



**Request for City Council Committee Action
From the City Attorney's Office**

Date: November 20, 2002
To: Ways & Means/Budget Committee
Referral to: Not Applicable

Subject: Wilburn v. City of Minneapolis, et al.
United States District Court File No.: 01-2113 (ADM/SRN)

Recommendation: That the City Council approve settlement of the above-referenced matter in the total amount of \$75,000, \$35,000 payable to Plaintiff, Maurice Wilburn and \$40,000 made payable to his attorney, Robert Bennett, Flynn, Gaskins & Bennett, LLP payable from Fund/Org 690 150 1500 4000. Further recommend that the City Council authorize the City Attorney to execute all documents in settlement of this matter.

Previous Directives: The matter was considered by the Council in closed session on November 8, 2002.

Prepared by: James A. Modre, Assistant City Attorney Phone: 673-2063

Approved by: Jay M. Heffern
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

<p>Financial Impact (Check those that apply)</p> <p><input type="checkbox"/> No financial impact - or - Action is within current department budget. (If checked, go directly to Background/Supporting Information)</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Capital Budget</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Operating Budget</p> <p><input type="checkbox"/> Action provides increased revenue for appropriation increase</p> <p><input type="checkbox"/> Action requires use of contingency or reserves</p> <p><input checked="" type="checkbox"/> Other financial impact (Explain): Fund/Org 690 150 1500 4000</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p>
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<p>Community Impact: None.</p>

Background/Supporting Information

On July 15, 2001, Minneapolis police officers were called to 3544 Portland Avenue South on a report of a domestic assault occurring at that address. When officers arrived, they found Plaintiff and his wife at the address and were advised by Plaintiff's wife that Plaintiff had assaulted her. Plaintiff's wife told the officers that she wanted him out of the house. The parties dispute what happens next, but a fight broke out

between the two police officers and the Plaintiff. During the course of the altercation, the officers called for additional assistance. The officers maintain that Plaintiff attempted to take a gun from one of the officers. Plaintiff and other witnesses at the residence dispute this account. During the course of the physical altercation, Plaintiff received numerous blows from an officer's flashlight. A couple of the police officers also received injuries in the altercation. Plaintiff was taken to the hospital where he was treated for a broken elbow. He also suffered numerous lacerations to his right forehead, posterior head, right eyebrow, side of his nose, elbow, upper lip and leg that required stitches.

Plaintiff has agreed to settle the case upon payment of \$35,000 to the Plaintiff and payment of attorney's fees, capped at \$40,000. Plaintiff's lawyer has submitted his claim for attorney's fees and expenses. The total fee amount claimed is \$50,466.38. The City Attorney's Office has reviewed the bill and compared it with its own time and expense records relating to defense of the case. The City Attorney's Office has expended approximately the same number of hours as the Plaintiff's lawyers claim in the matter. In addition, the City Attorney's Office also billed significant hours toward a companion case where the work on the companion case would have benefited the defense of the present matter. Based upon a review of the claim for attorney's fees and expenses submitted by Plaintiff, it appears that the total amount is reasonable and would likely be awarded by a court. Even if the court were to reduce Plaintiff's hours by some amount, it is unlikely that the court would award fees in an amount less than the agreed-to \$40,000. Accordingly, the City Attorney's Office recommends settlement of the matter as set forth above.