



AGENDA

COMMITTEE OF THE WHOLE WORKSHOP BOARD OF COUNTY COMMISSIONERS

Board Chambers
Suite 100
Ernie Lee Magaha Government Building - First Floor
221 Palafox Place

May 8, 2014
9:00 a.m.

Notice: This meeting is televised live on ECTV and recorded for rebroadcast on the same channel. Refer to your cable provider's channel lineup to find ECTV.

1. Call to Order

(PLEASE TURN YOUR CELL PHONE TO THE SILENCE OR OFF SETTING.)
2. Was the meeting properly advertised?
3. Issues Concerning the Unnamed Storm of April 2014 (NO BACKUP PROVIDED)
(Larry M. Newsom, Interim County Administrator/John Dosh, Emergency Management Division Manager)
 - A. Board Discussion
 - B. Board Direction
4. Proposed County Policy - Legal Representation for Commissioners and County Employees
(Alison P. Rogers - 5 min)
 - A. Board Discussion
 - B. Board Direction
5. Adjourn

Committee of the Whole

3.

Meeting Date: 05/08/2014

Issue: Unnamed Storm of April 2014

From: Larry Newsom, Interim County Administrator

Information

Recommendation:

Issues Concerning the Unnamed Storm of April 2014 (NO BACKUP PROVIDED)

(Larry M. Newsom, Interim County Administrator/John Dosh, Emergency Management Division Manager)

A. Board Discussion

B. Board Direction

Committee of the Whole

4.

Meeting Date: 05/08/2014

Issue: Proposed County Policy - Legal Representation for Commissioners and County Employees

From: Alison Rogers, County Attorney

Information

Recommendation:

Proposed County Policy - Legal Representation for Commissioners and County Employees

(Alison P. Rogers - 5 min)

A. Board Discussion

B. Board Direction

Attachments

Draft Policy

Board of County Commissioners
Escambia County, Florida

Title: Legal Representation for Commissioners and County Employees

Date Adopted:

Effective Date:

Reference:

Policy Amended: New Policy

A. Purpose:

Commissioners, County employees, Board appointees and County agents should be entitled to some assurance that in the performance of a public service they will not be encumbered by the expense of defending a civil, criminal, ethics, administrative or professional licensing action predicated upon their official acts and reports and should not fear such expenses that may result from reprisals. Further, the Board of County Commissioners finds that it is necessary to encourage the continued participation in County government by alleviating the potential liability of persons having to expend their own funds for the payment of reasonable attorney's fees and costs when such persons are named in a criminal, civil, ethics, administrative or professional licensing action. In following this policy, the Board may only incur or reimburse reasonable attorney's fees and costs as allowed by Florida law.

B. Definitions:

"Costs" shall mean actual and verifiable costs incurred in the provision of a defense for the subject commissioner, employee, appointee or agent of the County. Any travel expenses shall be as provided in section 112.061, Florida Statutes.

"Reasonable attorney's fees" shall mean fees earned by an attorney and/or attorneys licensed to practice law in the State of Florida, based on the customary rate, whether a flat fee or per hour, charged in Escambia County, Florida, for similar work performed by attorneys within the County, but in no event to exceed \$250 per hour unless a higher amount is approved by the Board due to extraordinary circumstances.

"Successfully defend" or "prevail" shall apply to individual counts, charges and/or allegations, and shall mean dismissal, a finding of not guilty or a verdict of no liability in favor of the person covered herein as set forth below. In a civil case, a judgment of nominal damages or a judgment of 25% or less than a proposal for settlement served by the Commissioner or employee pursuant to Florida Statutes and the Florida Rules of Civil Procedure, which is entered against the Commissioner or employee may be considered as a successful defense or as prevailing as circumstances warrant. A failure to successfully defend or prevail against one or more counts, charges or allegations shall not necessarily affect the application of the policy to other counts, charges and/or allegations which were successfully defended or against which the

officer or employee prevailed.

C. Policy.

It is the Board's policy that for cases involving current and former County employees, Board appointees and County agents personally named in any civil, criminal, ethics, administrative or professional licensing action for any act within the scope of their duties and responsibilities, the County will prospectively provide legal representation or pay reasonable attorney's fees and costs if the procedures in this policy are followed and if allowed by Florida Law.

