

October 15, 2008

**TO THE MEMBERS OF THE BROWN  
COUNTY BOARD OF SUPERVISORS**

Ladies and Gentlemen:

The EXECUTIVE COMMITTEE met in special session on September 16, 2008 and recommends the following motions:

1. Review and possible Approval of Unpaid Bills for Contract Legal Services for June, July and August 2008.
  - a) To not pay the bills from Attorney Kalny and Centofanti Phillips, S.C. in relation to the County Executive Special Counsel bills until such time as Attorney Kalny can show these services were necessary for the functioning of County Government and refer to Board Attorney, Fred Mohr, for review.
  - b) Refer to Corporation Counsel to draft a policy whereby Administration has to go to the Executive Committee and the County Board to hire outside counsel for special needs.

Approved by:

\_\_\_\_\_  
COUNTY EXECUTIVE

\_\_\_\_\_  
Date

**PROCEEDINGS OF THE BROWN COUNTY**  
**EXECUTIVE COMMITTEE**



Pursuant to Section 18.94 Wis. Stats., a special meeting of the **Brown County Executive Committee** was held on Tuesday, September 16, 2008 @ 5:30 p.m. in Room 200, Northern Building, 305 E. Walnut Street, Green Bay, Wisconsin

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**Present:** Mary Scray, Guy Zima, Tom Lund, Bernie Erickson, Andy Nicholson, John Vander Leest, Patrick Evans.

**Excused:**

**Also Present:** Supervisors De Wane, Krueger, La Violette. Executive Hinz, Fred Mohr, Don Vanderkelen, Sara Perrizo, Debbie Klarkowski, News Media.

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1. **CALL MEETING TO ORDER:**

The meeting was called to order by Chair Scray at 5:32 p.m.

2. **APPROVE/MODIFY AGENDA:**

**A MOTION WAS MADE BY SUPERVISOR LUND AND SECONDED BY SUPERVISOR EVANS TO APPROVE. Vote taken. MOTION CARRIED UNANIMOUSLY.**

3. **REVIEW AND POSSIBLE APPROVAL OF UNPAID BILLS FOR CONTRACT LEGAL SERVICES FOR JUNE, JULY AND AUGUST 2008. (BILLS PREVIOUSLY PRESENTED TO COMMITTEE MEMBERS.)**

Supervisors Mary Scray & Guy Zima called this meeting because they decided to look at how much legal services were being spent in Brown County. Zima suspected there were a large number of bills, however, there were more bills than he originally thought. Their approach was to try to identify the total legal expenses. The County Board approved hiring an attorney on a retention basis for a monthly fee, and it was their hope that over time, a savings would take place. Now they are facing the fact that there are ongoing costs that cannot be controlled. Zima & former Corporation Counsel, Mark Schroeder, discussed doing an analysis of the department to try to decide whether any of the outside legal services could be handled in house. In review of the bills, Zima felt most were for routine matters and should be done in house by Corporation Counsel. He believed it is up to the County Board to make the determination in cooperation with the Human Resources department and Corporation Counsel when outside legal counsel should be consulted. And further, in order to put a handle on it, the Executive Committee should ask Board Attorney, Fred Mohr, to put together a process by which outside legal services, services beyond routine, should be handled. On those rare occasions where special need cases come forward, they should not be

contracted for outside legal counsel without approval of the Executive Committee. The funds for legal expenses, at budget time, should be segregated in a contingency fund.

A lengthy discussion ensued regarding County Executive Special Counsel fees totaling \$7,158. Zima opined that strategizing on how to put a veto does not qualify for an outside attorney. He felt the County Executive special counsel bills provided by Jim Kalny and Mr. Philips should be referred to Board Attorney, Fred Mohr, to determine what bills are considered personal and political in nature and what services are necessary for the function of county government. In review of the bills in regard to Supervisor Julie Knier, Zima felt this was in the personal category and Kalny should be sending the bill to Knier and not to Brown County. Zima related a scenario where former chairman, Ken Simons, asked for an outside opinion and had to pay for it himself. When you seek personal legal advice, you cannot turn around and send it to Brown County for payment. Zima also related a scenario that occurred over ten years ago when, at that time, the County Board Chair sought fit to remove him from the County Board. Zima hired an attorney, the County hired two attorneys, one to represent the County Board Chair and one to represent Brown County to make the case before a Judge. Zima asked for his bills to be paid but was turned down by the County Board.

