
Subject: LITIGATION MANAGEMENT PROCEDURE

Pursuant to Board Policy on Litigation Management, the following procedures shall be implemented.

1. Legal Counsel Selection

A. Criteria

Attorneys selected to represent the BOCES and its Pool members will meet the following criteria:

1. A significant portion of the attorney firm's business must be defense related.
2. Attorneys should have at least 5 years' experience in insurance defense related work. Experience in school district representation will also be considered.
3. Attorneys must be willing to commit to and abide by BOCES' Pool's Litigation Management guidelines.
4. Law firm and their attorneys must have no conflicts of interest in matters relating to the BOCES, it's Pool, TPA, contracts or Pool members.
5. Hourly rates are not to exceed standard amount set for partners. Associates and paralegals are to be billed at reduced rates.

B. Selection of Attorneys/Law Firms

Attorneys assigned to represent the BOCES and its Pool members will be selected as follows.

1. Law firms and individual attorneys meeting the criteria in 1.A above, will be identified for approval by Member District Senior Administrative Staff and the BOCES Board. The selection of outside counsel will be based on input and recommendations from the TPA, Pool Administrator, and Management Advisory Council and District Superintendent.
2. Any future additions or deletions to the approved firms/attorneys will be subject to annual review by the TPA, Pool Administrator, and Management Advisory Council, and subject to approval by the Board.
3. It is the responsibility of the Pool Administrator, in consultation with the TPA and Pool member, to select counsel that is most competent to defend a particular claim. This may include involving a Pool member's general counsel in an

appropriate role in the administration of the claim, if the Pool Administrator, upon consultation with the TPA and Pool member, believes the member's counsel provides specific experience and expertise vital to the defense of claim. This may include counsel having a role in the defense of the claim, such as a consulting role, co-counsel role, or direct assignment as defense counsel.

4. In cases involving potential coverage by an excess insurance carrier for the Pool and its members, it is understood that under the terms of coverage, the carrier may direct the selection of a particular firm/attorney for a case/claim.

C. Exceptions

1. In exceptional circumstances, the Pool Administrator may recommend the use of an attorney where there is a need for the specialized expertise.
2. The Pool Administrator may authorize use of the exception attorney or firm if time constraints are an issue. At the first available opportunity, the decision will be subject to review by the Management Advisory Council on liability claims.

2. **Terms of Appointment**

1. All files and materials gathered by or entrusted to the attorneys in the course of investigating or defense shall be the sole property of the BOCES and its respective Pool member.
2. Attorneys must provide conflict of interest statements.
3. Attorney's must maintain professional liability insurance and provide evidence of insurance and errors and omission insurance.
4. Law firms/attorneys are required to enter engagement agreements, which shall include agreed upon billing rates.

3. **Litigation Management Guidelines**

A. Scope of Activities

1. The attorney will limit activities to those requested by the TPA, in consultation with the Pool Member and Pool Administrator.
2. If the attorney feels additional activities or services need to be provided, the attorney must request approval from TPA, in writing, before proceeding with those additional activities. The TPA shall consult with the Pool Administrator and Pool member regarding such request.

B. Case Analysis and Strategy

1. Legal Defense Attorneys will:
 - a. Identify all liability issues.
 - b. Identify all potential defenses.

- c. Analyze the basis for all damage claims including causation issues in relation to Pool member's actions.
- d. Identify viable third-party actions and/or cross actions and bring appropriate actions with approval of the Pool Member, Pool Administrator, and TPA.

C. Assignment/Supervision

1. Supervision of the case will be retained by the assigned attorney. The assigned attorney will maintain responsibility for the overall work product quality.
2. Actual work may be assigned to other staff members of the law firm (i.e. associates, paralegal, etc.) if it does not affect the quality of the work product.

4. Attorney Fees and Legal Defense Budget

A. Fee Guidelines and Billing Procedures

1. Agreed upon billing rates are not to be increased without prior written approval of the TPA, who shall first consult with the Pool Administrator and Pool member.
 - a. Billings are to be detailed in 1/10 hour increments.
 - b. No minimum charges are to be billed for any activity.
 - c. Any flat rate charges not set forth in the engagement agreement must have prior approval of the TPA, who shall first consult with the Pool Administrator and Pool member.
 - d. If the Pool is responsible for attorney fees, all billings must be submitted to the Pool Administrator for direct payment.