Cases involving current or former County Commissioners personally named in any civil, criminal, ethics, administrative or professional licensing case that arises out of and in connection with their scope of County function shall be addressed by the Board of County Commissioners on a case-by-case basis. Florida law shall be followed with regards to any payment or reimbursement of legal fees or prospective retention of legal representation. Any current or former County Commissioner personally named in a civil, criminal, ethics, administrative or professional licensing action and who desires the County pay for on an ongoing basis or reimburse legal fees shall follow the procedures set forth in this policy. For cases involving current or former County Commissioners, out of the Sunshine litigation strategy meetings set forth in section 286.011(8), Florida Statutes are discouraged but may be allowed by majority vote of the Board should circumstances warrant.

D. Procedures:

Any person who believes that he or she is allowed or entitled to payment or reimbursement of reasonable attorney's fees and costs or retention of legal representation shall, as a condition precedent to such payment, retention or reimbursement, notify the County through its County Attorney in writing within 10 days of their knowledge of a relevant action or within 10 days of retaining a private attorney, whichever is applicable. The request shall at a minimum set forth:

1. The name and current address of the person making the request;
2. A description of the entity conducting the investigation or proceeding;
3. The case number or file number of the investigation or proceeding, if known;
4. A description of each count, charge and/or allegation made or being investigated;
5. The date(s) that the alleged wrongful incidents are alleged to have occurred;
6. The person's office or position of employment with the County on the dates described in (5.) above;
7. The reasons why it is believed that the attorney's fees and costs should be paid by the County;
8. The name(s), address, and telephone number of the attorney(s) representing such person against the counts, charges, and/or allegations described in (4.) above, if applicable;
9. A description of the fee arrangement or agreement between the person and his or her attorney(s); the amount of attorney's fees and costs paid to the date of the written request for attorney's fees and costs for defense against the

counts, charges and/or allegations described in (4.) above; and the total balance due, if any, of all attorney's fees and costs that have been incurred in defense against the counts, charges, and/or allegations described in (4.) above; and

10. Such other information as the Board of County Commissioners and/or the County Attorney's Office may reasonably require.

E. Board Action.

The County Attorney shall review all requests provided pursuant to section D of this policy and within a reasonable time shall prepare and present an agenda item for consideration by the Board. In any case where the County Attorney believes the matter can be ethically, legally and expeditiously handled in-house, the recommendation shall so state. In all other instances, the County Attorney shall make a recommendation on the applicability of this policy to the request for retention of legal representation or payment or reimbursement of reasonable attorney's fees and costs.

For a civil action, the recommendation shall support payment, reimbursement or retention of legal counsel unless there has been a finding or it appears clear from the relevant materials that the person is personally liable, acted outside the scope of employment, or in bad faith, with malicious purpose or wanton disregard of human rights, safety or property pursuant to section 111.07, Florida Statutes.

For other actions the recommendation shall support payment, reimbursement or retention of legal counsel so long as it appears the alleged misconduct arose out of or in connection with the performance of their official duties and while serving a public purpose pursuant to Florida case law.

For a recommendation regarding a criminal charge for violation of Florida's Sunshine law, the recommendation shall reflect that Florida law specifically authorizes reimbursement of reasonable attorney's fees and costs upon acquittal pursuant to section 286.011(7), Florida Statutes.

The Board may:

1. Request additional relevant information from the applicant or County Attorney; or
2. Continue the request to a date and time certain; or
3. Take action upon the written request and determine if the attorney's fees and costs shall be reimbursed or paid, and if so, in what amount; or
4. Allow the County Attorney to represent the applicant or other counsel to be retained; or
5. Deny the request and make appropriate findings.

F. Agreement.

In any event where the County has prospectively provided legal representation or is paying reasonable attorney's fees and costs prior to disposition of an action or claim,

the Board may require the individual to execute an agreement with the County which shall require reimbursement to the County in the following circumstances:

1. In a civil action where the individual did not prevail and was found personally liable, to have acted outside the scope of employment, or in bad faith, with malicious purpose or wanton disregard of human rights, safety or property; or
2. In any other action where upon disposition of the case the Board of County Commissioners determined the alleged misconduct did not arise out of or in connection with their official duties or the individual was not serving a public purpose; or
3. In any case where prevailing Florida law would not allow the County to cover the expenses of the legal representation.

Regardless of whether an agreement is entered or not, the Board may authorize legal action to recoup expenses in cases where reimbursement is due to the County based on application of either this policy or Florida law.

G. Investigations and Grand Jury Investigations.

Florida law may not allow payment or reimbursement of reasonable attorney's fees and costs or retention of outside counsel in cases involving solely an investigation or a grand jury investigation. In the event a person subject to this policy believes they are entitled to relief, he or she may bring the request to the County Attorney, as set forth in this policy, and the County Attorney will review it and take a recommendation to the Board of County Commissioners in a timely fashion.