

HENNEPIN COUNTY EMPLOYEE DEFENSE AND INDEMNIFICATION PLAN

Declaration of Indemnification. Pursuant to Chapter 466 of Minnesota Statutes, to protect those performing governmental services on behalf of the County of Hennepin (“the County”) against specified risks and to protect them from personal liability for acts and omissions occurring in the course and scope of their employment, the Hennepin County Board of Commissioners hereby declares that, subject to the exclusions and exceptions specified in this Hennepin County Employee Defense and Indemnification Plan (“the Plan” or “this Plan”), the County will defend and indemnify an officer, agent or employee, whether elective or appointive, against any tort or professional liability claim or claim for deprivation of a constitutional right, arising out of an alleged act or omission occurring in the performance of the duties of the position of the officer, agent, or employee. The County will defend against or compromise and settle any such claim or lawsuit and pay the amount of any settlement or judgment rendered thereon.

I. Definitions. For the purpose of this Plan the following definitions shall apply:

A. Employee. An officer, agent or employee, collectively referred to as “Employee,” shall include all persons employed by Hennepin County whose pay comes in whole or in part from County funds and who are working under the direction or control of any official or department of the County. The term “Employee” shall include those who work for the County on a voluntary basis without pay when such employment is accepted, contracted for, or consented to by the County or a County department and is under the direction and control of the County or County department.

The term “Employee” shall also include any person serving with or without compensation as a member of a board, task force or commission duly established by statute or by the County to advise on matters of policy or procedure.

The term “Employee” specifically excludes any person or organization contracting to perform services or act for Hennepin County as an independent contractor.

B. Performance of Duty. The phrase “Performance of Duty” shall be interpreted as broadly as possible to include any situation in which a County Employee can reasonably be deemed to be acting within the scope of the duties of the Employee’s position. It shall specifically extend to all Employees who are providing service on a voluntary basis or otherwise to any private, corporate, or governmental agency other than the County when doing so with the appropriate consent and authorization from the County. The phrase “Performance of Duty” shall not include any act or omission constituting malfeasance in office, willful neglect of duty, or bad faith within the meaning of Chapter 466 of Minnesota Statutes, or any other act or omission specifically excluded by Section III of this Plan or by statute

II. Exclusions and Exceptions.

This Plan shall not apply to any claim or lawsuit based upon:

A. An alleged act or omission occurring outside of the Performance of the Duties of the Employee’s position;

B. An alleged act or omission constituting malfeasance in office, willful neglect of duty, or bad faith;

C. An action involving the removal from office of an elected official;

D. A private legal action commenced by an Employee against any other party;

E. An action involving the criminal prosecution of an Employee, provided that an Employee may request reimbursement for costs and reasonable attorney's fees pursuant to the circumstances and procedures described in Minn. Stat. §465.76;

F. Fines, penalties, costs, disbursements or attorney's fees incurred in actions under the Open Meeting Law (Minn. Stat. §13D.01 et seq.) unless specifically authorized by resolution of the Hennepin County Board of Commissioners as permitted by Minn. Stat. § 13.D.06; and

G. Fines for neglect of duty incurred by a public officer, body or board, pursuant to Minn. Stat. § 586.10.

III. Defense of Actions.

A. Attorney Representation.

The County reserves the right to designate the attorney appointed to defend any Employee in any claim or lawsuit to which this Plan applies. Such defense will be furnished by an attorney from the Hennepin County Attorney's Office ("HCAO") or an attorney selected by the HCAO. In providing such defense, the HCAO or selected attorney may retain private investigators, experts, or other counsel as the HCAO or selected attorney may deem necessary; provided, however, that a selected attorney must seek approval of the HCAO before retaining any third party assistance.

Where the HCAO determines that there exists a conflict of interest between the County and an Employee who is named as a party to the claim or lawsuit, the HCAO shall select legal counsel to provide representation to the employee and shall negotiate the legal fees, if any, for such selected counsel. The County will pay any negotiated legal fees as well as reasonable costs and expenses incurred in the investigation, defense, or settlement of a claim or lawsuit on behalf of the Employee who is the subject of such a conflict.

B. Procedures for Determining Defense and Indemnification.

1. Upon receipt of a notice of claim or summons and complaint from the Clerk of the County Board or from an affected Employee, the HCAO shall promptly conduct a preliminary investigation of the incident giving rise to the notice or complaint to determine the eligibility of an Employee for defense and indemnity. The HCAO may consult with the head of the Employee's department or other appropriate authority before making this determination.

2. If the Employee is determined to be ineligible for coverage of all or a portion of the claim presented, or where rights are reserved against the Employee, the Employee shall be so notified in writing. Such notice shall state the reasons for this determination and shall inform the Employee of the Employee's right to a hearing under this Plan.

3. If the Employee wishes to contest the determination of ineligibility, within 10 calendar days of receipt of such notice the Employee shall notify the HCAO that the Employee requests a hearing.

4. A hearing shall be held within 14 calendar days of receipt by the HCAO of the Employee's request for hearing. Notice of the date of the hearing shall be provided to the Employee at least 10 calendar days before the hearing.

5. The hearing shall be conducted by the County Administrator or by a Deputy County Administrator or a Department Head designated by the County Administrator (the "Hearing Officer"). However, such Hearing Officer shall not be the Head of the Department of the affected Employee.

6. At least 7 calendar days before the scheduled hearing, the parties exchange copies of any documents that the parties plan to present at the hearing.

