

## Dragging out cases drives costs higher

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ments is believed to be higher. A March 1989 newsletter distributed by UAW Local 2211, the union that represents most of the Law Department's attorneys, said "the number of such cases is distressingly high." It attributed the problem to a chronic shortage of attorneys in the department.

Besides dragging out litigation, the city's conduct drives up its legal costs, prevents plaintiffs from getting their day in court, and tarnishes the Law Department's reputation.

"I once put on the record that I was really ashamed to be a taxpayer of the city, considering how much disregard the Law Department was showing for the courts and for the practice of law," said Charles Farmer, who retired this year as a Wayne County Circuit Court judge.

City Corporation Counsel Donald Pailen did not respond to repeated requests for interviews about these cases and other aspects of the Law Department's operations.

But judges frequently express frustration with the city's lethargic response to court orders.

"Is this case ever going to get to trial?" Wayne County Circuit Court Judge Marianne Battani asked March 9 during the third hearing she conducted on the city's refusal to surrender records pertaining to the fatal shooting of Marvin Doyle, 18, of Detroit, by an off-duty police officer.

Doyle, an innocent bystander, was shot in the neck after Police Officer Ernest Gardner and Dorian Robinson got into an argument in the crowded parking lot of a McDonald's restaurant near Wyoming and Fenkell at 3 a.m., June 13, 1987.

The argument began when Gardner, off duty and out of uniform, tried to back out of the entrance of the restaurant while Robinson was trying to get in. Gardner flashed his gun, left and then returned, according to court records. Robinson opened fire, wounding Gardner in the thigh and abdomen.

When Robinson threw away his gun and started to flee, Gardner fired two shots at him, missing Robinson, but mortally wounding Doyle. Court records indicate that Gardner failed to identify himself as a police officer.

In a 1988 lawsuit, Doyle's family blamed the shooting on the city's failure to properly train and supervise Gardner.

"My client has now waited" three years "since his son was killed," attorney Leonard Miller told Battani in protesting the city's refusal to provide all the documents he requested, including Gardner's personnel file. "This is the third adjourned trial date, and I'm still not prepared because of defendant's lack of diligence on this."

The city attorney who handled the case seemed confused that Miller still had not received information vital to his case and blamed the oversight on a Law Department investigator, according to a transcript of the hearing.

"If your investigator, whoever you have working for you, can't come up with these things, unfortunately as the attorney you bear the responsibility for that," Battani told the city attorney.

Battani declared the city in default and sent the case to a jury to assess damages. Because of the default, the city could not contest Miller's version of the events that led to the shooting. The default judgment also meant the city could not tell the jury that Gardner had been wounded in the shoot-out.

Unaware of that potentially mitigating fact, the jury April 21 awarded Doyle's family \$765,000. The judgment will balloon when attorney fees, court costs and interest are added, Miller said, adding that the city probably will appeal. If it loses, additional interest and legal fees likely will cause the judgment to top \$1 million.

In that case, there were three court hearings in which the city had chances to avert a default.

In a case involving the sexual assault of a prisoner by a Detroit police officer, the city had four chances.

The 25-year-old Detroit woman said she was sexually assaulted on Oct. 2, 1982, by Police Officer William Kincer, 49, a turnkey in charge of the lockup of the 14th (Schaefer) Precinct.

The woman, jailed overnight on a shoplifting charge, said that she reported the assault to a supervisor while Kincer was on a lunch break, but that police made no attempt to investigate until mid-afternoon. She sued the city and Kincer in 1983.

Kincer, a 13-year veteran, was charged with third-degree criminal sexual conduct, convicted of gross indecency — a lesser offense — and sentenced to one to five years in prison.

Starting in November 1984, the woman's attorney, Julie Hurwitz, began asking the city for documents. But by the following September, all she had received was a copy of the Police Department's policy manual.

