



COUNTY OF DUTCHESS
DEPARTMENT OF LAW

November 2, 2022

Hon. Christie L. D'Alessio
New York State Supreme Court
Dutchess County Chambers
10 Market Street
Poughkeepsie, NY 12601

RE: League of Women Voters of the Mid-Hudson Region, et al, v. Dutchess County Board of Elections, et al.; **Index No. 2022-53491**

Your Honor:

The Dutchess County Attorney is the exclusive legal counsel to the Dutchess County Board of Elections, however, I write to respectfully request the Court's approval to be excused as counsel for the Board in this matter on the basis that a conflict of interest prevents such representation.

Pursuant to Election Law 3-200(2), the Dutchess County Board of Elections is comprised of two election commissioners. Election Law 3-212(2) requires that all actions of the Board require a majority vote of the Board. Commissioner Haight has been named as a Respondent in the above-referenced action, and Commissioner Black has offered an Affidavit in support of the Verified Petition. The County Attorney is therefore unable to represent the Board as a body because there is an irreconcilable division between the Commissioners in this matter.

I am in receipt of a Verified Answer offered by Respondent-Defendant proposed intervenor, Hannah Black, as Commissioner of the Dutchess County Board of Elections. The County Attorney's Office does not object to, and takes no position on, Respondent-Defendant proposed intervenor Black's Verified Answer to the extent that it seeks a declaration that Commissioner Black is a necessary party and further to the extent that it seeks leave of Court for Commissioner Black to intervene as an interested person. Further, if the Court declares that Respondent-Defendant proposed intervenor Black is a necessary party who may intervene as an interested person, then the County Attorney has no objection to the County's payment of attorney fees associated with private representation of Commissioner Black as a Respondent-Defendant, to the extent such fees are in accord with Dutchess County Local Law No. 4 of 1988.

It is well-settled that an attorney may not be compensated for services rendered a municipal officer unless he has been retained in accordance with statutory authority. *Cahn v. Town of Huntington*, 29 NY2d 451 (1972). Such statutory authority must be express. However, in the absence of specific statutory authority, a municipal board or officer may have implied authority to

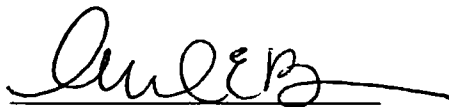
retain private counsel, but only if they are involved “in good faith in the prosecution or defense of an action undertaken in the public interest, and in conjunction with its or his official duties where the municipal attorney refused to act, or was incapable of, or was disqualified from, acting.” *Id.*

Dutchess County Local Law No. 4 of 1988, enclosed herewith, is the statutory mechanism by which the County provides legal and financial protection to County employees sued as a result of actions taken in performance of their official duties. Section 75-21 requires that legal action must be taken “against them.” Further, Section 375-23(B) states that when the County Attorney determines, upon investigation of the matter, that representation by the County Attorney would be inappropriate, or where a Court determines that a conflict of interest exists, then a County officer or employee may be represented by private counsel of his/her choice. Given that Commissioner Haight was named as a Respondent and his interests are adverse to Commissioner Black, on both of their admissions, the County Attorney authorized Commissioner Haight to secure private counsel at the expense of the County, within the confines of Local Law No. 4 of 1988. Commissioner Black was not named as either a Petitioner or Respondent-Defendant in this action, and thus, no legal action was taken “against her” in line with Dutchess County Local Law or *Cahn*, and as such, Commissioner Black’s request for private legal representation, paid for by Dutchess County, was denied. Further, Commissioner Black cannot alone represent the interests of the Board of Elections to the extent the Board is named as a Respondent.

The determination was made solely upon the aforementioned and on no other grounds. If the Court grants Commissioner Black’s application to be named as a necessary party and to intervene, I have no objection to Commissioner Black securing private counsel at county expense, in line with Local Law No. 4 of 1988, because the County Attorney has a conflict of interest and Commissioner Black would then be named in a civil proceeding “against her” and will directly participate in the “prosecution or defense of an action ... in conjunction with [her] official duties.” *Cahn*, 29 NY2d at 456.

Lastly, the conflict of the County Attorney’s Office prohibits me from taking any position as it concerns the Respondent-Defendant proposed intervenor Black’s Verified Answer’s request for “granting the relief requested in the Verified Petition of the Petitioners viz a vie Petitioners’ request for an order requiring that a poll site be placed upon the campus of Vassar College [or] such other an further relief as the Court deems necessary and proper.”

