

**RESOLUTION NO. RS2018-1394** (VERCHER) – This resolution would authorize the Department of Law to settle the claims of Andrea Miller against a former police officer for the Metropolitan Nashville Police Department in the amount of \$50,000 and reasonable attorneys' fees not to exceed \$80,000.

Andrea Miller was arrested on August 31, 2011. She was driving home from work at approximately midnight when an MNPD officer observed her. The officer alleges Ms. Miller ran a stop sign. He activated his blue lights to initiate a traffic stop. Both parties agree that Ms. Miller continued to her driveway instead of pulling over. But the officer reported that Ms. Miller accelerated away at a high rate of speed, while Ms. Miller states that she proceeded to her home safely and within the speed limit. In her driveway, the officer pulled in behind her and Ms. Miller opened her car door. The officer asked why she did not stop and she did not respond. The officer ordered her out of the car and attempted to assist her out of the car. The officer alleges she jerked away from him, whereupon the officer handcuffed Ms. Miller and placed her in the back of his patrol car.

The officer searched her vehicle and drove Ms. Miller to the Criminal Justice Center. The officer charged Ms. Miller with Reckless Driving and Resisting a Stop and also issued a traffic citation for running a stop sign. The officer went before a night court commissioner via video conferencing. Based upon the officer's testimony and arrest warrants, the night court commissioner determined there was probable cause for Ms. Miller's arrest. In the arrest warrants, the officer confused the cross street for the stop sign that Ms. Miller was alleged to have run. In lieu of posting bond, she was eligible for the Sheriff's Office pre-trial release program. A preliminary hearing was held where a judge found probable cause for Ms. Miller's arrest and bound her over to the grand jury. The grand jury indicted Ms. Miller for Resisting a Stop, Reckless Driving and Evading Arrest by Motor Vehicle. Evading Arrest was not one of the original charges and was added by the district attorney.

The charges against Ms. Miller were ultimately dismissed because the district attorney did not believe he could establish guilt beyond a reasonable doubt. The district attorney believed he could not prove guilt beyond a reasonable doubt because of the discrepancy in the arrest warrants, which misstated the cross street. Ms. Miller appeared in court regarding the traffic ticket and was ordered by the judge to pay the ticket.

Ms. Miller filed a 42 U.S.C. § 1983 action against the officer alleging malicious prosecution in violation of the Fourth Amendment. She claims approximately \$7,000 in pecuniary damages with an undisclosed amount of damages for emotional distress. There are no liability caps on Section 1983 claims. There is a risk that a jury could award more to Ms. Miller than she claims and there is a possibility of punitive damages which are not tied to the damages claimed by Ms. Miller. If she prevails at trial, no matter the amount of the verdict, she would be entitled to attorneys' fees. The attorneys' fees through trial are estimated to be \$250,000.

The officer faces individual liability under a Section 1983 claim. The Metropolitan Government is authorized to indemnify employees only up to \$50,000 under Metro Code sec. 2.40.140; and the decision to indemnify is discretionary. A judgment against the officer, even for a nominal amount, would include an award of attorney's fees and potentially punitive damages, likely forcing the officer into bankruptcy (which would not necessarily insulate the officer from any judgment).

The Department of Law recommends settlement of this claim for \$50,000 and reasonable attorneys' fees not to exceed \$80,000.

No disciplinary action was taken against the officer because Ms. Miller never filed a complaint with the MNPd. The officer resigned from the MNPd in good standing.

*Fiscal Note: This \$130,000 settlement would be the second payment from the Judgments and Losses Fund in FY19 for a cumulative total of \$245,000. The fund balance would be \$2,638,633 after this payment.*