In July 1986 — after the city had failed to comply with four court orders to produce the records — Wayne County Circuit Court Judge Susan Bor-

## COURTING DISASTER



CRAIG PORTER/Detroit Free Press

### 'NEVER WAS THE SAME'

Elvira Wheeler helps her mother Jeanette Clark eat in the nursing home where Clark has lived since November. In 1986, a friend was pushing Clark in her wheelchair when a DOT bus hit them; Clark's friend, Bernice Smith, was killed and Clark suffered injuries including broken ribs and a broken shoulder. Smith's daughter and Clark sued the city, charging the driver was negligent. A witness said the driver was not watching where he was going. The city said the accident was Smith's fault. The driver sued the city and collected \$4,000 for lost wages for time he took off from work. In 1988, the city settled for \$325,000 — \$300,000 to Smith's estate and \$25,000 for Clark. Wheeler said her mother "never was the same" after the accident. Right: Wheeler lifts her mother to her bed.



man entered a default judgment against the city and scheduled a jury trial to set the damage award.

On the day of the trial, both sides settled the case for \$550,000, a figure Hurwitz said the city would not have considered if not for the default.

"The city kept ignoring the court orders," Hurwitz said. "I must have filed five or six default motions against the city. Finally, the judge had no choice but to grant it."

Even then, Hurwitz said, "the city still refused to turn over certain documents. The judge ordered the assistant corporation counsel assigned to the case to either show up in court with the documents or bring his toothbrush because Judge Borman was going to throw him in jail."

That never happened, but Hurwitz said: "The number of default judgments the City of Detroit has had entered against it is just outrageous. It just seems absolutely unacceptable for any law firm to be responsible for any default judgments."

Unlike Hurwitz's client, Ilene and Daniel Wohl didn't even receive a response from the Law Department when they sued the Detroit Police Department for alleged harassment that they said ultimately forced them to abandon their west side market.

In the 1988 lawsuit, Ilene Wohl said she was assaulted by officers from what was then the 6th (McGraw) Precinct during a drug raid at 1:15 p.m., April 17, 1986. No drugs were found and no charges were filed against the couple, according to court records.

Wohl said police had come to the

### POSSIBLE REMEDIES

Here are steps experts say the City of Detroit might consider to remedy some of the problems facing its Law Department:

- Hire more lawyers and backup staff to make caseloads more manageable and reduce employee turnover.
- Use lawsuits to identify potentially problem employees and problems that cause lawsuits.
- Use lawsuits to identify

employees and other problems giving rise to litigation.

- Do a better job of evaluating and settling lawsuits.
- Do a better job of complying with court orders to avert default judgments.

- Hire more risk managers and have them report to someone high in the city administration.
- Require the Law Department to provide more complete information to the City Council about lawsuits.

market daily, questioning and harassing her. On the day of the raid, Wohl said, officers kicked in the door and threw her against a booth, injuring her arm. She accused the officers of stealing money and beer and threatening to kill store employees unless she closed the market. They closed it that day and never returned.

Three months after the lawsuit was filed, the Wohls' attorney, Lauri Elias of Southfield, asked the court to enter a default judgment against the city because it had not answered the complaint — the first step in defending against any lawsuit.

Two months later, the city attorney who handled the case apologized to the court for the oversight. In a legal brief, the attorney said: "The pressures of counsel's volatile caseload and no charges were filed against the couple, certainly played some part in the confusion surrounding this file. But counsel realizes it is his sole responsibility to

maintain adequate caseload control. This was not done and has resulted in the default motion."

Wayne County Circuit Judge Michael Connor decided to give the city a break: He ordered the city to pay Elias \$750 for her trouble and to file an answer to the complaint.

But the city not only failed to file the paperwork, it failed to pay Elias \$750.

So, in October 1988, Connor entered a default judgment against the city and assessed damages totaling \$386,584. The city appealed the decision, but settled the case for \$320,000 in summer 1989.

Elias, a former city attorney, declined to discuss the case. But other plaintiff attorneys said they are continually frustrated by the city's delaying tactics and the numerous second chances judges give city lawyers.

## Case studies in expensive litigation

**Patricia and Eddie Reed Sr.**  
AMOUNT: \$602,000

**BACKGROUND:** The Reeds claimed that police officers Edward Frieger and Daniel McGinnis terrorized their eight children at their home in the 4600 block of Berkshire about noon, Sept. 7, 1985, while the parents were at work.

The officers went there to investigate a complaint involving the Reeds' dog. But the children, ages 8 to 14, wouldn't open the door because their parents had told them not to let anyone in. The officers tried unsuccessfully to climb in through windows.