B. Budget

1. An initial estimate of attorney fees and litigation costs must be included in the initial status report.
2. The budget should include an estimate of the hours needed for any anticipated activities and any other associated costs, such as court reporter expenses, expert witness fees, etc.
3. A review of the proposed budget and costs-to-date must be included in each subsequent status report. If it appears that the proposed budget will be insufficient to cover the legal fees and costs the TPA must be notified immediately.

5. Communication Responsibility

A. Initial Acknowledgement/Acceptance of Engagement

1. The TPA, with approval of the Pool Administrator and Pool member, will make the initial assignment based on the BOCES' Claims Management Procedures and Litigation Management Procedures.
2. The initial acknowledgement/acceptance of engagement from the attorney is due within 5 days, or other date as specified by the TPA.
3. The initial acknowledgement/acceptance of engagement will outline the initial actions to be taken.

B. Initial Status Report

1. The initial status report is due from the attorney within 14 days of receipt of the assignment.
2. The initial status report is to include the initial steps taken, identification of the issues, a proposed litigation management strategy, and an estimated budget for the cost of the legal fees.
3. The initial status report may be combined with the initial acknowledgement/acceptance of engagement at the discretion of the attorney.

C. Subsequent Reporting

1. Any significant activity or change in case status shall be reported to the TPA immediately by telephone or in writing.
2. The first subsequent status report is due within 60 days of receipt of the assignment and should address all information included in Exhibit B.
3. Periodic status reports are to be provided at 60 day intervals, unless otherwise specified by the TPA.
4. Status of inactive claims is to be reported at 6 month intervals, unless otherwise specified by the TPA.

D. File Documentation

1. Copies of all pertinent documents are to be sent to the TPA immediately. These documents may include:
 - a. Liability claims--pleadings and motions, deposition transcripts, releases.
 - b. Workers Compensation--Responses to applications for hearings, motions, hearing notices.

6. Settlement Authority

- A. All settlement authority will be based on the BOCES settlement authority procedures.
- B. No settlement offers are to be made without prior settlement authority.

7. Reporting to Board

Should the Pool Administrator consider it necessary and prudent, he/she may have counsel representing the BOCES or any of its member districts to report the status of a case, to the Board of Directors. Such reporting shall be provided to inform the Board of Directors on the case issues without prejudice or waiver of any privilege that the member district or BOCES may possess.

8. Conflict Resolution

In the event of any disagreement or conflict between the TPA, any Pool member, and/or the BOCES in connection with the interpretation or implementation of this Litigation Management Procedures, above, the parties to such disagreement or conflict will cooperatively discuss the issues presented with a view to reaching an agreeable resolution. In the event an agreeable resolution cannot be reached, the conflict shall be resolved by the BOCES Board.

LIABILITY

LEGAL STATUS REPORT

1. Defendant--effectiveness as witness, including credibility, memory, etc.
2. Plaintiff--personal information, effectiveness as a witness, including credibility, memory, etc. Plaintiff attorney--expertise, reputation.
3. Summary of facts.
4. Co-defendants and third party defendants--factual and legal basis for claims against other parties.
5. Analysis of claim
 - A. Governmental immunity, liability and damages
 - B. Plaintiff theory
 - C. Defense theory
 - D. Strengths and weaknesses of above theories
 - E. Causation issues
 - F. Probable damages/exposure
 - G. Punitive damages
 - H. Probability of comparative negligence finding and apportionment of fault
 - I. Settlement value
 - J. Settlement discussion
6. Future handling--additional investigation, further discovery, experts.
7. Legal expense--expenses to date and budget for future expenses.

WORK COMP

LEGAL STATUS REPORT

1. Employer--effectiveness as witness, including credibility, memory, etc.
2. Plaintiff--personal information, effectiveness as witness, including credibility, memory, etc. Plaintiff attorney--expertise, reputation, etc.
3. Summary of facts.
4. Co-defendants and third party defendants--factual and legal basis for claims against other parties.
5. Analysis of claim:
 - A. Potential benefits/exposure
 - B. Plaintiff theory
 - C. Defense theory
 - D. Strengths and weakness of above theories.
 - E. Causation issues
 - F. Probable benefits/exposure
 - G. Potential penalties
 - H. Potential apportionment/offsets/etc
 - I. Settlement value
 - J. Settlement discussion
6. Future handling--additional investigation, further discovery, experts.
7. Legal expense--expenses to date and budget for future expenses.