



County of Milwaukee
Office of the Sheriff

David A. Clarke, Jr.
Sheriff

DATE: April 26, 2012

TO: Supervisor Marina Dimitrijevic, Chairman, County Board of Supervisors

FROM: Edward Bailey, Inspector, Milwaukee County Office of the Sheriff

SUBJECT: **Request to Direct Corporation Counsel to Contract for Outside Legal Counsel for the Office of the Sheriff**

REQUEST

The Sheriff of Milwaukee County requests the County Board to direct the Office of Corporation Counsel to contract for Outside Legal Counsel for all future legal matters for the Office of the Sheriff.

BACKGROUND

On January 30, 2012, a letter was submitted to the Chairman of the County Board from the Office of Sheriff regarding its current legal representation. It is the opinion of the Sheriff that the development of case 2012CV000350, Milwaukee County V. David Clarke, Jr. has resulted in the legal relationship between the Office of the Sheriff and Corporation Counsel as irretrievably broken. This is due to the representation by Attorney Kimberly Walker against the Office of the Sheriff. It is the opinion of the Office of the Sheriff that according to the guidelines of Wisconsin Statutes Chapter SCR 20, Rule of Professional Conduct for Attorneys that once Attorney Walker appeared against the Sheriff that Attorney Walker can no longer represent the Sheriff in future legal matters. That letter with additional details is attached to this request.

The Office of the Sheriff is requesting that the Office of Corporation Counsel contract with outside legal counsel to represent the Office of the Sheriff interests in all future legal matters.

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FISCAL NOTE

It is estimated that the contract cost on an annual basis would be approximately \$300,000. The estimate is based upon an analysis of the following categories: Lawsuits, Notice of Claims, EEOC Complaints, Disciplinary Cases, Legal Opinions, Unemployment Hearings and Open Records Consultations/Mandamus. It was estimated that the time worked would be split between a Principal Attorney and a Staff Attorney with an estimated rate of \$187.50 per hour charged to the County. It was estimated that the Office of the Sheriff would require over 1,500 hours of legal work on an annual basis based on 2011 activities in those categories.

A handwritten signature in blue ink, appearing to read "Edward Bailey" with a stylized flourish at the end.

Edward Bailey, Inspector, Milwaukee County Office of the Sheriff

cc: Chairman, Committee on Judiciary, Public Safety and General Services
Craig Kammholz, Fiscal and Budget Administrator
Jon Priebe, Public Safety Fiscal Administrator

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David A. Clarke Jr.
Sheriff

County of Milwaukee
Office of the Sheriff

January 30, 2012

Supervisor Lee Holloway, 5th District
Chairman, Milwaukee County Board of Supervisors
Courthouse Room 201
901 North 9th Street
Milwaukee, WI 53233

Chairman Holloway:

Corporation Counsel is charged to be the legal counsel for all Milwaukee County departments and elected officials. However, that relationship (as much as the relationship between any attorney and client) is bound by the guidelines of Wisconsin Statutes Chapter SCR 20, *RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS*, as noted:

SCR 20:1.7 Conflicts of interest current clients.

(a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under par.

(a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in a writing signed by the client.

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Chairman Lee Holloway, Milwaukee County Board of Supervisors
January 30, 2012
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SCR 20:1.9 Duties to former clients.

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in a writing signed by the client.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

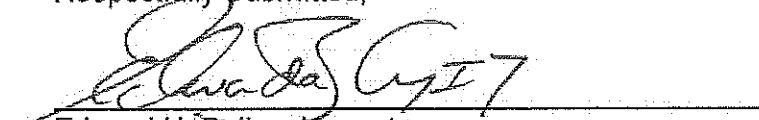
- (1) whose interests are materially adverse to that person; and
- (2) about whom the lawyer had acquired information protected by sub. (c) and SCR 20:1.6 that is material to the matter; unless the former client gives informed consent, confirmed in a writing signed by the client.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the information has become generally known; or
- (2) reveal information relating to the representation except as these rules would permit or require with respect to a client.

With the developments of 2012CV000350, Milwaukee County V. David Clarke Jr., it is the position of the MCSO that the legal relationship between the MCSO and Sheriff David A. Clarke Jr., and the Office of Corporation Counsel and Attorney Kimberly Walker is irretrievably broken in fact, both legally and ethically. As such, we request that the Milwaukee County Board of Supervisors provide outside legal counsel, at county expense, to represent MCSO interests in all future legal matters.

Respectfully Submitted,



Edward H. Bailey, Inspector
Milwaukee County Sheriff's Office

C: Ms. Kimberly R. Walker, Milwaukee County Corporation Counsel
Supervisor Willie Johnson, Jr., 13th District
Chairman, Judiciary Committee