this juncture (after a ruling from the Wisconsin Court of Appeals), WCMIC typically reserves \$20,000 for such appeals and any follow-up work that might be expected. That includes the filing of the petition to the Wisconsin Supreme Court, follow-up briefing, preparation for and oral arguments, and any required follow-up on settlement or dismissals after judgment. Costs are higher for the party doing the petition versus the party opposing or defending the outcome. And the ultimate price tag is dependent upon the case. More complex litigation, such as the O'Donnell appeal, which involves a 6 week trial record, multiple plaintiffs and defendants, and complications on appeal due to a switch in law firms, will be far more expensive than a declaratory judgment action present here. That declaratory judgment action involved limited briefing in the lower court, therefore the appellate record and review will be limited to those discrete issues.

Respectfully submitted,



Colleen Foley
Interim Corporation Counsel