

CJPRMA

Litigation Policy



California Joint Powers Risk Management Authority

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TABLE OF CONTENTS

1)	<u>ARTICLE I</u>	
	Objectives	1
2)	<u>ARTICLE II</u>	
	Assignment of Case.....	1
3)	<u>ARTICLE III</u>	
	Acknowledgement of Case	2
4)	<u>ARTICLE IV</u>	
	Preliminary Liability Report	2
5)	<u>ARTICLE V</u>	
	Mandatory Status Reports	4
6)	<u>ARTICLE VI</u>	
	Trial / Arbitration Reports	5
7)	<u>ARTICLE VII</u>	
	Final Reports	6
8)	<u>ARTICLE VIII</u>	
	CJPRMA Reporting Requirements	6
9)	<u>ARTICLE IX</u>	
	Significant Strategy Decisions	6
10)	<u>ARTICLE X</u>	
	Discovery	7
11)	<u>ARTICLE XI</u>	
	Settlement Authority	7
12)	<u>ARTICLE XII</u>	
	Extraordinary Expenses.....	7
13)	<u>ARTICLE XIII</u>	
	Legal Research.....	7
14)	<u>ARTICLE XIV</u>	
	Legal Billings.....	8
15)	<u>ARTICLE XV</u>	
	Remarks	9

California Joint Powers Risk Management Authority

LITIGATION POLICIES AND PROCEDURES

PURPOSE OF POLICY

CJPRMA adopts policies and procedures to protect the organization and its members from adverse exposures during the litigation process. This policy has been approved by the Board of Directors to be a required policy for every CJPRMA Member. This policy will insure that all members are utilizing best practices for their management of litigation. Each member shall adopt this policy and will comply with the requirements. This policy will be reviewed by the Board of Directors annually to confirm the policy is providing a benefit to the membership. The annual claims audit will evaluate all members' compliance with this policy.

Every Member's litigation program shall be in compliance with the terms and conditions of this policy:

ARTICLE I. OBJECTIVE

The member maintains a comprehensive litigation management program, the objective of which is to reduce litigation costs without sacrificing case results. The City has developed the following procedures to assist its claim personnel in the management of lawsuits as well as to efficiently supervise defense counsel. The City asks for your cooperation and enthusiasm in implementing the policies and procedures outlined herein.

ARTICLE II. ASSIGNMENT OF CASE

Assignments to defense counsel are typically made by the Risk Manager/Member Representative. Cases are transmitted with a detailed assignment letter. The letter will indicate which people at the City are to be copied on status reports. Please be sure to copy the designated City contacts on all reports.

The Risk Manager/Member Representative will comment in the assignment letter on the case objective for each file. For example, if the case is one of questionable liability and a relatively low level of gross exposure, it may be our desire to limit discovery and try the case. On the other hand, it may be the intention of the City to vigorously defend a low exposure case, which has greater political implications.

We will normally pay for one attorney to handle a case, i.e. one partner with the assistance at times of an associate; or in some cases, it may be appropriate to have an associate take full responsibility for a case. We will pay for only one attorney to accomplish any single task. For example, we will not pay for more

than one attorney attending depositions, motions, court hearings or trial without prior approval. We encourage the use of paralegals; however, assignment of work to paralegals should not result in duplicated work by attorneys. Unauthorized or unapproved activity contrary to the above will not be paid.

The attorney handling the case or the activity being reported should be the one to prepare the status reports.

Defense counsel is asked to respond to an assignment, following the guidelines below:

ARTICLE III. ACKNOWLEDGEMENT OF CASE

An acknowledgement of assignment letter should be returned to the Risk Manager/Member Representative within 7 days of receipt of assignment advising which attorney has been assigned to the case. Defense counsel is responsible for investigating and promptly disclosing any ethical or legal conflicts that would prevent counsel from representing any of the City defendants.

ARTICLE IV. PRELIMINARY LIABILITY REPORT

Within 90 days of receipt of assignment, the handling attorney must provide the Risk Manager/Member Representative with a comprehensive first report. The City understands that the liability picture may develop as discovery is ongoing, but this does not excuse the responsibility of providing an early, objective analysis of the file, subject to later developments. An early analysis not only permits the City to set an accurate reserve level, but also permits the City to decide whether to actively litigate the case, try to settle the case, or limit discovery based upon the exposure. No payment of bills will occur until the Preliminary Report has been received.

