TITLE: County Litigation Defense		**PROCEDURE #:**	212-A
DEPT: Legal Counsel		**PROGRAM:**	N/A
EFFECTIVE DATE: 7/08	**REVIEWED:**	**REVISED:**	10/25

OBJECTIVE: To establish legal representation procedures for employee relations, tort litigation, civil rights litigation, miscellaneous civil litigation, administrative actions, and other matters.

REFERENCE: Policy #212

POLICY STATEMENT: The Marion County Office of Legal Counsel provides legal advice and representation to the Board of Commissioners, County Administration, and all other county departments and officials on legal matters related to the county.

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 Chief Administrative Officer or County Personnel Officer (collectively CPO) prior to any actions being taken.
   - 1.2. All grievances filed at the department head level must be reviewed with the CPO.
   - 1.3. All grievances filed with the Board of Commissioners must be reviewed with the CPO and legal counsel.
   - 1.4. It is the responsibility of the CPO 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 CPO 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 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.

2.5. If the CPO, 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, CPO, and 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.

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 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. If the responsible person is unsure about the scope of records that should be retained, they should contact legal counsel for assistance.
3.6. Marion County shall defend, save harmless and indemnify any of its officers, employees and agents, whether elective or appointive, and former officers, employees, and agents, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission allegedly occurring in the performance of duty while a county officer, employee or agent, except in cases of malfeasance in office or willful or wanton neglect of duty. If Oregon law (ORS 30.285 or successor or similar statute) is amended, the scope of defense and indemnification shall automatically adjust to include Oregon law requirements and Legal Counsel shall suggest appropriate policy updates.
3.7. Tort is defined as the breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy. ORS 30.260. This includes any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the

performance of duty. ORS 30.285(1). If Oregon law (ORS 30.260, ORS 30.285, or successor or similar statutes) is amended, the definition of tort shall automatically adjust to include Oregon law requirements and Legal Counsel shall suggest appropriate policy updates.

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).
   - 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, punitive damages, 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 or 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. General Policies, Miscellaneous Civil Litigation, Administrative Actions, and Other Matters
   - 5.1. Legal representation includes miscellaneous civil litigation, administrative actions, and other matters, so long as related to alleged acts or omissions allegedly in the performance of duty for the county that are not a willful or wanton neglect of duty. This can include, 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, writs of review, invalid encumbrances, complaints to the Oregon Government Ethics Commission, and complaints to licensing/regulatory boards for credentials required for county employment.

5.2. Liability exposure to the county may include damages, opposing party attorney fees, the payment of costs and expenses, the county being compelled to take action or refrain from action, or harassment of county employees that discourages service to the county.

5.3. Marion County Legal Counsel will work directly with the department or official on miscellaneous civil litigation, administrative complaints, and other matters.

5.3.1. All county elected officials, appointed officers, employees and agents shall cooperate fully in the defense of claims. If Marion County Legal Counsel determines and certifies to the Board of Commissioners that an official, officer, employee or agent has not cooperated or has otherwise acted in prejudice of the defense of the claim, the Board of Commissioners may at any time reject the defense of the claim.

5.3.2. Marion County Legal Counsel will appear and defend the county officer, employee or agent unless after investigation it is determined that the claim or demand does not arise out of an alleged act or omission allegedly occurring in the performance of duty, or that the alleged act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Board of Commissioners may reject defense of the claim.

5.3.3. Marion County may obtain insurance that substitutes for county defense obligations.

5.3.4. County legal defense does not constitute any admission or commitment for indemnification.

5.3.5. County counsel represents the county. When representing county officials, county counsel shall ask those officials to sign a form agreeing to representation. Failure to agree to representation may result in the County rejecting defense of the claim and indemnification.

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 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 or 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.

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.

5.6. When hiring outside counsel, Marion County Legal Counsel shall take reasonable steps to balance reducing legal representation costs while also mitigating legal risk based on capacity and expertise.

5.7. Updates to the legal defense policy and procedure are prospective only.