

BAY COUNTY BOARD OF COMMISSIONERS

6/17/2014

RESOLUTION

BY: BAY COUNTY BOARD OF COMMISSIONERS (6/17/14)

WHEREAS, The Register of Deeds currently has a FUJITSU scanner which is in need of repair and, due to the cost of the repairs and replacements parts, it is more prudent to replace the scanner with an extended warranty; and

WHEREAS, Funds are available in the Register of Deeds' Automation Fund to cover this purchase; Therefore, Be It

RESOLVED By the Bay County Board of Commissioners that authorization is granted for the purchase of a new FUJITSU scanner with extended warranty at a total cost of \$6,152.35, monies to come from the Register of Deeds' Automation Fund; Be It Further

RESOLVED That related required budget adjustments are approved.

ERNIE KRYGIER, CHAIR
AND COMMITTEE

ROD - FUJITSU Scanner

MOVED BY COMM. Coonan

SUPPORTED BY COMM. Lutz

COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E
Michael Duranczyk	✓			KIM J. COONAN	✓			MICHAEL E. LUTZ	✓		
ERNIE KRYGIER	✓			THOMAS M. HEREK	✓						
VAUGHN J. BEGICK	✓			DONALD J. TILLEY	✓						

VOTE TOTALS:

ROLL CALL: YEAS _____ NAYS _____ EXCUSED _____
VOICE: ✓ YEAS 7 NAYS 0 EXCUSED 0

DISPOSITION: ADOPTED ✓ DEFEATED _____ WITHDRAWN _____
AMENDED _____ CORRECTED _____ REFERRED _____

BAY COUNTY BOARD OF COMMISSIONERS

6/17/2014

RESOLUTION

BY: PERSONNEL/HUMAN SERVICES COMMITTEE (5/20/14)
 WHEREAS, On February 13, 1979, via resolution no. #79-011, the Bay County Board of Commissioners adopted Civil Counsel Guidelines; and
 WHEREAS, The Department of Civil Counsel was created pursuant to Board resolution no. 79074, as authorized by MCL 45.563(e). (Unified Form of County Government Act, or Act 139 of 1973), which states that "[t]he department of corporation counsel if adopted shall perform as provided by law all civil law functions and provide property acquisition services for the county as provided by law."; and
 WHEREAS, The 1979 Guidelines do not provide sufficient direction regarding the assignment of outside counsel and the procedure and funding guidelines in the event outside counsel is desired by departments or elected officials; and
 WHEREAS, In the past year, the County has incurred significant legal costs from elected officials engaging outside counsel without properly informing or utilizing the legal services of Corporation Counsel, which is entrusted "to provide all civil law functions" of the County; and
 WHEREAS, The Civil Counsel Guidelines have been revised building in adequate controls, assuring that Corporation Counsel is apprised early when legal issues begin to arise and still allowing for the use of outside counsel when appropriate; Therefore, Be It
 RESOLVED That the Bay County Board of Commissioners approves the attached "Civil Counsel Guidelines - Bay County, Michigan" with immediate effect.

BRANDON KRAUSE, CHAIR
 AND COMMITTEE

Corporation Counsel - Revised Civil Counsel Guidelines

MOVED BY COMM. Tilley

SUPPORTED BY COMM. Herek

COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E
Michael Duranczyk	✓			KIM J. COONAN	✓			MICHAEL E. LUTZ	✓		
ERNIE KRYGIER	✓			THOMAS M. HEREK	✓						
VAUGHN J. BEGICK	✓			DONALD J. TILLEY	✓						

VOTE TOTALS:

ROLL CALL: YEAS _____ NAYS _____ EXCUSED _____
 VOICE: ✓ YEAS 7 NAYS 0 EXCUSED 0

DISPOSITION: ADOPTED ✓ DEFEATED _____ WITHDRAWN _____
 AMENDED _____ CORRECTED _____ REFERRED _____

**CIVIL COUNSEL GUIDELINES
BAY COUNTY, MICHIGAN**

1. The Department of Corporation Counsel:

The Bay County Department of Corporation Counsel (the "Department") was created on April 10, 1979 pursuant to Bay County Board of Commissioners' Resolution No. 79074, as authorized by MCL 45.563(e). The director of the Department is the Corporation Counsel. Additional attorneys hired to provide legal services in the Department shall be designated Assistant Corporation Counsel. Corporation Counsel and Assistant Corporation Counsel shall be attorneys licensed to practice law in the State of Michigan.