The first report should contain the following captions:

1) Facts

Defense counsel should give a brief synopsis of the facts giving rise to the lawsuit.

2) Status of Pleadings

Briefly review the status of the complaint filed against the City. If the pleading can be challenged by demurrer or motion to dismiss, or if a motion for change of venue or removal to federal court are desirable, the pros and cons of such a response should be reviewed. Any recommendations for cross-complaints, including the issues of solvency or potential coverage of cross-defendants, should also be covered.

3) Damages

Summarize and analyze plaintiff's injuries, damages and our exposures in the case.

4) Liability Analysis & Plan of Action

Provide your initial impression of liability. This should be quantified by the use of percentages where possible. If you disagree with the liability assessment as reported by the Risk Manager/Member Representative, please feel at ease to report so, with your reasons why. If you believe it is a case of liability, efforts should focus on resolving the case without incurring unnecessary discovery costs. If facts are disputed and counsel cannot properly assess liability, a preliminary liability opinion should be provided outlining the questions that still need to be resolved before a true assessment can be made.

5) Legal Opinion

Any pertinent cases on point, which will govern liability, should be briefly reviewed.

6) Request for Additional Investigation

Any request for additional field investigation must be formally requested, including, if applicable, a recommendation for an investigator. Counsel is not authorized, without permission, to assign field investigation to associates, law clerks or paralegals; our staff is charged with the responsibility for the completion of field investigation. Let us know what additional work you need, and our staff will see if we can accomplish it first. Identify any tangible physical evidence the City needs to secure.

7) Discovery Plan

Counsel should briefly analyze what discovery is anticipated to put the case into perspective for proper evaluation. List the person(s) you believe should be deposed or who are likely to be deposed by the adverse parties. If the case calls for early retention of experts, discuss that issue. Describe any other site investigation, witness interviews, or other investigation that is needed. Proposed discovery should be outlined and recommended in the report. Should the Risk Manager/Member Representative have a particular objection to a suggested discovery item, he or she will so advise.

8) Legal Budget

To assist the attorney in projecting anticipated legal costs, a "Legal Budget" must be completed. The CJPRMA Model Litigation Budget Form may be used by members and personalized for their agency. Attach the completed form to the Preliminary Liability Report. The form is used to set our legal cost reserve. Unanticipated litigation activity may give rise to an under-reserved legal budget. As soon as it is reasonably foreseeable that

the file is under budgeted, an updated "Legal Budget" should be completed with counsel's recommendation for a budget increase. The Risk Manager/Member Representative will closely monitor the basis for budget increases. If the "Legal Budget" has been exceeded, no further payments of fees can be paid until a revised budget is submitted. Significant deviations from the budget will be taken into account when evaluating defense counsel's performance.

9) Remarks/Recommendations

Include comments/recommendations not previously mentioned. This would include discussion of any existing demand, or if a demand should be solicited, etc. since early exploration of such issues can simplify decisions regarding what discovery and expert witness costs should be undertaken. Include comments on the settlement status of the case, and the availability of ADR or arbitration.

Although the information required in this report is comprehensive in scope, it is our hope that the attorney's first report does not exceed 3-5 pages.

ARTICLE V. MANDATORY STATUS REPORTS

Status reports are mandatory every 90 days or as soon as possible following any significant event in the case. *Please report only on new developments since the last report. It is not necessary to rehash the case facts or repeat information previously reported.* The reporting diary can be extended if the Risk Manager/Member Representative is notified of your intention to put the file on an extended diary.

SECTION A. STATUS REPORT

Status reports should include a periodic reevaluation of the litigation plan and should specifically address the following:

- 1) The ongoing strategy for defense or resolution of the case, including a factual analysis of developments related to liability and damages;
- 2) A description of planned discovery with a timetable for completion;
- 3) A brief synopsis of the discovery completed since the last report;
- 4) We don't want copies of all legal documents, but we do need copies of significant documents relating to liability and/or damages, including any amendments to the complaint; points and authorities on demurrers, motions to dismiss, or summary judgment motions; hospital discharge summaries; expert reports; mediation briefs; and similar significant motions and responses;

- 5) Court actions or calendar dates, including but not necessarily limited to: mandatory settlement conferences, trial setting conferences, arbitration and trial dates, hearings on discovery, etc.
- 6) Anticipated changes in the litigation budget;
- 7) New settlement demands or other material communications from plaintiff's counsel; and
- 8) A "to do" list of immediately upcoming tasks.

