

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

Council Agenda
Item No. XI. V
8/29/2023

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 Michael Callaway, in the case of *Luis Maldonado v. David Prater, et al.*, United States District Court, Case No. CIV-23-675-D;

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. (2022 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 August 1, 2023, Plaintiff filed his Complaint in United States District Court, Western District of Oklahoma against City of Oklahoma City employee Michael Callaway alleging this officer violated his civil rights under 42 U.S.C. §1983 by false arrest, malicious prosecution, unreasonable seizure, and cruel and unusual punishment. Mr. Maldonado was a former Oklahoma City Police Officer who was terminated for domestic abuse, which led to two separate felony cases being filed against him: CF-2019-3953 (Kidnapping; Threatening an Act of Violence; Domestic Abuse; Forcible Oral Sodomy; Child Neglect - Mr. Maldonado was acquitted at a jury trial) and CF-2021-5168 (Rape in the First Degree; Domestic Abuse by Strangulation; - charges were dismissed by the Oklahoma County District Attorney). Mr. Callaway was a detective assigned to investigate charges against Plaintiff Maldonado.

This employee has requested that the firm of Collins, Zorn & Wagner, P.C. represent and defend him in this lawsuit. The facts and documents available at this time indicate the defendant officer as acting in good faith and within the course and scope of his 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 Detective Michael Callaway, 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.

Review:

Municipal Counselor's Office

Recommendation: Joint Resolution be adopted and/or Executive Session be held.