



# ADMINISTRATIVE POLICIES

<b>SECTION:</b> 200	<b>POLICY#:</b> 202
<b>TITLE:</b> Retention of Independent Legal Counsel	<b>R &amp; O #:</b> 96-65, 18-53
	<b>IMPLEMENTED BY PROCEDURE #:</b>
<b>SPONSORING DEPT/DIV:</b> County Administrative Office	
<b>ADOPTED:</b> 05/22/2018	<b>REVIEWED:</b>

**PURPOSE:** The purpose of this policy is to set forth the Board's intent and guidelines regarding the consideration of requests by officials and employees for the County to pay for legal representation in matters that arise from their official duties but are not covered under the Oregon Tort Claims Act (OTCA).

**APPLICABILITY:** This policy applies to officials and employees of Washington County not already represented by a labor association.

**DEFINITIONS:** Oregon Tort Claims Act (OTCA): Requires the County to provide County officials and employees with a legal defense in tort claims arising from the performance of their official duties.

**GENERAL POLICY:** It is within the Board's sole discretion to consider requests to pay for legal representation for County officials and employees involving circumstances arising from their official duties but not covered under the OTCA. It is in the public interest that County officials and employees be free of fear of personal financial hardship associated with such matters.

## **POLICY GUIDELINES:**

### 1. General Provisions

- a. Except as otherwise provided, nothing in this policy should be construed to entitle any County official or employee to a legal defense or representation, nor is it the intent of the Board in adopting this policy to pay for independent legal counsel for a County official or employee involving matters for which the County has established formal administrative procedures and processes, including but not limited to Article 5 (Conduct, Discipline and Appeals) and Article 10 (Non-Disciplinary Appeals Procedure) of the County Personnel Rules and Regulations,

and the County's Reporting of Improper Governmental Conduct policy (Administrative Policy #205).

- b. The Board shall in all cases, in the light of new or additional information, retain the right to revisit and alter any decision to pay for a defense or representation and, in so doing, seek reimbursement of any public monies expended and, if warranted, pursue disciplinary action through appropriate channels.

## 2. Sheriff's Office Provisions

- a. The County shall offer and pay for criminal defense legal services for all Sheriff's Office non-represented sworn supervisors involved in a use of force situation as soon as practical after the use of force event.
- b. The County may enter into contracts with criminal defense attorneys who will be available to all Sheriff's Office non-represented sworn supervisors in use of force situations. The Board may impose certain terms and conditions including, but not limited to, monetary and scope of work limits. In no event will the County's payment of expenses exceed what is determined by the Board to be reasonable and prudent.
- c. If the Board, in its sole discretion, determines that payment for criminal defense is not an appropriate use of county resources, it may stop paying for continued legal representation of the non-represented sworn supervisor. Examples could include, but are not limited to, non-duty use of force events, grand jury indictment, and other extraordinary circumstances. The County Administrative Officer, Sheriff and County Counsel shall consult with the Board prior to a decision to stop payment. The officer and the attorney for the officer shall be immediately notified in writing of the decision.

## 3. Approval Process

- a. Except as otherwise provided in Section 2, a request for the County to pay for legal representation must be submitted in writing to the County Administrator, who will consult with County Counsel and forward the request to the Board of Commissioners with or without a recommendation.
- b. Any such request must be submitted by the official or employee at the earliest opportunity and, preferably, prior to the employee or official making any arrangement for representation or incurring any cost or payment obligation.
- c. In considering a request, it shall not be construed that the Board of Commissioners has undertaken or is required to undertake more than a preliminary assessment. Where claims or charges against an official or employee are involved, the presumption is that such claims or charges are unfounded unless or until otherwise proven. Should it later appear that the official or employee misstated or failed to disclose facts which, if known, would have influenced a decision or, in the event that claims or charges are validated through subsequent review, the County shall be entitled to recover any public funds expended on that

person's behalf and to pursue discipline through established policies and procedures.

- d. If the Board pays for legal representation for an employee or official charged with violating a law, rule or regulation and such law, rule or regulation provides for payment of costs and/or attorney fees if the official or employee prevails, then the County shall be entitled to reimbursement of any costs and/or attorney fees incurred by the County.
- e. In the event the Board chooses to pay for representation, the Board may impose certain terms and conditions including, but not limited to, monetary and scope of work limits. In no event will the County's payment of expenses exceed what is determined by the Board to be reasonable and prudent. Unless expressly provided for otherwise, the official or employee shall be principally responsible for payment. A commitment to pay for legal representation pursuant to this policy may involve direct payment of costs, as incurred, or the Board may elect to commit only to reimbursement upon satisfying certain conditions, such as exoneration of any claims or charges made against the official or employee. The Board of Commissioners shall be the final decision maker in these matters.

4. County Representation

- a. In no event shall the Office of County Counsel provide primary representation to the official or employee. County Counsel may, however, provide information and assistance to the retained attorney as County Counsel deems consistent with the interests of the County and with the Code of Professional Responsibility governing attorneys.

5. Exceptions

- a. Exceptions may only be granted by the Washington County Board of Commissioners unless such authority has been delegated to the County Administrator.

6. Implementation:

- a. Elected officials and department directors are expected to be knowledgeable of, and shall be responsible for, implementing this policy within their respective departments. Observance of this policy is mandatory for all County employees and violation may result in disciplinary action (up to and including termination).

7. Periodic Review:

- a. This policy shall be reviewed by the County Administrative Office at least every three years, or more often if needed, and updated as necessary.