



## ADMINISTRATIVE PROCEDURES

<b>TITLE:</b> County Litigation Defense		<b>PROCEDURE #:</b>	212-A
<b>DEPT:</b> Legal Counsel		<b>PROGRAM:</b>	N/A
<b>EFFECTIVE DATE:</b>	7/08	<b>REVIEWED:</b>	<b>REVISED:</b> 09/18

**OBJECTIVE:** To establish procedures for employee relations, tort litigation, civil rights litigation and miscellaneous civil litigation defense.

**REFERENCE:** Policy #212

**POLICY STATEMENT:** The Marion County Office of Legal Counsel provides legal advice and representation to the Board of Commissioners, County Administration, the Sheriff's Office, and all other county departments and agencies on employment, contracts, litigation defense (torts), real estate taxes, and issues related to property, civil rights claims, and miscellaneous civil actions, and legal matters related to health care.

**APPLICABILITY:** All public officials, including county officers, employees or agents, irrespective of whether or not a person is compensated for services.

**PROCEDURES:**

1. Employee Relations
  - 1.1. All personnel disciplinary actions involving loss of pay or benefits, or termination of employment must be reviewed with the human resources (HR) manager prior to any actions being taken.
  - 1.2. All grievances filed at the department head level must be reviewed with the HR manager.
  - 1.3. All grievances filed with the Board of Commissioners must be reviewed with the HR manager and legal counsel.
  - 1.4. It is the responsibility of the HR manager and HR analysts to ensure that the personnel officer and legal counsel are informed of discipline that involves loss of pay or benefits or termination of employment.
  
2. Arbitration of Employee Relations Issues
  - 2.1. The elected official or department head will review the case and fully cooperate with the HR manager and HR analyst prior to the hearing before the arbitrator.
  - 2.2. Prior to the hearing, human resources will review the facts, policies and law concerning the case with the labor attorney or legal counsel.
  - 2.3. Any efforts at reasonable compromise or settlement, based upon the particular facts of the case, will be undertaken through the elected official or department head.
  - 2.4. If the arbitration involves an employee who has filed or threatened litigation against or has submitted a tort claim notice to the county, legal counsel and risk management will be included in the review.

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- 2.5. If the HR manager, after consultation and review, concludes that the case should not be arbitrated, this conclusion will be communicated to the elected official or department head.
- 2.6. If the elected official or department head requests a meeting, the meeting will be scheduled as soon as possible to discuss the recommendation.
- 2.7. The elected official or department head may request orally or in writing that the Board of Commissioners review the recommendation not to proceed with arbitration.
- 2.8. A meeting will be scheduled as soon as possible between the board, elected official or department head, HR manager, and labor attorney or legal counsel to review the case.
  - 2.8.1. The board will either approve or disapprove the recommendation not to proceed and so advise the elected official or department head.
- 2.9. If the elected official or department head wishes to proceed with arbitration, the elected official or department head has the right to do so.
  - 2.9.1. If there is an adverse decision, all costs, expenses and awards will be charged against the department's budget.

### **3. Tort Litigation**

- 3.1. Marion County is self-insured under the provision of the Oregon Tort Claims Act (OTCA) and maintains several additional insurance policies through its risk management division. Defense and indemnification of county officers, employees and agents is provided by Marion County pursuant to the OTCA.
- 3.2. Tort litigation and liability claims will be handled in the manner described by the Risk Management Program Rules.
- 3.3. Marion County Legal Counsel is responsible for defending the county when litigation has been filed or is expected to be filed.
  - 3.3.1. All county elected officials, appointed officers, employees and agents shall cooperate fully in the defense of the claims.
- 3.4. Any county elected official, appointed officer, employee or agent who is served with a copy of a court complaint or other legal process shall note or stamp the date received and immediately (within one business day) forward a copy of the document to legal counsel.
- 3.5. Once a tort claim notice has been received, all evidence related to the claims must be preserved.
  - 3.5.1. Documents, regardless of the manner in which they are stored, must be retained and may not be destroyed even if they have otherwise met the maximum records retention requirements of the Oregon Archiving rules.
  - 3.5.2. Legal counsel is responsible for notifying the appropriate department head or elected official of the duty to preserve records.
  - 3.5.3. The department head or elected official is responsible, in turn, for informing actual or probable custodians of records within the department of the duty to preserve records.

