BOARD POLICY - SECTION 03.04.01.05

SUBJECT: REIMBURSEMENT OF LEGAL EXPENSES

EFFECTIVE DATE: January 9, 2013

SUPERCEDES: April 2006, April 1997

SECTION 1.

INTENT: As used in the balance of this policy, the words "successfully defend or prevail" shall apply to individual counts, charges and/or allegations, Commission on Ethics complaints, or Florida Bar complaints and shall mean the dismissal, the finding of not guilty, a result of no charges being filed, or a verdict in favor of the person covered herein as set forth in Section 3, below. 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.

SECTION 2.

DEFINITIONS: "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 per hour rate charged in Hillsborough County, Florida, for similar work performed by attorneys within the County. The County Attorney shall survey the legal community in Hillsborough County to determine the customary rate charged by attorneys for similar work. Then, every other year thereafter the County Attorney shall repeat the survey to determine whether the customary rate should be adjusted. Any recommended adjustments to the
customary rate will be presented to the Board for their consideration.

SECTION 3.

Subject to Section 7, the Board of County Commissioners of Hillsborough County shall, pursuant to the procedures set forth herein, reimburse present and former county commissioners and county public officers, and their present and former employees and agents, including appointees of the Board or such officers, for the reasonable attorney's fees and costs that such persons have incurred when they successfully defend or prevail in civil, criminal, and/or ethical investigations and/or actions that arise out of and in connection with their scope of county employment or county function, while acting in their official capacity, and while serving a public purpose. The Board of County Commissioners shall, pursuant to the provisions of this policy, determine if the attorney's fees and costs shall be reimbursed, and if so, in what amount.

SECTION 4.

Any person against whom counts, charges and/or allegations have been leveled stemming from actions within the scope of their employment shall contact the County Attorney prior to retaining private counsel. The County Attorney shall determine whether the Office of the County Attorney is able to provide the representation for the person. The County Attorney shall advise the person whether or not there is a conflict which would prevent the Office of the County Attorney from representing the person. If the Office of the County Attorney cannot represent the person, the person can then retain private counsel and be reimbursed attorney's fees and costs if authorized by this policy.

Any person who believes that he or she is allowed or entitled to payment for reasonable attorney's fees and costs pursuant to the provisions of this policy shall as a condition precedent to entitlement to such reimbursement, notify the County through its County Attorney, in writing within 10 days of the retention of a private attorney. Such notification shall include the reason for retention of a private attorney and recitation of the fee agreement. Thereafter, at anytime should fees and costs exceed $5,000, such person shall immediately notify the
County Attorney in writing that such threshold amount has been expended and establish good cause why the threshold amount should be exceeded.

Subsequently, any person who believes he or she is entitled to reimbursement of attorney's fees and costs pursuant to this policy shall file within 30 days of conclusion of the matter a written request for such fees and costs with the County Attorney, which request shall at the minimum state:

a. the name and current address of the person making the request;

b. a description of the entity conducting the investigation or proceeding;

c. the case number or file number of the investigation or proceeding, if known;

d. a description of each count, charge and/or allegation made or being investigated;

e. the date(s) that the alleged wrongful incidents are alleged to have occurred;

f. the person's office or position of employment with the county on the dates described in (e.) above;

g. a narration of the reasons why such person believes that the request meets the criteria set forth in this policy and that his or her attorney's fees and costs should be reimbursed by the county;

h. the name(s), address, and telephone number of the attorney(s) representing such person against the counts, charges, and/or allegations described in (d.) above;

i. 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 (d.) 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 (d.) above; and

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

In the alternative, such person may also request approval by the Board of County Commissioners to retain an outside attorney to be paid on a monthly basis, subject to all of the requirements of this Section. Such person shall submit the information set out in sub-paragraphs a. through j. to the County Attorney. The County Attorney shall prepare and present an agenda item for consideration by the Board. The County Attorney shall recommend to the Board an up front cap of the amount that is to be paid on a monthly basis, based on the particular legal issues related to the counts, charges and/or allegations. Once this cap is met, the County Attorney will bring an agenda item for the Board to decide whether to continue the monthly payments. Pursuant to Fla. Stat. 111.07, however, any attorney's fees paid from public funds for such person who is ultimately found to be personally liable by virtue of acting outside the scope of his or her employment, or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the county in a civil action against such person.

SECTION 5.

Within a reasonable time following receipt of the written request for payment of attorney's fees and costs, the County Attorney shall prepare and present an agenda item for consideration by the Board. In the agenda item for the Board's consideration, the County Attorney shall include a recommendation on the applicability of this policy to the request payment of attorney's fees and costs. The Board may: (1) request additional relevant information from the applicant; (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, and if so, in what amount.

If there are any areas of disputed facts, or where the County Attorney has a conflict of interest, the Board of County Commissioners will direct the Office of the County Attorney to request the President of the Hillsborough County Bar Association to select an attorney to volunteer on a pro bono basis to act as a Special Hearing Officer to render a recommendation with regard to the applicability of this policy. Hearings before the Hearing Officer will be open to the public. The Clerk shall make and preserve the record of the proceedings before the Hearing Officer.

SECTION 6.

Upon receipt of the written request, the County Attorney shall also communicate with the County's "insurance" providers to determine and advise the Board whether such "insurance" providers will indemnify the County for any attorney's fees and costs incurred by the applicant in defense against such counts, charges, or allegations.

SECTION 7.

Notwithstanding anything to the contrary stated or implied herein, this policy does not address or pertain to recall proceedings or to employee discipline or termination proceedings. In the event such recall, discipline or termination proceedings occur concurrently with the issues and/or proceedings described above, such recall, discipline or termination proceedings shall not affect the application of the policy to the above described non-recall, non-discipline or non-termination issues or proceedings.

SECTION 8.

This Policy shall become effective upon adoption and shall apply to all requests for reimbursement of attorney's fees and costs.

Approved by: Board of County Commissioners
Approval Date: January 9, 2013