Onto another bill, Zima provided a handout (attached) from Davis & Keulthau legal bills for a total amount of \$123,289.06. According to Zima, this is Jim Kalny's law firm and he was County Executive Tom Hinz's campaign treasurer for Hinz's election. Zima felt it was totally out of bounds for Hinz to use Kalny and then to tell him to send the bill to Brown County.

County Executive, Tom Hinz, questioned Zima as to how he was using Jim Kalny on a personal basis and felt Zima was making assumptions. At the time Jim Kalny was being requested for attorney opinions, there was no Corporation Counsel available. Hinz agreed that about 90% of the cases should be handled in house and he does not like going for outside attorney opinions. He felt the former Corporation Counsel went outside too much for opinions, when he could have represented Brown County. Some outside attorney fees are the Termination of Parental Rights (TPF). There is a plan in place to have these done and other cases necessary to go out of house because of that particular expertise. Hinz believed that if Brown County had a Corporation Counsel in house that person could differentiate what could be handled in house or out of house. Right now there is no Corporation Counsel due to Mark Schroeder's resignation on September 12, 2008. Hinz countered that he got to know Kalny while he was Sheriff and at the time, Jim Kalny worked for Human Resources, prior to Hinz taking his position as County Executive in April 2007. Kalny

negotiated contracts and he & Kalny worked on waiver issues. Kalny became Hinz's Treasurer in his campaign but that was the extent of it.

Zima wanted it noted for the record that Labor Negotiator, Don Vanderkelen stated that Human Resources Manager, Debbie Klarkowski, was told by Executive Hinz to instruct Vanderkelen to use Jim Kalny and Fred Mohr for the cases referred to Kalny.

With regard to the bills accrued by Supervisor Julie Knier, Supervisor Lund had an issue with the fees from the correspondence between Supervisor Knier and Attorney Kalny. He questioned why this supervisor had access to a lawyer. He is unaware if it is a violation, but now there is a large bill that needs to be paid. When Lund was Board Chair, he got the County Board's approval to seek an outside legal opinion. If there was a time when a Board member was under investigation over something from a citizen, then they would have the right to outside legal counsel with the board's approval.

Chair Scray responded that it is something that can be addressed with the County Executive and Attorney Kalny. Scray stated that it was her assumption that Supervisor Knier didn't presume she was going to be billed for this discussion with Attorney Kalny.

Supervisor Evans gave a scenario where former Corporation Counsel, Ken Bukowski, leveled charges against some of the supervisors that he alleged were having secret meetings in regard to the budget. Evans went to his personal attorney and had him write an opinion regarding this situation. He had to pay that bill and did not submit it to Brown County. He views this situation in a similar way and thought that maybe Supervisor Knier may not have understood that she would be charged. In his opinion, he felt the bill should be her responsibility, and it should be brought to her attention by the Board Chairman. With regards to the rest of the bills, he would agree to pay the bills listed "review" and "presentation of fact" but felt the ones listed as "political advice" should not have to be paid by the tax payers of Brown County. There needs to be some precedence or a message sent that some of the invoices need to be reviewed by the County Board Chair and Vice Chair and not paid by the tax payers. Evans suggested that after the research is done by Fred Mohr, if he felt the need to invite Jim Kalny to the County Board meeting, he should do so for further clarification.

**A MOTION WAS MADE BY SUPERVISOR ZIMA AND SECONDED BY SUPERVISOR NICHOLSON TO ASK THAT THE COUNTY EXECUTIVE SPECIAL COUNSEL BILLS PROVIDED BY ATTORNEY KALNY AND ATTORNEY PHILLIPS BE REFERRED TO BOARD ATTORNEY, FRED MOHR, TO DETERMINE WHAT BILLS ARE CONSIDERED PERSONAL**

**AND POLITICAL NATURE AND WHAT ARE SERVICES NECESSARY FOR THE FUNCTION OF COUNTY GOVERNMENT. No vote taken.**

*Supervisor Vander Leest arrived at 5:46 p.m*

Supervisors Lund, Vander Leest & Erickson were in support of Zima's motion. However, Vander Leest felt they needed to develop a policy for the County Executive and a policy on how the County Board would use outside legal counsel.