7. The Employee shall have the right to have a representative present at the hearing, at the Employee's own expense.

8. At the hearing, the Employee or the Employee's representative shall have the right to present documents and arguments to contest the denial of eligibility. Upon mutual agreement, the parties may also present tangible exhibits.

9. The Employee may, but is not required, to testify. Other witnesses will only be permitted upon mutual agreement of the parties.

10. The Hearing Officer may impose reasonable time limits upon the hearing.

11. Within 7 calendar days of the hearing, the Hearing Officer shall issue written findings of fact and conclusions specifying whether the Employee is eligible or ineligible for defense and indemnity under the terms of this Plan and shall serve such findings and conclusions upon the Employee and the HCAO.

12. Review of the Hearing Officer's decision regarding defense and indemnity shall solely be by writ of certiorari to the Minnesota Court of Appeals pursuant to Minn. Stat. Chapter 606.

In the event that the implementation of the process described above cannot be concluded before a timely response is required to a duly served summons and complaint, the HCAO shall arrange for independent legal counsel to represent the Employee under a reservation of rights until the contested eligibility process is concluded.

C. Notifications.

All notices or other notifications required by this Plan shall be served by personally delivering a copy to the Employee or to the HCAO, by U.S. Mail, or by electronic mail.

D. Cooperation of Employee.

No defense or indemnification shall be provided by the County to any Employee in any of the following circumstances:

1. If the Employee fails to use diligent efforts in reporting to the HCAO or to the Employee's department head any incident which the Employee might reasonably expect could result in a claim of liability against the Employee, or the County.

2. If the Employee fails to notify the HCAO of the receipt of notice of claim or summons and complaint commencing a suit for damages reimbursable under the Plan. Such notice shall be given to the HCAO within five (5) calendar days of its service upon the employee.

3. If the Employee fails or refuses to cooperate with an investigation or defense of any claim or lawsuit by the HCAO or by any other attorney selected by the HCAO to furnish defense to said Employee, or any investigator retained by the County to investigate such claim or lawsuit.

IV. Liability Limitations.

A. The County shall indemnify an eligible Employee up to the maximum amounts established by Minn. Stat. §466.04 as applicable at the time of the settlement or judgment. However, in any case where, by statute or court decision, the limits of liability do not apply to the County or its Employee, the County shall indemnify an eligible Employee for any amount agreed to by the County in settlement discussions or ordered by the court as final judgment.

B. The County specifically reserves all defenses which are made available to the County or its Employees.

C. Payment and Allocation of Claims.

All claims to be paid as a result of the indemnification provided by this Plan may be paid from Hennepin County's Self Insurance Fund established pursuant to Minn. Stat. § 383B.155, or any other fund established for these purposes. Any judgment or settlement of a claim against the County or an Employee shall be paid in accordance with the provisions of Minn. Stat. § 466.09. Unless otherwise determined by the County Administrator, any claims paid by the County shall be charged back to the County department from which the claim originated.

V. Effect of Other Insurance, Bond or Indemnification Plan.

If the County or Employee against whom a claim or judgment reimbursable under this Plan is asserted has any other valid and collectable insurance, bond or indemnification plan available covering the loss or damage alleged against the Employee, such insurance, bond or other plan will be primary and will be first applied to the payment of any claim or judgment. However, if the funds applied are not sufficient to pay the claim or judgment in full, the obligation of Hennepin County is limited to the difference between the primary payment and the liability limitations of Hennepin County, stated in paragraph IV of this Plan.

This Plan shall not apply to any claim, or lawsuit for liability arising out of an act or omission for which the County has procured a policy of insurance pursuant to Minn. Stat. § 466.06. However, in the event that:

1. The County would otherwise be liable for the alleged act or omission if such insurance had not been purchased, and

2. The liability limits of such policy are less than the liability limits provided by the Plan, and/or contain a deductible amount to be assumed by the insured, then the liability limits of the Plan shall apply to any damages in excess of the liability limits of such policy and up to the limits provided by Minn. Stat. §466.04. The deductible amount on any such County purchased liability insurance policy shall be paid by the County for indemnified Employees.

VI. Subrogation Rights of County.

In the event of any payment under this Plan on behalf of an Employee, the County shall be subrogated to all of the Employee's rights of contribution, indemnity, or recovery therefor against any person or organization. The Employee shall execute and deliver instruments and papers and do whatever else is necessary to secure these rights for the County. The Employee shall do nothing after loss to prejudice these rights.

VII. Assignments Prohibited.

Assignment of interest under this Plan is not permitted without the written consent of the County signed by the Chairperson of its Board of Commissioners and no such assignment shall bind the County unless such written consent is given prior to assignment. If, however, an Employee dies before a claim or action is commenced or concluded, the benefits and responsibilities of this Plan shall apply fully to the deceased Employee's estate or legal representative, but only if the deceased Employee qualified for defense and indemnification under all requirements of this Plan and the governing statutes.

VIII. Continuation of Protection.

Any defense and indemnification available to an Employee under this Plan shall continue to be available to the Employee after the termination of employment so long as the act or omission causing the former Employee's alleged liability occurred during the former Employee's Performance of Duties while an Employee of the County and so long as the former Employee timely notifies the County of any claim or lawsuit and cooperates with the defense as required in the Plan. Such defense and indemnification shall not be available to a former Employee in the event that the liability claim against the former Employee is asserted as a counterclaim or set off in any suit brought by the former Employee, except to the extent that the liability of such former Employee may exceed the amount of his own claim or suit.

IX. Effective Date.

This Plan is effective beginning the ___ day of _____, 2018 pursuant to Hennepin County Board Resolution No. _____ of the same date.