### **4. Civil Rights Litigation**

- 4.1. Civil rights litigation may arise under a number of state and federal laws and filed either in state or federal court, or before various state and federal administrative oversight agencies like the state Bureau of Labor and Industries (BOLI) or the federal Equal Employment Opportunities Commission (EEOC).

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- 4.2. Remedies sought for civil rights violations may include: liability claims (money damages), declaratory or injunctive relief, agency civil fines or penalties, attorney fees, and costs and expenses.
  - 4.3. Civil rights liability claims will be handled in the manner described by the Risk Management Program Rules.
  - 4.4. Some civil rights litigation seeking declaratory or injunctive relief only and all civil rights litigation filed with oversight agencies empowered to impose civil fines or penalties are excluded from coverage by the Insurance Fund.
    - 4.4.1. Legal counsel will work directly with the department on civil rights claims not covered by the Insurance Fund
  - 4.5. Marion County Legal Counsel is responsible for defending the county when civil rights litigation has been filed or is expected to be filed, either in court or before administrative agencies.
  - 4.6. All county elected officials, appointed officers, employees and agents shall cooperate fully in the defense of the claims.
  - 4.7. Any county elected official, appointed officer, employee or agent who is served with a copy of a court complaint, notice of an agency complaint, or other legal process shall note or stamp the date received and immediately (within one business day) forward a copy of the document to legal counsel.
    - 4.7.1. Once litigation has been filed, notice of claims and demand of payment is made, or notice of an administrative filing is received, whichever event occurs sooner, all evidence related to the claims must be preserved.
    - 4.7.2. Documents, regardless of the manner in which they are stored, must be retained and may not be destroyed even if they have otherwise met the maximum records retention requirements of the Oregon Archiving rules.
    - 4.7.3. Legal counsel is responsible for notifying the appropriate department head or elected official of the duty to preserve records.
    - 4.7.4. The department head or elected official is responsible, in turn, for informing actual or probable custodians of records within the department of the duty to preserve records.
5. Miscellaneous Civil Litigation
- 5.1. Miscellaneous civil litigation includes, but is not limited to: contract litigation, declaratory judgment actions, election law challenges, review of denial of concealed handgun permits, wage and hour complaints, writs of habeas corpus, writs of mandamus, and writs of review.
  - 5.2. Liability exposure to the county may include damages, opposing party attorney fees or the payment of costs and expenses.
  - 5.3. Marion County Legal Counsel will work directly with the department on miscellaneous civil litigation and administrative complaints.
    - 5.3.1. All county elected officials, appointed officers, employees and agents shall cooperate fully in the defense of claims.
  - 5.4. Any county elected official, appointed officer, employee or agent who is served with a copy of a court complaint or other pleading, notice of an agency complaint, or other legal process shall note or stamp the date received and immediately (within one business day) forward a copy of the document to legal counsel.
  - 5.5. Once litigation has been filed, notice of claims and demand of payment is made, or notice of an administrative filing is received, whichever event occurs sooner, all evidence related to the claims must be preserved.

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- 5.5.1. Documents, regardless of the manner in which they are stored, must be retained and may not be destroyed even if they have otherwise met the maximum records retention requirements of the Oregon Archiving rules.
- 5.5.2. Legal counsel is responsible for notifying the appropriate department head or elected official of the duty to preserve records.
- 5.5.3. The department head or elected official is responsible, in turn, for informing actual or probable custodians of records within the department of the duty to preserve records.