2. Powers and Duties of the Department:

A. Except as otherwise provided by law or this Policy, the Department shall, in all matters related to County business;

1. Perform all civil law functions for the County;
2. Provide property acquisition services for the County as provided by law;
3. Represent the County in all civil actions in which the County is a party; and
4. Represent County elected officials in any civil action in which:
 - i. the County elected official is named as a Defendant; and
 - ii. the subject matter involves official acts or duties of the office of the County elected official.

Corporation Counsel shall make the legal determination as to whether any such civil action involves an official act or duty of that County elected official's office that would necessitate representation by the Department, outside legal counsel, or would not necessitate representation. These services shall not be performed on behalf of any component unit of the County or individuals appointed to those component units' boards unless otherwise mandated by law or agreed upon in writing between the duly authorized representative of the component unit with authority to bind that unit and the County Executive, subject to the approval of the Board of Commissioners.

B. The Department is authorized to retain outside legal services on behalf of and in representation of the County, the County Commission, the County Executive and all County elected officials or individuals appointed to a County elected official's position, County Entities, employees, departments, divisions, officers, agencies and instrumentalities and their directors, trustees, officers and employees in matters in which he, she or it is involved as the result of any official act or duty of office.

- C. The provision of legal services and representation as set forth in this Policy shall be within the limits provided by Michigan Law and the Michigan Rules of Professional Conduct.

3. Retention of Outside Counsel:

- A. No County Entity other than the Department is authorized to retain outside legal counsel. A County Entity may submit to Corporation Counsel a written request to retain outside legal counsel. Any written request must comply with section 3.B. of this Policy. A request for retention of outside legal counsel shall not be approved unless the request complies with section 3.B. Corporation Counsel shall evaluate the request and, after consultation with the County Entity, either:
- (i) approve the request and arrange for retention of outside legal counsel within the scope and limits determined by Corporation Counsel to be necessary and appropriate for each matter; or
 - (ii) reject the request, providing a written notice to the County Entity explaining the basis of the rejection. If the rejection of the request is based solely upon lack of funding, the rejection must so state and the County Entity may request an appropriate budget adjustment to adequately cover the cost of the retention.
- B. Any request to Corporation Counsel for retention of outside counsel must:
- (i) Be submitted in writing;
 - (ii) Be reasonable and necessary;
 - (iii) Explain the need to retain outside legal counsel;
 - (iv) Set forth the reasons why the Department cannot or may not handle the matter;
 - (v) Indicate that the County Entity has verified that there are sufficient funds available in the portion of the Department's budget allocated to retention of outside legal counsel and, if sufficient funds are not available in the Department's budget, that the County Entity requesting the retention has the funds or will have the funds to pay for the outside legal services and shall identify the account from which the outside legal services will be paid.

- C. Unless otherwise specified in this Policy, no elected or appointed County official, County Entity, employee, department, division, officer, agency or instrumentality or their directors, trustees, officers or employees is authorized to retain outside legal counsel.
- D. Notwithstanding any provision of this Policy to the contrary, outside legal counsel shall not be retained and a contract for legal services shall not be awarded unless the retention is in compliance with the County's Purchasing Policy.
- E. The Department shall not provide legal services to, retain outside legal counsel for or on behalf of an individual who is a Defendant in a criminal matter.
- F. Immediately upon notification by any County Entity of a claim filed against it which may necessitate legal representation, the Department shall notify the County's designated Risk Assessment Manager who shall make an independent determination as to what claims should be submitted to the County's insurance carrier. After submission of a claim to the insurance carrier, the rules, regulations, policies and procedures mandated by the insurance carrier shall control for purposes of that distinct controversy.

4. **County Entities As Adverse Parties:**

The Department represents the County as an organization and is responsible for directing all legal affairs for the County. Litigation between separate County Entities constitutes a conflict of interest for the Department. In the event that two County Entities are to be adverse parties in litigation, the Department shall in good faith (after receiving input from and conferring with each County entity) select and retain independent legal counsel on behalf of each County Entity, subject to the following procedures, parameters and limitations:

- A. The plaintiff County Entity must notify the Department prior to instituting legal action and must follow the procedure set forth in section 3.B.(i)-(ii) for the Department to retain outside counsel on its behalf. No attorney fees incurred prior to retention of an attorney by the Department on plaintiff County Entity's behalf shall be paid with County funds absent a showing that:
 - (1) There existed an unavoidable, emergency need to retain counsel prior to complying with the requirements of these Guidelines; and
 - (2) The failure to utilize outside counsel before approval and retention by the Department of an attorney for the plaintiff County Entity would have resulted in immediate and irreparable injury or damage to the plaintiff County Entity.

