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City of Racine, Wisconsin  
COMMON COUNCIL

**AGENDA BRIEFING MEMORADUM (ABM)**

**COMMITTEE:** Finance and Personnel Committee    **LEGISLATION ITEM #:** 0412-19

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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 requesting authorization to represent employees in the case of *Pinkins v. City of Racine, et al.*, U.S. District Court Eastern District of Wisconsin Case No. 2-19-CV-00368-PP.

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**EXECUTIVE SUMMARY:** The City Attorney seeks Common Council authorization to represent an employees in the case of *Pinkins v. City of Racine, et al.*, U.S. District Court Eastern District of Wisconsin Case No. 2-19-CV-00368-PP.

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**BACKGROUND & ANALYSIS:** The City of Racine and former Officer Joshua Diederich are named in this lawsuit. The Complaint alleges civil rights violations contrary the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 and violations of the Americans With Disabilities Act, 42 U.S.C. 12101. Broadly stated, the Complaint alleges that the former officer used excessive force when arresting the plaintiff and without due care for the plaintiff's medical condition, specifically diabetes, all allegedly occurring on October 6, 2016.

Pursuant to Wis. Stat. § 895.46, a municipality is required to defend or pay for the defense of any official or employee sued for acts taken in the conduct of official business and to indemnify such employee or official if any judgment is ordered. Pursuant to Wis. Stat. § 62.115, the common council of any city may by ordinance or resolution authorize the city attorney to defend actions brought against official or employee sued for acts taken in the conduct of official business.

30 It is more efficient and easier to control costs if the City Attorney's Office simply defends, or manages  
31 the defense of, lawsuits against City employees than to have an employee pay for her/his own defense  
32 and seek reimbursement.

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34 **BUDGETARY IMPACT:** After consulting with the City's liability insurer, the City Attorney's Office will  
35 likely retain outside attorneys to defend this action. Outside counsel will be paid from Atty-Professional  
36 Services, Account 11004 52100. Total fees are as yet to be determined.

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38 **OPTIONS/ALTERNATIVES:** Require employee or officers to pay for their own defense and seek  
39 reimbursement from the City.

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41 **RECOMMENDED ACTION:** To authorize the City Attorney to represent the employees in the case of  
42 *Pinkins v. City of Racine, et al.*, U.S. District Court Eastern District of Wisconsin Case No. 2-19-CV-00368-  
43 PP.

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45 **ATTACHMENT(S):** None