

City Commission Policy 103

Reimbursement and Recovery of Attorney's Fees and Costs in Ethics Complaint Cases

DEPARTMENT: City Attorney's Office

DATE ADOPTED: January 25, 2012

DATE OF LAST REVISION: New Policy

103.01 Authority: City Commission

103.02 Purpose: To formalize existing policy for the payment/reimbursement of attorney's fees and costs incurred by public officials, officers, and employees when they successfully defend or prevail in ethics complaints arising out of and in connection with the scope of their City employment, while acting in their official capacity and serving a public purpose.

103.03 General Statement: The common law in Florida, court cases and Attorney General Opinions establish, and have defined the right of public officials, officers, and employees to be relieved of the financial burden of defending themselves when ethics complaints arise out of or in connection within the scope of their public employment, while acting in their official capacity and serving a public purpose, and where the official/officer successfully defends or prevails in such action.

103.04 Definitions: (a) "Successfully defend" or "prevail" shall apply to individual charges and or allegations and shall mean the dismissal, without a finding of a violation of the Florida Ethics 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 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.

103.05 Reimbursement: The City shall 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 ethics complaints 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.

103.06 Application for Reimbursement After the Conclusion of an Ethics Matter: 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 ethics complaint or proceeding;
- c. a description of each count, charge and/or allegation made or being investigated;
- 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.

103.07 Process for Considering Reimbursement After the Closing of Case by Florida Ethics Commission: 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.

103.08 Payment of Reasonable Fees While Process is Pending: The city will pay reasonable fees billed during the pendency of an ethics complaint for services rendered up to a Finding of Probable Cause. The City Commission shall be notified in writing when fees paid in a specific complaint exceed \$5,000 and in the event of subsequent expenditures in \$5,000 increments. In

the event of a Finding of Probable Cause, no additional fees shall be paid unless the individual successfully defends or prevails and application is made pursuant to 103.06. In the event that the individual is ultimately, by Final Order, determined to have violated the ethics code, he shall be responsible for reimbursing the City of all fees previously paid in the matter on which he did not prevail.

103.09 Recovery by City of Fees and Costs: Upon dismissal of an ethics complaint and pursuant to the provisions of Florida Statute 112.317(7), if it appears that the person filing the complaint has done so with a malicious intent to injure the reputation of the officer/employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact, material to a violation of Florida Statute Chapter 112, a motion shall be filed with the Florida Ethics Commission to hold the complainant liable for the cost plus reasonable attorney's fees incurred in defense of the person complained against, including the cost and reasonable attorney's fees incurred including entitlement to an amount of costs and fees.

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

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

103.12 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.