

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. XI. U
2/13/2024

TO: Mayor and City Council

FROM: Kenneth Jordan, Municipal Counselor

1. Joint Resolution with the Oklahoma City Municipal Facilities Authority authorizing the firm Collins, Zorn, & Wagner, P.C. to represent City employee Rebecca Fry in the case of *Stephanie Bobo v. City of Oklahoma City, et al.*, United States District Court, Case No. CIV-24-58-HE and/or Oklahoma County District Court Case No. CJ-2023-852;

AND/OR

2. Enter into executive session on advice of the Municipal Counselor to receive confidential communications from its attorney concerning the above pending litigation, as authorized by 25 O.S. (2023 Supp.) §307(B)(4), because disclosure would seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

On December 4, 2023, Plaintiff filed her Petition in the District Court of Oklahoma County against the City of Oklahoma City and OCPD Officer Rebecca Fry alleging Negligence, Assault and Battery, and False Arrest pursuant to 42 U.S.C. §1983 as a result of an incident with Oklahoma City Police Department on October 28, 2022 when officers were investigating a domestic violence call related to Plaintiff's son. At the scene, Plaintiff was giving an Oklahoma City municipal citation for Interfering with Official Process – Obstruction and a citation for no state driver's license in possession.

Because of the §1983 civil rights allegation in the Petition, on January 18, 2024, the City removed the lawsuit to the United States District Court for the Western District of Oklahoma. Upon receiving notice of removal of the lawsuit to federal court, Plaintiff filed a Motion to Remand the lawsuit back to Oklahoma County District Court, stating that the civil rights allegation was no longer being pursued. The parties are waiting for the remand decision by United States District Judge Heaton.

Oklahoma City employee Officer Rebecca Fry has requested that the firm of Collins, Zorn & Wagner, P.C. represent and defend her in this lawsuit. The facts and documents available at this time indicate the defendant officer was acting in good faith and within the course and scope of her employment during all times of the events set forth in the above-styled lawsuit. It is the recommendation of this office that outside counsel be retained to represent the municipal employee and that this representation be at the expense of the City so long as such representation seems appropriate to the Mayor and Council subject to the requirements of 51 Okla. Stat. §151, *et seq.*, 11 Okla. Stat. §23-101, *et seq.*, and the applicable case law, because there is a potential of a conflict of interest between the City and its employee if the Plaintiff's allegations are true.

Title 51 Section 162 of the Oklahoma Statutes requires:

A. [A]ny political subdivision, subject to the procedure requirements imposed by this section, other applicable statute, ordinance, resolution or written policy, shall:

1. Provide a defense for any employee . . . when liability is sought for any violation of property rights or any rights, privileges or immunities secured by the constitution or laws of the United States when alleged to have been committed by the employee while acting within the scope of employment;

Title 11, Section 23-101 states:

...if an action is brought against a municipal employee in any civil action or special proceeding in the courts of this state or of the United States by reason of any act done or omitted in good faith in the course of employment, the governing body of the municipality shall direct the municipal attorney or other designated legal counsel to appear and defend the action or proceeding on the behalf of the employee in accordance with the provisions of Section 11-23-102 of this title.

Further, Article 26 of the Collective Bargaining Agreement between the Oklahoma City Police Department and the Fraternal Order of Police, Lodge 123 states:

All police officers who are sued for violation of constitutional rights while acting in the capacity of a police officer in which they are individually named as Defendants and punitive damages are sought shall have the right to representation by outside counsel. The officer shall be represented by private counsel who is approved by FOP Lodge 123 and the City Council as having expertise in the defense of police officers in civil rights actions. The City agrees to pay the reasonable fees and costs for said services as set forth in the contract between the City and outside counsel and pursuant to 11 O.S § 23-101.

It is the recommendation of this office that outside counsel be retained to represent employee Rebecca Fry, and that this representation be at the expense of the City subject to the requirements of 51 Okla. Stat. §151, *et seq.*, 11 Okla. Stat. §23-101, *et seq.*, and applicable case law. If additional discussion is necessary, it is the recommendation of the Municipal Counselor that the Mayor and Council enter executive session to discuss the ongoing litigation.

Source of Funding: Comprehensive Retainer Agreement between City and CZW