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City of Racine, Wisconsin  
COMMON COUNCIL

**AGENDA BRIEFING MEMORADUM (ABM)**

**COMMITTEE:** Finance and Personnel Committee    **LEGISLATION ITEM #:** 0414-19

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**AGENDA DATE:** April 22, 2019

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**DEPARTMENT:** City Attorney's Office

**Prepared By:** City Attorney Scott R. Letteney

**Reviewed By:** N/A

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**SUBJECT:** Communication from the City Attorney submitting the claim of Brinelle Nabors for reimbursement of attorney fees pursuant to Wisconsin Statute section 895.35(2)(b).

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**EXECUTIVE SUMMARY:** The City Attorney recommends approval of the claim of Brinelle Nabors for reimbursement of attorney fees pursuant to Wisconsin Statute section 895.35(2)(b).

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**BACKGROUND & ANALYSIS:** Officer Brinelle Nabors was charged with misconduct in public office, simple battery, and disorderly conduct stemming from Officer Nabors's actions on November 20, 2015, involving a Washington Park High School student. Officer Nabors pled Not Guilty to the charges. On January 11, 2019, following a four-day jury trial, Officer Nabors was acquitted on all counts, and the Honorable Circuit Court Judge Mark Nielsen entered judgment on each Not Guilty verdict. Officer Nabors was reinstated to full duty by the City of Racine Police Department. The attorney fees incurred defending Officer Nabors's criminal prosecution are owing.

Wisconsin Statute section 895.35(2)(b)1., states that "the city . . . shall reimburse a protective services officer for reasonable attorney fees incurred by the officer in connection with a criminal proceeding arising from the officer's conduct in the performance of official duties[.]" The statute defines a "protective services officer" to include a law enforcement officer. Wis. Stat. § 895.35(2)(a)2. Also, a "criminal proceeding" includes any criminal action or proceeding governed by Wisconsin Statute chapters 967 to 979, Wis. Stat. § 895.35(2)(a)1., which, collectively, is the criminal procedure code, Wis. Stat. § 967.01.

31 There are five enumerated exceptions to the legislature’s instruction that, if applicable to the officer’s  
32 conduct, would negate the City’s reimbursement obligation:

- 33 a. The officer is convicted of a crime.
- 34 b. The officer’s employment is terminated for cause.
- 35 c. The officer resigns for reasons other than retirement before the attorney fees are  
36 incurred.
- 37 d. The officer is demoted for reduced in rank.
- 38 e. The officer is suspended without pay for 10 or more working days.

39 Wis. Stat. § 895.35(2)(b)1.a.-e.

40 In this case, as a City of Racine Police Officer, Officer Nabors qualifies as a “protective services  
41 officer,” and the proceedings for Officer Nabors incurred attorney fees were criminal charges and  
42 related to his official duties. So, Officer Nabors’s situation falls squarely within section 895.35(2)(b).  
43 Additionally, none of the five enumerated exceptions apply to Officer Nabors, who was acquitted on all  
44 counts and fully reinstated. Therefore, Wisconsin Statute section 895.35(2) requires the City to  
45 reimburse Officer Nabors for reasonable attorney fees.

46 Officer Nabors hired Attorney Patrick Cafferty to represent him. Attorney Cafferty’s invoice is  
47 appended hereto. The total fee charged were \$22,800.00. In my experience and opinion, this is a  
48 reasonable and is, in fact, far lower than might ordinarily be charged for a case of this scope.

49 \_\_\_\_\_  
50 **BUDGETARY IMPACT:** Payment of \$22,800.00 will be made from Misc-Judgment & Claims, Account  
51 11202 53500.

52 \_\_\_\_\_  
53 **OPTIONS/ALTERNATIVES:** None. Under the circumstances, reimbursement under Wisconsin Statute  
54 section 895.35(2) is mandatory.

55 \_\_\_\_\_  
56 **RECOMMENDED ACTION:** Approve the claim of Brinelle Nabors for reimbursement of attorney fees in  
57 the amount of \$22,800.00.

58 \_\_\_\_\_  
59 **ATTACHMENT(S):** Patrick Cafferty Law Office, S.C., Invoice dated March 7, 2019.

**Patrick Cafferty Law Office, S.C.**

Attorneys at Law  
840 Lake Avenue, Suite 300  
Racine, WI 53403  
Phone: 262/632-5000  
Fax: 262/632-5686

PATRICK K. CAFFERTY  
Licensed in WI & IL

JILLIAN J. SCHEIDEGGER  
Licensed in WI

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March 7, 2019

Attorney Andrew Schauer  
WPPA  
Via E-Mail

RE: Racine Police Officer Brinelle Nabors  
Attorney Fees

To Whom It May Concern:

The total fee I charged and collected on Officer Brinelle Nabors case was \$22,800. I did not charge Officer Nabors hourly as I do with most of my clients. I charged flat fees for the stages of his case. I charged \$2,800 for the pre-charge phase of his case. This phase of the case involved the following:

**Pre-Charge Phase – 2015 to May, 2018**

5 Meetings with Brinelle  
14 Telephone conferences with Brinelle and others  
Reviewed Brinelle's Answers to 1<sup>st</sup> Set of Interrogatories  
14 Emails with Brinelle, Richard Toeller, Gunta Law Firm and Art Howell  
Reviewed deposition transcripts of Brinelle and others  
Countless telephone calls and in-person meetings with various DA's and ADA's

**\$2800.00 paid by Brinelle**

I charged \$10,000 for the pre-trial phase of his case. This phase of the case involved the following:

**Pre-Trial Phase – May, 2018 – December, 2018**

10 meetings with Brinelle  
10 telephone conferences with Brinelle  
55 emails to/from Brinelle and others  
2 telephone conferences with expert witness, Robert Willis  
Review of Charging Documents, Paper Discovery and Video  
Telephone conference with Jerome King  
Letter to PFC President Rogers  
Drafted and filed all motions  
In-person preparation with expert witness, Robert Willis in Milwaukee  
8 court appearances

**\$10,000.00 paid**

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March 7, 2019

I charged \$10,000 for the trial phase of his case. This phase of the case consisted of the following:

**Trial Phase – December, 2018 to January, 2019**

Trial Preparation  
3-1/2 days – Jury Trial  
Email to expert witness, Robert Willis

**\$10,000 paid**

Additionally, I paid \$1,000.00 to expert witness, Robert Willis. I did not seek reimbursement from Officer Nabors for that \$1,000.00 payment.

If there is any additional information you need from me regarding this bill, please do not hesitate to contact me.

Sincerely,



Patrick K. Cafferty

PKC/sam