



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

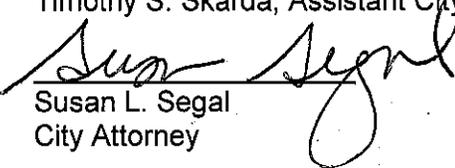
Date: August 9, 2010
To: Ways & Means/Budget Committee
Referral to: None

Subject: Request for Reimbursement of Legal Fees of Chief of Police Timothy Dolan.

Recommendation: That the City Council approve the request of Chief Timothy Dolan for the reimbursement of attorneys' fees for 265.00 hours at a rate to be determined by the City Council and costs of \$332.35 to the firm of Kelley, Wolter & Scott, P.A. payable from Fund/Org. 06900 1500100 145400.

Previous Directives: None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by: 
Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Payment from Fund/Org. 06900 1500100 145400
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: None

Background/Supporting Information

Chief Dolan has requested the reimbursement of attorneys' fees and costs totaling \$72,743.35, representing 295.35 hours of time and costs of \$332.35. We are recommending the reimbursement of 263.60 hours at an hourly rate to be determined by this Committee and costs of \$332.35. Chief of Police Timothy Dolan was the subject of a criminal investigation and a City ethics investigation initiated pursuant to complaints by the Minneapolis Police Federation. The Chief was absolved in both matters. Of the hours expended, approximately 31.75 hours were related to the City ethics investigation, which are not eligible for reimbursement. We are, therefore, recommending reimbursement for 265 hours.

The investigations arose when attorneys representing the Police Federation and Sgt. Charlie Adams accused Chief Dolan of violating the Minnesota Government Data Practices Act ("MGDPA") by making certain public statements regarding Sgt. Adams' reassignment. A May 12, 2008, letter to Hennepin County Sheriff Stanek from the Police Federation demanded a criminal investigation into whether Chief Dolan willfully violated the MGDPA. In addition to the call for a criminal investigation, the Police Federation filed a complaint with the Minneapolis Ethical Practices Board claiming Chief Dolan violated provisions of the Minneapolis Code of Ethics. The ethics complaints related to the boarding of Chief Dolan's dog at the department kennel. The ethical complaints were separated into three individual matters, Ethics Complaints 2008-2, 2008-3 and 2008-4. Matter 2008-4 was summarily dismissed for lack of probable cause on June 17, 2008. Matters 2008-2 and 2008-3 were stayed pending the completion of the criminal investigation. The criminal allegations were investigated by the Dakota County Attorney's Office, which was appointed as a special prosecutor. By letter dated December 9, 2008, the special prosecutor declined all prosecution. The prosecutor found that Chief Dolan's comments about Sgt. Adams' job reassignment were not made in knowing violation of the MGDPA; that no theft of public services occurred when Chief Dolan boarded his dog; and that there was no violation of the public employee misconduct statute. Subsequently, the Ethical Practices Board dismissed Ethics Complaint 2008-2 and Ethics Complaint 2008-3 for lack of probable cause.

Throughout the investigations Chief Dolan was represented by the law firm of Kelley, Wolter & Scott, P.A.. The firm has submitted itemized bills for the total hours expended in representing Chief Dolan to this office for payment under Minn. Stat. § 465.76. The firm has billed attorneys at \$300/hour and \$400/hour; an investigator at \$190.00/hour and paralegal time at \$90.00/hour. The total amount of fees is \$72,411.00 for 295.35 hours of work with expenses of \$332.35. The billing related to the ethics investigation amounted to approximately \$8,329.00 for 31.75 hours of work. The billing related to the criminal investigation amounted to approximately \$44,340.00 for 134.40 hours of attorney time at an average rate of \$330/hour; \$16,682.00 for 87.80 hours of investigator time billed at \$190.00/hour and \$3024.00 for 33.60 hours of paralegal time at \$90/hour. The total billing related to the criminal defense, including costs, is \$64,378.35. The hours expended and expenses appear reasonable.

The hourly rate requested by Kelley, Wolter & Scott is in excess of the standard hourly rate of between \$135.00 and \$175.00 billed by outside counsel hired by the City during this timeframe and which normally forms the basis for City Council approvals for reimbursement in these requests. The billing rate of \$90.00/hour for paralegal time is within the rates paid to outside counsel. The City has no standard rate related to investigator hourly rates. The approval of requests for reimbursement of attorney's fees and costs is entirely within the discretion of the City Council. This Committee and the City Council have the authority to determine the hourly rate to be reimbursed. There is City Council precedent for paying more than the City's standard rates. In 1999, the City Council approved a request for reimbursement from former Council Member Steve Minn at an hourly rate of \$158.00, when the standard rate was \$125.00; in 2002, the City Council approved a request for reimbursement from Council Member Goodman at an hourly rate of \$265.00; and in 2004, the City Council approved a request for reimbursement from Deputy Chief Lucy Gerold at an hourly rate of \$319.00.

Minnesota Statute §465.76 provides:

"If reimbursement is requested by the officer or employee, the governing body of a home rule charter or statutory city or county may, after consultation with its legal counsel, reimburse a city or county officer or employee for any costs and reasonable attorneys fees incurred by the person to defend charges of a criminal nature brought against the person that arose out of the reasonable and lawful performance of duties for the city or county, provided if less than

quorum of the governing body is disinterested, that such reimbursement shall be approved by a judge of the district court."

In 1984 the City Council appointed a criminal legal fees task force. The task force was directed to consider and recommend appropriate policies for the City to follow with respect to payment of legal fees. The task force examined the statutes, policies of other jurisdictions, the present policy, case law and alternative procedures. In a letter dated June 18, 1984, the task force ratified the existing system in which the City Council, after the advice of the City Attorney upon the reasonableness of the fees and the scope of employment issues, acts formally on a request for reimbursement. Prior to acting, the Council reviews each case with reference to the general principles as follows:

1. Nature of the inquiry or allegations by the investigating authority.
2. Whether the action arose out of the performance of the officer or employee's duties.
3. Whether he or she acted in good faith.
4. Whether there was malfeasance or willful or wanton neglect of duty.
5. Whether he or she was acting pursuant to directions from a superior or pursuant to law.
6. Whether the morale of other City officers and employees would be adversely affected by paying or not paying the claim.

The above criteria were developed under Minn. Sess. Laws 1969, Chapter 790, Section 2, granting the City of Minneapolis authority to reimburse legal fees to employees in criminal proceedings. Minn. Stat. §465.76 was enacted in 1984. The new section is fundamentally the same, except insofar as it adds the requirement that the incident arise from the "reasonable and lawful" performance of the duties of the employee. It had been the practice under Chapter 790 to approve reimbursement only upon acquittal or failure to charge the employee. Minn. Stat. §465.76 makes this practice mandatory.

We believe that the request for reimbursement of fees qualifies under the above criteria, with the exception of the fees incurred in connection with the complaint brought forward to the Ethical Practices Board.

Based on the foregoing, it is our recommendation that Chief Timothy Dolan be reimbursed for reasonable criminal defense fees pursuant to Minn. Stat. §465.76 for 265.00 hours at a rate to be determined by this Committee and the City Council, as well as, costs in the amount of \$332.35.