According to court records, when a grandfather arrived, the officers followed him into the home, but retreated when one of the children got a rifle. They charged back in and grabbed a 13-year-old girl who was trying to put away the rifle. Neighbors said the officers hit, kicked and handcuffed the 13-year-old girl and took her to the 5th (Jefferson) Precinct. She later was acquitted of felonious assault. The family sued the city in 1986.

**OUTCOME:** In May 1988, circuit court mediators recommended a \$167,500 settlement, which the Reeds accepted and the city rejected. By June 1989 — after the city had failed repeatedly to file a legal response to the lawsuit on behalf of the officers — a judge declared the city in default and the case went to a jury on damages only. The jury awarded the Reeds \$380,000, not counting court costs, interest and attorney fees. The judge refused the city's request to set aside the verdict, which the city agreed to pay in February 1990 after the Reeds' attorney took steps to freeze the officers' assets. By then, the judgment had grown to \$602,000. The Law Department did not tell the City Council that it had defaulted.

**Larry McKinnon**

AMOUNT: \$81,677

**BACKGROUND:** McKinnon, then 16, of Detroit, said police beat him with fists and flashlights when they arrested him on a burglary charge at a friend's home on the northwest side about 3:45 p.m. Dec. 31, 1981.

In a 1984 lawsuit, McKinnon accused police of attacking him without provocation. He said he was hospitalized for injuries that included broken front teeth. He said the burglary charge was dropped.

In June 1985 — 15 months after the suit was filed — Wayne County Circuit Court Judge Claudia Morcom ordered the city to pay McKinnon's attorney \$100 for failing to surrender records in violation of court orders. She rejected McKinnon's request to declare the city in default, calling it "too severe and drastic."

Fourteen months later — in August 1986 — Morcom levied \$500 more and threatened to declare the city in default for failing to produce four officers for depositions. She carried out the threat one month later after the city failed to pay the \$500 and to produce the officers.

**OUTCOME:** In September 1986, Morcom entered a \$62,108 judgment against the city. The city appealed and lost, partly because it didn't file the required appellate briefs. In November 1988 and April 1989, the City Council approved a total of \$81,677 to pay the judgment, which had grown because of interest and attorney fees. The Law Department did not tell the City Council it lost the case by default.

**Raymond Welborne**

AMOUNT: \$56,553

**BACKGROUND:** Welborne, then 47, said he was denied a promotion to supervisor of the Housing Department's maintenance and operations division in June 1983 in violation of civil service rules.

Welborne sued the city for job discrimination in 1986, claiming the promotion was given to another man based on the man's "political activities" — not on merit. Welborne charged that when the preferred candidate flunked the civil service test, city officials voided the results and scheduled another test. The other candidate passed the second test and got the job. Welborne and four others passed the first exam.

**OUTCOME:** In May 1987, after the city's attorney failed to attend a pretrial conference, 36th District Court Judge Alex Allen Jr. declared the city in default and awarded Welborne \$50,422. Allen later agreed to set aside the damage award if the city paid Welborne \$250 for attorney fees within 14 days. When it didn't pay the attorney fees, the \$50,422 judgment was reinstated. In July 1989, one month after Welborne filed a lawsuit in Wayne County Circuit Court to enforce the two-year-old judgment, both sides agreed to settle the case for \$56,553. The Law Department did not tell the City Council that it lost by default.

"When you sue the City of Detroit there's always two sets of rules — the court rules you have to play by and the ones they have to play," said Southfield lawyer Fred Laucke.

"Maybe they're understaffed and overworked and maybe they don't have qualified people. But they rarely do anything in a timely fashion."

### Payment raises question

There is a footnote to the Granzotto case.

In April, the city violated yet another court order by failing to pay the judgment. So, in June, Granzotto went back to circuit court, asking that Braceful and Corporation Counsel Pailen be held in contempt of court.

Before the judge could rule on that request, the Law Department issued a \$392,994 check to pay the award — \$100,000 more than the city would have spent had it paid the judgment in 1988 and not appealed.

The Free Press could find no evidence that the City Council approved paying the judgment — a violation of the City Charter.

### AHEAD

Monday: One cop, 17 lawsuits, \$1.4 million.