

**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

DATE: June 27, 2013

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

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

SUBJECT: *State v. One 1993 Toyota Land Cruiser et al.*  
Milwaukee County Case No. 08-CV-6701  
*Nieves v. State of Wisconsin et al.*  
Dane County Case No. 10-CV-2582

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement. I request authority for Milwaukee County to pay \$15,000 towards the settlement of these cases.

In 2008, the Cudahy Police Department executed a search warrant and seized multiple items in connection with a drug investigation. One item seized was Nieves' car. The Milwaukee County case listed above was commenced as a civil forfeiture action by our office against that car pursuant to §961.555(1), Stats. This statute generally authorizes seizures and forfeitures of property used in connection with the commission of certain crimes if it can be shown the car was used in connection with such crimes or activity. The Office of Corporation Counsel is authorized by §961.555(2)(c), Stats., to pursue these actions in the State's name and has done so for many years. During the trial of this case in March of 2009, it became apparent that the burden of proof could not be met and the case was dismissed at our request. Mr. Nieves asked the court to find that the lack of proof to support the case should have been known prior to trial and requested payment of his attorneys' fees and costs. The circuit court granted the request and entered a judgment against the State in the amount of \$8789.29.

When payment of the judgment was not made, Nieves began a collection action against the State in Dane County and filed a motion for sanctions in the Milwaukee County case. In late 2010, our office reached an agreement with the Attorney General's office to share the cost of the judgment equally between the State and the County. The judgment, with interest, was paid in full by the State and the County in January of 2011. The garnishment action was dismissed by the Dane County court and the Milwaukee County court declined to decide Nieves' motion for contempt and sanctions. Nieves was dissatisfied with these decisions and filed appeals in the Court of Appeals. In March of 2012, the Court of Appeals

held that the Milwaukee County court was required to address his motion for sanctions. On remand from the Court of Appeals, the circuit court addressed Nieves' motion and found in his favor in January of 2013. A decision on the amount of any costs and sanctions to be awarded is now pending before the circuit court.

Discussions occurred between the Attorney General's office and our office and the Attorney General's office proceeded to negotiate a compromise settlement of Nieves' claim for costs and sanctions. A proposed settlement was reached totaling \$30,000 for costs only (no sanctions), with the State and County each paying \$15,000. The State is paying the total settlement and the County would reimburse the State for one-half.

We request approval to pay the State of Wisconsin Department of Justice the amount of \$15,000 for Milwaukee County's share of the negotiated settlement in return for a full release of all claims.

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