- B. The Department reserves the right, WITH THE EXCEPTION OF any legal action filed by the district, probate or circuit courts asserting the court's inherent power doctrine, to obtain an independent legal opinion from outside counsel as to whether there exists a non-frivolous, legal basis to proceed with legal action against the defendant County Entity. In the event that the independent outside counsel opines that there is no non-frivolous, legal basis to proceed with legal action, Corporation Counsel, in his or her discretion, may decline to retain outside legal counsel for the plaintiff County Entity or may retain such counsel only upon a reservation of rights pending a legal determination of the County's responsibility to retain outside counsel. Should the Department decline to retain outside counsel, no County funds shall be used to pay for outside legal services retained directly by the County Entity in contravention of these Guidelines until the County is ordered to do so by a court of competent jurisdiction.
- C. The Department shall immediately retain outside counsel on behalf of a defendant County Entity upon notification that it has been served with legal process by a plaintiff County Entity.
- D. The County shall be responsible for the payment of only those costs and legal fees incurred that the Court or administrative agency/tribunal presiding over the dispute between the County entities determines were: (1) necessary; (2) reasonable; and (3) the responsibility of the County under Michigan or federal law.
- E. The County Entities agree in any litigation to request the Court or administrative agency/tribunal to make the fee determinations referenced in paragraph 4.D. and agree to stipulate to the Department's permissive intervention in the action on behalf of the County for the limited purpose of addressing the County's responsibility for payment of any necessary and reasonable costs and attorney fees incurred by either County Entity.
- F. In the event any action filed by a plaintiff County Entity is adjudicated as frivolous by the Court or administrative agency/tribunal presiding over the dispute, the Department reserves the right to seek reimbursement from any plaintiff County Entity of costs and attorney fees advanced by the County consistent with the County's approved budget.
- G. In the event any action filed by a plaintiff County Entity results in a finding of liability as a result of an intentional tort by the defendant County Entity, the Department reserves the right to seek reimbursement from that defendant County Entity of attorney fees advanced by the County.

- H. The Department shall maintain its duty to the County throughout the course of any litigation between County Entities to oversee the litigation without advocating for either side in order to ensure that each County Entity is adequately represented and that the representation is efficiently handled.
- I. Under no circumstances shall the Guidelines require the County to retain or compensate any attorney retained by any current or former County employee who sues the County for any adverse employment action.

5. **Adherence To This Policy Required:**

This Policy shall be strictly enforced. The retention of outside legal counsel contrary to the express provisions of this Policy is prohibited. No funds may be paid by the County to satisfy any claim for services rendered by outside legal counsel unless the requirements of this Policy have been followed.

6. **Definitions:**

For purposes of this Policy, all words and phrases herein not defined in this section or elsewhere in the Policy shall be construed and understood according to the common and approved usage of the English language. Specific terms listed below shall have the following meanings, unless provided otherwise in this Policy:

Component unit of the County means, collectively, all component units, blended component units and discretely presented component units as defined within Bay County's financial statement which include the Bay County building authority, the Bay County road commission, the Bay County economic development corporation, the Bay County library system, the Bay County department of water and sewer, any distinct Bay County drainage districts, the bay area narcotics enforcement team and the Bay County landbank.

County Commission means, collectively, the individuals elected and/or appointed and currently serving as commissioners of the legislative branch of the County of Bay.

County elected official means an individual who was either elected in a county-wide election or lawfully appointed to that position and who is currently serving as either the county clerk, prosecuting attorney, register of deeds, sheriff, treasurer, county executive, drain commissioner, the judges of the Bay County district, probate and circuit courts or an individual currently serving in any other elected office as defined in MCL 49.73.

County Entity means any and all county elected officials, all currently serving county commissioners, all officials elected in district-wide, as opposed to county-wide elections, the county commission, any and all boards established in whole or in part by Bay County pursuant to any federal or state statutes or by county ordinance, all departments, divisions, officers, agencies and instrumentalities and their individual directors, trustees, officers and employees.

County Executive means the individual elected and currently serving as the chief executive officer of the County of Bay.

Defendant County Entity means a county entity that has been served with legal process by another county entity in a state or federal court or administrative tribunal.

Legal action means a legal cause of action in a state or federal court or administrative tribunal. Legal action for purposes of this policy specifically excludes workers' compensation and unemployment agency disputes as well as any matters involving alleged Unfair Labor Practices or labor and employment disputes subject to any collective bargaining agreement of which any county entity is a signatory party. Legal action and "civil action" are not intended to be synonymous for purposes of their use in this Policy.

Legal process means service of any summons, complaint or legal papers regarding a legal action brought by a plaintiff county entity.

