

City Commission Policy 102
Reimbursement and Recovery of Attorney's Fees and Costs in Criminal Cases

DEPARTMENT: City Attorney's Office

DATE ADOPTED: January 25, 2012

DATE OF LAST REVISION: New Policy

102.01 Authority: City Commission

102.02 Purpose: To establish a policy to provide for the consideration of the payment/reimbursement of attorney's fees and costs incurred by public officials, officers, and employees when they successfully defend or prevail in criminal cases arising out of and in connection with the scope of their City employment, while acting in their official capacity and serving a public purpose.

102.03 General Statement: There shall be a presumption that a public official, officer, or employee charged with a crime is exclusively responsible for all attorney's fees and costs incurred in his or her defense.

102.04 Definitions: (a) "Successfully defend" or "prevail" shall apply to individual charges and or allegations and shall mean the dismissal, without a finding of a guilt of criminal provisions of the Florida Statutes or U.S. Code. A failure to successfully defend or prevail against one or more counts, charges, or allegations shall not necessarily affect the application or policy or other counts or allegations which were successfully defended against, dismissed, or against which the public official, officer or employee prevailed.

(b) "Reasonable attorney's fees" shall mean the fees earned by an attorney or attorneys licensed to practice law in the State of Florida while based on the customary per hour rate charged within the City of Tallahassee for similar work.

102.05 Reimbursement: The City may reimburse public officials, officers, and employees for reasonable attorney's fees and costs that such persons have incurred when they successfully defend or prevail in criminal cases that arise out of and in connection with the scope of their City employment, while acting in their official capacity and serving a public purpose.

102.06 Application for Reimbursement After the Conclusion of a Criminal Case: Any person who believes that he or she is allowed or entitled to payment of reasonable attorney's fees and costs pursuant to the provisions of this policy shall notify the City Attorney in writing. Within 30 days of conclusion of the matter, a written request for fees and costs shall be filed with the City Attorney which shall at a minimum state:

- a. the name and current address of the person making the request;
- b. the case number or file number of the criminal proceeding;
- c. a description of each count, charge and/or allegation made;
- d. The date(s) that the alleged wrongful incidents are alleged to have occurred;
- e. the person's office or position of employment with the City on the dates described in (e) above.
- f. 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 City;
- g. 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;
- h. 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,
- i. such other information as the City Attorney's Office may reasonably require.

102.07 Process for Considering Reimbursement After the Closing of the Criminal Case: Within a reasonable time following receipt of the written request for payment of attorney's fees and costs, the City Attorney shall prepare and present an agenda item for consideration by the City Commission. In the agenda item for the City Commission's consideration, the City Attorney shall include a recommendation on the applicability of this policy to the request for payment of attorney's fees and costs. The City Commission 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.

102.08 Sunset Provisions: The City Commission will review this policy every five years.

102.09 Effective Date: This policy guideline becomes effective upon City Commission approval and shall apply to criminal cases filed after that date.

102.10 Responsible Agency: The City Attorney's Office shall make amendments as necessary to maintain current statutory references and shall make recommendations for amendments as needed to the City Commission.