



**DATE:** April 24, 2019

**TO:** Colorado Springs City Council

**FROM:** City Attorney's Office

**SUBJECT:** *Kelvin Tivis v. City of Colorado Springs, et al.*  
Case No. 19-cv-00867-PAB-KMT

This memorandum is to apprise you of the facts alleged in the above-referenced case as you consider the claims made against the involved officers.

#### **NATURE OF THE CASE**

Plaintiff, Kelvin Tivis, has filed an action in the United States District Court for the District of Colorado against Officers Robert Comstock, Ronald Carter, Brian Makofske, Corey Hutchison asserting claims for excessive force, unlawful entry, unlawful seizure and violation of the Americans with Disabilities Act. Plaintiff also asserts a claim against the City of Colorado Springs based upon its alleged failure to train and supervise.

The complaint alleges that officers entered into Plaintiff's house without permission after Plaintiff contacted police. After attempting to persuade Plaintiff to go outside with officers for thirty minutes, Plaintiff alleges that officers "attacked" him and placed him on the ground. In order to subdue Plaintiff, the complaint alleges officers "applied knees, elbows and fists to [his] back, neck and wrists." Plaintiff alleges that he was also tased multiple times. Plaintiff claims that he was handcuffed too tightly. Plaintiff alleges that he was then transported to Memorial Hospital for treatment.

Plaintiff alleges that the Colorado Springs Police Department investigated the officers' use of force and found no misconduct. Plaintiff alleges that the finding reflects an unlawful policy of dealing with individuals who suffer from mental illness/ drug problems.

Plaintiff claims that the encounter left him with multiple injuries including permanent injuries to his wrists, shoulders and lower back. Plaintiff seeks compensatory and consequential damages, economic losses, punitive damages, attorney's fees and pre- and post- judgment interest.

#### **RECOMMENDATION**

The Civil Action Investigation Committee met on April 15, 2019 and has recommended that City Council authorize City representation for the named officers as required by the City Code, the Colorado Governmental Immunity Act and the Peace Officers Liability

Act. The officers were acting in the course and scope of their employment and in good faith during the incident. As usual, it is recommended that the City reserve the right not to pay any award of punitive damages.