Supervisor Krueger felt that in his 14 years on the County Board that he had the right to go to any private attorney and feels it is any supervisor's right to go to Corporation Counsel for an opinion. In due respect, in his opinion, he felt Supervisor Zima was spurring right on the edge of liability because he had made assumptions without having the information and let someone justify it before he came forward with these issues.

County Board Attorney, Fred Mohr, stated that he felt the items that indicate that Supervisor Knier had contact with Mr. Kalny should be questioned. There is nothing in the County Code that authorizes a supervisor individually to incur an expense on behalf of the County. The County Board Vice Chair, in the Board Chair's absence, does have some limited discretion. According to Mohr, Supervisor Knier called him several times over the course of the month and a few of those times were in regard to an ordinance she had proposed that the Executive Committee had been considering in which the committee had directed him to speak with her. Those would be incurred as a result of the committee's action. The Executive Committee and the County Board had in his retainer an agreement that if an individual supervisor calls him, he is not allowed to bill. Through his contract, the Chairs of the committees are instructed that they may call him.

*Supervisor Evans was excused at 6:13 p.m.*

Supervisor La Violette questioned if there are any policies currently in place that address the issue of asking for outside counsel. She felt that the County Board and the County Executive are concerned with the legal bills. She questioned that, in the absence of Corporation Counsel, does the County Executive have the authority to seek outside legal counsel because there are legal funds in the Executive's budget.

Mohr responded that he was unaware of any policies in place.

*Supervisor Nicholson was excused at 6:23 p.m.*

Labor Negotiator Don Vanderkelen explained that historically, 1)

Corporation counsel has always hired outside counsel; and 2) when former Corporation Counsel, John Jacques, left, the County Board appointed an interim Corporation Counsel so the County has never been without a counsel of some sort.

Supervisor Erickson stated that he would opt to look at budgeting for 2009 an additional Assistant Corporation Counsel designated specifically for particular needs. He would like to see outside legal fees approved by the Executive Committee and would be open to hiring someone on a retainer basis as well.

Chair Scray stated there are no exact policies as to what they should be doing. Whether there was ill intent or not on these bills attached to our agenda, she believed the Board needed to keep an eye on the bills and get control of them. She hoped that Mohr knew that in representing the County Board, he would know not to reply to a single supervisor. With regard to the fees accrued by Supervisor Knier, according to what she has learned in this, she would like Jim Kalny to consider taking the bill back and not charge the County.

**A MOTION WAS MADE BY SUPERVISOR ZIMA AND SECONDED BY SUPERVISOR LUND TO NOT PAY THE BILLS FROM ATTORNEY KALNY AND CENTOFANTI PHILLIPS, S.C. IN RELATION TO THE COUNTY EXECUTIVE SPECIAL COUNSEL BILLS UNTIL SUCH TIME AS ATTORNEY KALNY CAN SHOW THESE SERVICES WERE NECESSARY FOR THE FUNCTIONING OF COUNTY GOVERNMENT AND REFER TO BOARD ATTORNEY FRED MOHR FOR REVIEW. Vote taken. MOTION CARRIED UNANIMOUSLY.**

**A MOTION WAS MADE BY SUPERVISOR ZIMA AND SECONDED BY SUPERVISOR LUND TO REFER TO CORPORATION COUNSEL TO DRAFT A POLICY WHEREBY ADMINISTRATION HAS TO GO TO THE EXECUTIVE COMMITTEE AND THE COUNTY BOARD TO HIRE OUTSIDE COUNSEL FOR SPECIAL NEEDS. Vote taken. MOTION CARRIED UNANIMOUSLY.**

