



CAPCR Shout Out

Update: Monitoring the Ferguson Monitor's Consent Decree Bills

By
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"There is important work to be done on reforming policing in Ferguson. We cannot let ourselves be distracted from progress on this core work. But the taxpayers of Ferguson are entitled to make sure that their money is spent most productively, and they should expect a clear and transparent accounting of expenditures and the work accomplished as the process moves forward."

The billing records of the Ferguson Monitor, covering the period from August 2016 through March 2017, have become publicly available through a Sunshine Law request. Those records show a faster billing rate than anticipated.

Ferguson has so far paid \$350,000 for the Monitor's work from August through part of January. Yet-unpaid bills from January through March total more than \$250,000. Though this portion of the bill is expected to be substantially reduced before payment is made, the current total comes to a little more than \$603,000. This rate of billing has caused the Monitor, the City of Ferguson and the DOJ to devise a plan to better pace the costs of the consent decree so that the members of the Monitor team are paid regularly throughout the expected five-year process.

The Ferguson Monitor is assigned the role of overseeing the consent decree, making sure that the police and court reforms ordered by the Department of Justice are fully implemented. The Monitor is actually a team headed by Clark Ervin from the law firm of Squire, Patton, Boggs, and includes members with expertise in policing, municipal courts, data collection and analysis.

The Monitor was hired in late July 2016 with the stipulation that costs to the City would not exceed \$350,000 per year, with a total spending cap of \$1.25 million. Mr. Ervin stated even before being hired that he anticipated that the work involved in implementing the consent decree would likely exceed these caps and that a substantial part of the work would be done for free.

Monitor billing reached \$350,000 in early January, less than six months into the contract. However, there were differing interpretations as to whether the cap had been exceeded. Mr.

Ervin believed that caps were to be instituted on the basis of calendar years. He therefore believed that he could reach the first-year cap in December 2016 and then begin a new year of billing beginning January 2017. The DOJ and the City believed that spending was to be counted based on a “fiscal year” beginning with the hiring date of the Monitor and was to run from late July of each year to late July of the following year.

To resolve this difference, the parties reached the following compromise. This description of that compromise is based on interviews with both Mr. Ervin and the DOJ. Their interpretations were in substantial agreement, though some details are still being determined.

Yearly caps will be based on the fiscal year running from each July to the next. The first year of billing will not end till the end of July, 2017. The Monitor team is to comb through billing from January through March 2017 and reduce that billing to a considerable degree. Mr. Ervin has agreed to reduce all bills attributable to his individual work by 100%. The newly submitted bill will be paid from monies allocated to the 2017-2018 fiscal year. The money available to the Monitor team for that fiscal year will be reduced by that amount.

With this plan, all original caps on City spending will remain in force. All members of the Monitor team will work for free as much as necessary each year to guarantee that caps are not exceeded. This is the case for the remainder of this fiscal year. Mr. Ervin has agreed not to charge any money for his individual work during all of the 2017-2018 fiscal year as well. He plans to re-evaluate at that time how much of his remaining individual work will be for free.

At the time this article is being published, the terms of this agreement have been discussed verbally. They have not been committed to writing, though such a written contract is expected. It will also include a yearly schedule of expected work for the various Monitor team members, so that payments can be anticipated and equitably distributed amongst them.

The parties have also agreed to alter their work flow. Moving forward the DOJ and the City will work on the initial stages of policy documents and other work product, bringing in the Monitor only when drafts are closer to completion. This will cut down on Monitor time.

The billing records have been posted online with the hope that anyone interested will glean whatever information they contain. It is important to keep in mind that the January-March numbers will be revised. I hope to post them as well. The 2016 billing numbers may also be lowered slightly, though changes are not expected to be large.

All parties anticipated that spending would be weighted toward the early years of the consent decree timeframe, but the extent of billing and this new agreement raise some questions:

- 1) Even given the need for time-intensive start-up activities, has enough work been accomplished to justify the cost? I have solicited help from ArchCity Defenders, a local law firm, to analyze the bills submitted for August through December—essentially the first \$350,000--since they will be only slightly altered. This analysis should give us a better idea of the focus and extent of the work so far.

2) We have seen some work come through the City/DOJ/Monitor pipeline--a revised Civilian Review Board Ordinance, policies on recruitment and duty of candor—and we know that work is progressing on other policy fronts. But what percentage of this policy-writing phase remains to be done and what percentage of the overall work does this represent?

3) The community has expressed some disappointment with the nature and frequency of community interactions with the Monitor. Though there have been productive meetings and town halls, he has not come in town as often as promised nor been as aggressive about community outreach as was initially suggested. Given the added pressure to keep down costs and work for free, will the Monitor team be able to keep the visiting schedule Mr. Ervin has committed to, and will fewer team members participate in these visits?

4) Do we need to worry that the quality or pace of work might suffer due to the financial pressures, and what quality controls will all parties put in place to avoid this? There is important work to be done on reforming policing in Ferguson. We cannot let ourselves be distracted from progress on this core work. But the taxpayers of Ferguson are entitled to make sure that their money is spent most productively, and they should expect a clear and transparent accounting of expenditures and the work accomplished as the process moves forward. Why not create a page on the Monitor's website where monthly bills are posted and where the Monitor can summarize the month's achievements?