SECTION B. DEPOSITION REPORTS

Defense counsel is responsible to report, in writing, on the substance of all depositions taken in the case.

This need not be a lengthy, multi-page deposition summary, but should instead include a concise report of major events occurring at the deposition, an evaluation of the credibility and appearance of the witness, and an evaluation of the effect of the deposition testimony on the case. Except in extraordinary situations, the maximum allowable charge for summarizing a deposition will be limited to two hours.

The setting of a trial date, settlement conference date, hearing date on motion for summary judgment or similar dispositive motion must be reported, in writing, within one week of the time the date is established. Settlement demands and offers similarly must be reported, in writing, within one week of the time the offer is made or the demand is received. Please flag reports at the top of the first page to note any items that are urgent or require an immediate reply. Similarly, if a trial or settlement conference date has been set, please note the upcoming dates in the caption of each status report.

ARTICLE VI. TRIAL / ARBITRATION REPORTS

No later than 60 days prior to trial (or binding arbitration), the defense trial attorney will provide a report, which shall include:

- (a) An assessment of the City's liability;
- (b) An assessment of plaintiff's injuries or damages;
- (c) An assessment of the legal defenses (and probability of prevailing);
- (d) An assessment of the chances of prevailing at trial;
- (e) The verdict value assuming full liability;
- (f) An assessment of any other factors affecting the items above, including demeanor or credibility of important witnesses, evidentiary disputes,

tendencies of local juries, the judge or opposing counsel, liability and solvency/coverage of co-defendants, or similar important issues;

- (g) An appraisal of settlement value, considering verdict value and chances of prevailing;
- (h) The status of settlement discussions;
- (i) Estimated future fees and costs through trial (since last billing).

A daily oral report is expected during trial, unless the Risk Manager/Member Representative is present. The Risk Manager/Member Representative will keep the City's excess liability pool advised of status, where applicable. Immediately following any trial/arbitration, a brief trial report should be sent to the Risk Manager/Member Representative outlining the results.

ARTICLE VII. FINAL REPORTS

At the conclusion of the case, a brief report should be sent to the Risk Manager/Member Representative. Original closing papers and final billing should be attached.

ARTICLE VIII. CJPRMA REPORTING REQUIREMENTS

The City participates in the California Joint Powers Risk Management Authority (CJPRMA), an excess liability self-insurance pool. A copy of CJPRMA's reporting requirements is attached to this policy. The Risk Manager/Member Representative will notify your office on those cases that have been reported to CJPRMA. In the event the case appears to meet the requirements and you are not aware whether it has been reported, call the Risk Manager/Member Representative to ascertain its status. Once a case is reported to CJPRMA, defense counsel must ensure that additional copies of all status reports are forwarded to CJPRMA and the City's CJPRMA Board member (if not already copied) and that the reports comply with CJPRMA's case reporting requirements.

ARTICLE IX. SIGNIFICANT STRATEGY DECISIONS

A primary goal of these policies and procedures is to keep the City involved in litigation decisions. Defense counsel is urged to keep this in mind throughout the handling of the case. Many decisions are made routinely, such as sending out standard discovery requests or granting an extension of time to opposing counsel. Where multiple extensions are sought, however, the Risk Manager/Member Representative should be consulted. Similarly, deciding on the order and timing of discovery to be taken and whether some discovery should be delayed pending settlement discussions are strategy decisions that should be discussed with the Risk Manager/Member Representative. Selection of an arbitrator or mediator, or waiver of a jury trial, must be done in consultation with the Risk Manager/Member Representative. Decisions such as filing indemnity cross complaints, conducting informal exchanges of discovery materials with co-

defendants or the claimant, or sharing discovery costs with co-defendants, must also be made in consultation with the Risk Manager/Member Representative.

ARTICLE X. DISCOVERY

In order to facilitate prompt discovery responses, please provide the maximum possible lead time for all papers, particularly answers to interrogatories. Unless directed otherwise, such discovery requests should be forwarded to the department or employee involved with a copy to the Risk Manager/Member Representative so that the Risk Manager/Member Representative can assure timely follow-up. Please review discovery requests in advance for objectionable items so that City staff does not spend unnecessary time preparing responses that will not be used.