Outside legal counsel means counsel other than the department of corporation counsel.

Plaintiff County Entity means a county entity that has or intends to imminently file a legal cause of action against another county entity in a state or federal court or administrative agency or tribunal.

The County means the County of Bay.

The Department means the Bay County department of corporation counsel and its individual members which includes corporation counsel and assistant corporation counsel.

This Policy means these civil counsel guidelines.

BAY COUNTY BOARD OF COMMISSIONERS

MEETING DATE: JUNE 17, 2014

MOTION SPONSORED BY: COMM. TILLEY

MOTION SUPPORTED BY: COMM. LUTZ

MOTION NO.: 64

TO APPOINT MICHAEL DURANCZYK AS 1st DISTRICT BAY COUNTY COMMISSIONER FOLLOWING THE RESIGNATION OF COMMISSIONER BRANDON KRAUSE. (VOTING RESULTS ARE BELOW.)

1. MICHAEL DURANCZYK - 6 VOTES: BEGICK, COONAN, HEREK, TILLEY, LUTZ, KRYGIER
2. REBECCA COYER - 0 VOTES

COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E
				Kim Coonan	X			Michael Lutz	X		
Ernie Krygler	X			Thomas Herek	X						
Vaughn J. Begick	X			Donald J. Tilley	X						

VOTE TOTALS:

ROLL CALL: YEAS _____ NAYS _____ EXCUSED _____

VOICE: XX YEAS 6 NAYS 0 EXCUSED 0

DISPOSITION: ADOPTED XX DEFEATED _____ WITHDRAWN _____

AMENDED _____ CORRECTED _____ REFERRED _____

BAY COUNTY BOARD OF COMMISSIONERS

MEETING DATE: JUNE 17, 2014

MOTION SPONSORED BY: COMM. TILLEY

MOTION SUPPORTED BY: COMM. HEREK

MOTION NO.: 65

TO GO INTO RECESS FOR THE PURPOSE OF ADMINISTERING
THE OATH TO MICHAEL DURANCZYK AS 1ST DISTRICT BAY
COUNTY COMMISSIONER.

COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E
				Kim Coonan	X			Michael Lutz	X		
Ernie Krygier	X			Thomas Herek	X						
Vaughn J. Begick	X			Donald J. Tilley	X						

VOTE TOTALS:

ROLL CALL: XX YEAS 6 NAYS 0 EXCUSED 0

VOICE: YEAS NAYS EXCUSED

DISPOSITION: ADOPTED XX DEFEATED WITHDRAWN
AMENDED CORRECTED REFERRED

BAY COUNTY BOARD OF COMMISSIONERS

MEETING DATE: JUNE 17, 2014

MOTION SPONSORED BY: COMM. TILLEY

MOTION SUPPORTED BY: COMM. LUTZ

MOTION NO.: 66

TO GO BACK TO REGULAR SESSION FOLLOWING RECESS FOR
THE PURPOSE OF ADMINISTERING THE OATH TO MICHAEL
DURANCZYK AS 1ST DISTRICT BAY COUNTY COMMISSIONER.

COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E
Michael Duranczyk	X			Kim Coonan	X			Michael Lutz	X		
Ernie Krygier	X			Thomas Herek	X						
Vaughn J. Begick	X			Donald J. Tilley	X						

VOTE TOTALS:

ROLL CALL: YEAS _____ NAYS _____ EXCUSED _____

VOICE: XX YEAS 7 NAYS 0 EXCUSED 0

DISPOSITION: ADOPTED XX DEFEATED _____ WITHDRAWN _____

AMENDED _____ CORRECTED _____ REFERRED _____

BAY COUNTY BOARD OF COMMISSIONERS

MEETING DATE: JUNE 17, 2014

MOTION SPONSORED BY: COMM. TILLEY

MOTION SUPPORTED BY: COMM. HEREK

MOTION NO.: 67

TO ADJOURN THE SPECIAL BOARD SESSION OF JUNE 17,
2014 AT 4:50 P.M.

COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E	COMMISSIONER	Y	N	E
Michael Duranczyk	X			Kim Coonan	X			Michael Lutz	X		
Ernie Krygier	X			Thomas Herek	X						
Vaughn J. Begick	X			Donald J. Tilley	X						

VOTE TOTALS:

ROLL CALL: YEAS _____ NAYS _____ EXCUSED _____

VOICE: XX YEAS 7 NAYS 0 EXCUSED 0

DISPOSITION: ADOPTED XX DEFEATED _____ WITHDRAWN _____

AMENDED _____ CORRECTED _____ REFERRED _____