

Title V

Section 405 – Defending Professionally Licensed Employees in Administrative Procedures

Section 405: DEFENDING PROFESSIONALLY LICENSED EMPLOYEES IN ADMINISTRATIVE PROCEEDINGS

405.1: Introduction

The County may defend professionally licensed employees in administrative proceedings when they perform their duties within the scope of their employment in a good-faith manner and to the best of their abilities in accordance with the policies set forth below.

405.2: Policy

Pursuant to Government Code section 995.6, the County does not have a legal duty to defend employees licensed pursuant to the provisions of the California Business and Professions Code ("professionally-licensed employees") in administrative proceedings initiated by the respective professional licensing entities. The County may, however, provide a defense to its current and former employees if:

(a) The administrative proceeding is brought on account of the employee's act or omission in the scope of his or her employment; and

(b) The County determines that such defense would be in the best interests of the County and that the employee acted, or failed to act, in good faith, without actual malice, and in the apparent interests of the County. In accordance with Government Code section 995.6, the County will decide on a case-by case basis whether to defend professionally- licensed employees in administrative proceedings. The decision to defend employees is at the sole discretion of the County and a defense will be provided only if all the requirements of Section 995.6 have been met. The County will make the decision whether to defend employees in administrative proceedings at three stages. The first stage pertains to the initial investigation and written response to the inquiry from a professional- licensing entity; the second stage pertains to the formal initiation of disciplinary charges if the written response does not resolve the inquiry; and the third stage pertains to any appellate proceeding that the employee wishes to initiate following a decision adverse to the employee. Even if the County initially agrees to defend an employee, the County has the right to withdraw its defense at any time if it determines any of the following: 1) the proceeding was not brought on account of an act or omission in the scope of the employee's employment with the County; 2) the County determines that the defense would not be in the best interests of the County; 3) the employee did not act in good faith, without actual malice, or in the apparent interests of the County; or 4) the employee fails to cooperate with the defense. The County's decision process for withdrawal during Stage 1, Stage 2, and Stage 3 is discussed below.

405.3: Procedures

The following procedures will be followed to implement the County's policy for defending professionally-licensed County employees in administrative proceedings (note: this policy does not apply to contractors):

(A)Stage 1

(1) Upon receipt of an inquiry from a professional-licensing entity, the employee shall notify the head of the department in which the employee works and that department head shall contact the Office of the County Counsel to request a defense in the proceeding if the employee wants to have County-appointed representation.

(2) If an employee decides not to have County-appointed representation, the employee may be precluded from later receiving representation from the County. Under these circumstances, the employee will sign a waiver indicating that he or she understands and acknowledges that the County may refuse to represent him or her in Stage 2 or Stage 3 of any professional-licensing administrative proceedings if he or she decides not to have County-appointed representation during Stage 1 or Stage 2 of said proceedings.

(3) If a request for County-appointed representation is made, County Counsel will appoint an attorney in the Office of the County Counsel or an outside attorney, when deemed appropriate by County Counsel, to review the matter as soon as possible after receipt of the inquiry. The employee is required to reasonably cooperate in good faith with the assigned attorney to provide all pertinent and known information and to assist in the preparation of a response to the inquiry. Failure to cooperate at any stage of the administrative proceeding may result in withdrawal of representation.

(4)In order to assume the representation of an employee, the County (through the County Counsel) and the employee will enter into an agreement in which the County reserves the right to withdraw its defense as follows:

At any time during Stage 1 of the proceeding if the County Counsel determines that 1) the employee did not act within the scope of his or her employment; 2) the employee did not act in good faith, without actual malice, or in the apparent interests of the County; or 3) the employee is failing or has failed to cooperate with the defense ("Stage 1 Requirements").

At any time during Stage 2 of the proceeding if the County Counsel determines that 1) the employee did not act within the scope of his or her employment; 2) the defense would not be in the best interests of the County; 3) the employee did not act in good faith, without actual malice, or in the apparent interests of the County; or 4) the employee is failing or has failed to cooperate with the defense ("Stage 2 Requirements").

At any time during Stage 3 of the proceeding if the County Counsel determines that 1) the employee did not act within the scope of his or her employment; 2) the

defense would not be in the best interests of the County; 3) the employee did not act in good faith, without actual malice, or in the apparent interests of the County; or 4) the employee is failing or has failed to cooperate with the defense (“Stage 3 Requirements”).

(5) If, after accepting representation of the employee, the County Counsel determines that the Stage 1 Requirements have been met, the assigned attorney will prepare a written response to the inquiry from the professional-licensing entity.

(6) If, after accepting representation of the employee, the County Counsel determines that the Stage 1 Requirements have not been met, the County will withdraw its defense. The County Counsel will advise the employee in writing of the withdrawal decision, which is considered final when made.

(7) The County will not assume payment of fees or costs incurred by an employee for representation by an attorney privately retained by the employee during Stage 1, unless the County Counsel approves of such representation before the commencement of the representation.

(B) Stage 2

(1) If the professional-licensing entity decides to pursue formal disciplinary charges or otherwise take action impacting an employee’s license, the employee may request that the County provide him or her with a defense in Stage 2 of the proceedings.

(2) If the employee decides at the outset of Stage 2 of the proceedings that he or she does not want County-appointed representation, the employee may be precluded from requesting County-appointed representation at a later date.

(3) If the employee requests County-appointed representation, the County Counsel will decide whether the County will continue to defend the employee. If the County Counsel determines that the Stage 2 requirements have been met, the County Counsel’s Office will either continue to provide a defense or will appoint outside counsel as appropriate. If the County Counsel determines that the Stage 2 requirements have not been met, the County will withdraw its defense of the employee. The County Counsel will advise the employee in writing of the withdrawal decision, which is considered final when made.

(4) The County will not assume payment of fees or costs incurred by an employee for representation by an attorney privately retained by the employee during Stage 2, unless specifically approved by the County Counsel before the commencement of such representation.

(C)Stage 3

(1) If there is a finding adverse to an employee during Stage 2 of the disciplinary proceedings, and the employee wishes to appeal the finding, the County will, at the request of the employee, continue to provide him or her with County-appointed representation during the appellate process, subject to the provisions below.

(2) If an employee decides during Stage 1 or Stage 2 of the proceedings that he or she does not want County-appointed representation, the employee may be precluded from receiving County-appointed representation during Stage 3.

(3) If the County continues to provide County-appointed representation to the employee with respect to the appeal of a formal disciplinary charge, the Office of the County Counsel will provide the defense, or appoint outside counsel of its choice.

(4) If it is determined at any time during Stage 3 of the proceedings that the Stage 3 Requirements have not been met, the County will withdraw its defense. The County Counsel will advise the employee in writing of the withdrawal decision, which is considered final when made. (5) The County will not assume payment of fees or costs incurred by an employee for representation by an attorney privately retained by the employee during Stage 3, unless specifically approved by the County Counsel before the commencement of such representation.