ARTICLE XI. SETTLEMENT AUTHORITY

Defense counsel has no authority to settle cases without prior authorization, depending upon the amount involved, from the Risk Manager/Member Representative, City Attorney or City Council. There are many cases that require that defense counsel handle negotiations directly. In all such circumstances it is mandatory that the Risk Manager/Member Representative be kept fully apprised at each step of negotiations.

ARTICLE XII. EXTRAORDINARY EXPENSES

Experts, Investigative Services, Independent Medical Exams, Out-of-Area Travel; Prior approval must be obtained before incurring expenses in these areas. Before an expert is retained, assure he/she testifies well and will be available for trial. Provide the expert's curriculum vitae and discuss the pros and cons of the expert with the Risk Manager/Member Representative. Have an estimated cost for the expert's services.

Careful consideration must be given to the value of any motion before it is filed, and proper authority must be obtained from the Risk Manager/Member Representative. Except in unusual circumstances, time and effort should not be spent preparing, filing and arguing a motion unless the motion will significantly shorten or terminate the suit or gain a distinct advantage in the litigation.

ARTICLE XIII. LEGAL RESEARCH (including time on Lexis and Westlaw)

As government defense attorneys, you are expected to have knowledge in the area of claim requirements, government immunities and tort defense. Therefore, we expect extended legal research billings to be limited to more complex issues.

If a legal research project is expected to exceed 4.0 hours, prior approval by the Risk Manager/Member Representative is required. Include in the billing a

description identifying the subject being researched. A copy of the work product from such activity should be forwarded to the Risk Manager/Member Representative. Do not create a separate report simply to comply with this requirement; you may forward the handwritten notes or file memo so that the Risk Manager/Member Representative can keep track of the research done.

The City will index research memos by issue. It is the intention of the Risk Manager/Member Representative to share research projects between defense firms where similar issues recur.

ARTICLE XIV. LEGAL BILLINGS

Legal fees are to be submitted in the following format:

- (a) Each legal activity must be separately dated and itemized, with a description of the work along with the initials of the attorney completing the work (no "block billing"; multiple daily descriptive explanations of activities with a single time entry are not acceptable).
- (b) The amount of time to complete the task must be broken down into tenths of hours.
- (c) The rates and hours charged by each attorney/paralegal working on the case must be summarized at the end of the bill to depict a cost per attorney.
- (d) Interoffice conferencing among attorneys will not be compensable unless it is a necessary strategy meeting related to some significant legal event (such as an upcoming trial). We will not pay for duplicated entries for reviewing and analyzing documentation and legal research.
- (e) General overhead and administrative costs (including secretarial time, word processing time) are included in the hourly rate and are not separately compensable.
- (f) Time to "organize file" is a secretarial function and not compensable.
- (g) Show actual charges or rates for cost charges (FAX, photocopy, out of area telephone, postage, etc.).
- (h) Telephone calls should specify the participants and the subject matter discussed.
- (i) Billings can be submitted monthly, but must be submitted at least quarterly unless no activity has occurred.

Bills from vendors or other contractors under \$200 should typically be paid by the firm and included on the attorney's bill for reimbursement. Bills of \$200 or over

should be sent directly to the City for payment. Use of vendors or independent contractors must be previously approved.

Routine use of overnight mail or messenger service is strongly discouraged.

The Risk Manager/Member Representative will review and approve all billings for payment. Any questions regarding charges will be directed to the managing attorney. Legal payments will not be remitted until any disputes on billings are resolved.

Unilateral fee rate increases by law firms will not be accepted. Any proposed fee increase must be approved by the City prior to implementation.

ARTICLE XV. REMARKS

Case reporting is given a high priority by the Member and is a major consideration in evaluating defense counsel's performance. Our goal is that these litigation policies and procedures will result in a better organized and managed defense of the Member. The completion of a "Legal Budget" will focus defense attorney and Member staff on the cost of defense provided to the Member and, we hope, will assure a sound defense with a reasonable litigation cost.

Your firm has been selected to defend the Member because the high caliber of your work. The Member is grateful for your efforts on its behalf, and hopes that the litigation policies and procedures outlined above will provide you with direction on what is expected in reporting and thereby improve our relationship, our mutual communication and your overall performance in handling litigation on behalf of the member.