4. SUCH OTHER MATTERS AS AUTHORIZED BY LAW. None.

**Motion made by Supervisor Vander Leest and seconded by Supervisor Erickson to adjourn at 6:56 p.m. MOTION APPROVED UNANIMOUSLY**

Respectfully submitted,

Alicia A. Loehlein  
Recording Secretary

111 East Kilbourn, Suite 1400  
Milwaukee, WI 53202-6613  
414-276-0200

BROWN COUNTY  
\*PERSONAL & CONFIDENTIAL\*  
ATTN: MS. DEBORAH KLARKOWSKI, ANALYST  
305 E. WALNUT STREET  
P.O. BOX 23600  
GREEN BAY, WI 54305-3600

August 25, 2008  
Invoice 297487  
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For Services Through July 31, 2008

Our Matter # 18852.04850

COUNTY EXECUTIVE SPECIAL COUNSEL

**Comment:** Review of veto message and other documents 3; discussion with Exec 8; discussion with Ms. Kneir 6; began outlining research and collecting prior research and doing additional research and putting it in outline form 1.9

7/10/08 Review of documents and discussion of strategy with County Executive. Review of issues with Ms. Kneir; collection of research on executive powers; meeting with Executive.

James M. Kalny 3.60 hrs. 215.00/hr \$ 774.00

7/11/08 Review of the AGs opinions; discussion with Ms. Kneir; e-mail to Ms. Kneir with research; further research on Task report.

James M. Kalny 2.40 hrs. 215.00/hr \$ 516.00

**Comment:** Read through Ag's opinions 7; Conversation with Ms. Kneir, 5; review of leg histories and Trask report 1.2

7/15/08 Discussion of legal precedent with Ms. Kneir.

James M. Kalny 1.20 hrs. 215.00/hr \$ 258.00

**Comment:** conversation was about 9, I also reviewed a AGs opinion she had that I had not read.

7/15/08 Discussion with County Exec and staff; completed Board statement; review of Phillips opinion.

James M. Kalny 1.20 hrs. 215.00/hr \$ 258.00

**Comment:** discussions (there was more than one) 6; completed statement for board 3; review of Phillips opinion 3

7/16/08 Review of Phillips opinion; review of Mohr opinion; review of Phillips response; update of statement to board; several conversations with Executive; attendance at meeting.

James M. Kalny 4.00 hrs. 215.00/hr \$ 860.00

**Comment:** Looked at authority cited in Phillips opinion 3; reviewed Fred's opinion and reviewed his authority 8; updated statement 4; Discussed matter with Exec 5; attended meeting

7/25/08 Draft letter to AG and response to e-mail.

James M. Kalny 1.20 hrs. 215.00/hr \$ 258.00

**Comment:** Reviewed a draft 2; drafted alternative 5; email explaining 5

PAYMENT OF THIS INVOICE IS DUE WITHIN 30 DAYS  
PLEASE MAKE CHECKS PAYABLE TO DAVIS & KUELTHAU, S.C.  
THANK YOU.

111 East Kilbourn, Suite 1400  
Milwaukee, WI 53202-6613  
414-276-0200

BROWN COUNTY  
\*PERSONAL & CONFIDENTIAL\*  
ATTN: MS. DEBORAH KLARKOWSKI, ANALYST  
305 E. WALNUT STREET  
P.O. BOX 23600  
GREEN BAY, WI 54305-3600

August 25, 2008  
Invoice 297487  
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Total Fees for Professional Services..... \$ 2,924.00

Totals for This Matter

Fees for Professional Services ..... 2,924.00  
NET CURRENT BILLING FOR THIS MATTER ..... 2,924.00

PAYMENT OF THIS INVOICE IS DUE WITHIN 30 DAYS  
PLEASE MAKE CHECKS PAYABLE TO DAVIS & KUELTHAU, S.C.  
THANK YOU.



To: County Board Chair Zima

From: Sara Perrizo, Internal Auditor

Re: Davis & Keulthau legal bills

Date: September 15, 2008

Per your request, below is the total legal bills incurred by Brown County during 2007 and through July 2008.

2007	2008	Total
<u>30,760.20</u>	<u>92,528.86</u>	<u>123,289.06</u>