

REQUEST TO ENTER INTO EXECUTIVE  
SESSION - FAILED

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

Council Agenda  
Item No. XI. T  
6/4/2024

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 employees Rebecca Fry and Robert Burton in the case of *Tonya Johnson v. Breanna Hurd, et al.*, Oklahoma County District Court Case No. CJ-2024-965;

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 February 13, 2024, Plaintiff filed her pro se Original Petition in the District Court of Oklahoma County against Breanna Racole Hurd and Kim Bruner-Ringo, alleging Wrongful Institution of Civil Proceedings and Abuse of Process, Malicious Prosecution, Libel and Slander. This lawsuit stemmed from a family incident at a funeral on February 13, 2023. On April 25, 2024, Plaintiff filed her pro se Amended Petition, adding OCPD Officers Rebecca Fry and Robert Burton as defendants. Plaintiff's Amended Petition has eight causes of action against all defendants, and includes allegations against Detective Fry and M.Sgt. Burton for Malicious Prosecution (two counts); Libel and Slander; Conspiracy; False Imprisonment; Intentional Infliction of Emotional Distress; Negligence; and Punitive Damages. The incident occurred on February 13, 2023, when Plaintiff, along with other family members, attended her father's funeral at Temple and Sons Funeral Home. A disagreement occurred, OCPD was called, and Det. Fry and M.Sgt. Burton responded. Defendant Hurd signed a citation for Assault and Battery against Plaintiff, but Plaintiff was not arrested. Because the signed citation was an Oklahoma City Municipal Court jury division charge of Assault and Battery, it was reviewed by the Municipal Counselor's Office and no charges were filed against Plaintiff related to the altercation.

Oklahoma City employees Detective Rebecca Fry and M.Sgt. Robert Burton have requested that the firm of Collins, Zorn & Wagner, P.C. represent and defend them in this lawsuit. The facts and documents available at this time indicate the defendant officers were acting in good faith and within the course and scope of their 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 employees 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 employees 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 employees Rebecca Fry and Robert Burton, 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

**Review:**

Municipal Counselor's Office

**Recommendation:** Joint Resolution be adopted and/or Enter into Executive Session.