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Caroline E. Blackburn", written over a horizontal line.

CAROLINE E. BLACKBURN, ESQ.
Dutchess County Attorney
22 Market Street, 5th Floor
Poughkeepsie, New York 12601

*Dutchess County, NY
Wednesday, November 2, 2022*

Chapter 75. Officers and Employees

Article V. Defense and Indemnification

[Adopted 7-11-1988 by L.L. No. 4-1988]

§ 75-21. Findings and intent.

The purpose of this article is to provide legal and financial protection for those individuals serving the County of Dutchess from losses which may be brought against them in their individual capacity for actions taken while in the performance of their official duties and responsibilities. In enacting this article, the County Legislature of Dutchess County finds that the State of New York has enacted similar provisions for the legal and financial security of its officers and employees and further finds that such security is also required for local personnel. By enactment of this article, the County Legislature of Dutchess County does not intend to limit or otherwise abrogate any existing right or responsibility of the County of Dutchess or its employees with regard to indemnification or legal defense. It is solely the intent of this article to provide similar coverage for local employees as is presently provided for state employees, so as to continue to attract qualified individuals to local government service.

§ 75-22. Definitions.

[Amended 5-13-1991 by L.L. No. 6-1991]

As used in this article, the following terms shall have the meanings indicated:

EMPLOYEE

Any person holding a position by election, appointment or employment in the service of the County of Dutchess, whether or not compensated, or a volunteer expressly authorized to participate in a County-sponsored volunteer program, but shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative and shall also include an officer, director or employee of the Dutchess County Industrial Development Agency and a member of any board or agency appointed by the County Executive and/or the Dutchess County Legislature.

§ 75-23. Duty to provide for defense; legal representation.

- A. Upon compliance by the employee with the provisions of § 75-25 of this article, the County of Dutchess, through the office of the County Attorney or by means of any applicable insurance program maintained by the County, shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties, or which is brought to enforce a provision of Title 42 of the United States Code. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the County of Dutchess.

- B. Subject to the conditions set forth in Subsection A of this section, the employee shall be entitled to be represented by the County Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his/her choice in any civil judicial proceeding whenever the County Attorney determines, based upon his/her investigation and review of the facts and circumstances of the case, that representation by the County Attorney would be inappropriate, or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his/her choice. The County Attorney shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel of his/her choice. The County Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the County Attorney shall so certify to the County Legislature. Reasonable attorney's fees and litigation expenses shall be paid by the County to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification by the County Attorney as provided herein. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorney's fees shall be resolved by the court upon motion or by way of a special proceeding.
- C. Where the employee delivers process and a request for a defense to the County Attorney as required by § 75-25 of this article, the County Attorney shall take the necessary steps, including the retention of private counsel where necessary as provided in Subsection B herein, on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

§ 75-24. Scope of indemnification; proposed settlements.

- A. The County of Dutchess shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his/her public employment or duties. The duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee and shall not be applicable to an award for punitive damages.
- B. The determination of an issue of whether or not an employee was acting within the scope of his/her public employment or duties at the time of the occurrence, act or omission giving rise to a claim shall be made in the first instance, with regard to employees within the Executive Branch, by the County Executive, on advice from the County Attorney, and, with regard to employees within the Legislative Branch, by the Chair of the Legislature, subject to the entire Legislature, also upon advice from the County Attorney. Any such determination shall be subject to review by a court of competent jurisdiction in the manner prescribed by law.
- C. An employee represented by private counsel shall cause to be submitted to the County Legislature, any proposed settlement which may be subject to indemnification by the County of Dutchess. The County Attorney shall review such proposed settlement as to form and amount and submit a favorable recommendation if, in his/her judgment, the settlement is in the best interest of the County. Nothing in this subsection shall be construed to authorize the County to indemnify or hold harmless an employee with respect to any settlement not so reviewed and approved by the County Attorney.
- D. Upon entry of a final judgment against the employee, or upon the settlement of the claim after approval by the Legislature as provided in Subsection C hereof, the employee shall cause to be served on the County Attorney, personally or by certified or registered mail, a copy of such judgment or settlement within 30 days of the date of entry or settlement. If not inconsistent with

the provisions of this section, such judgment or settlement shall be certified for payment by the County Attorney.

§ 75-25. Conditions for defense or indemnification.

The duty to defend or indemnify and save harmless provided by this article shall be conditioned upon the following:

- A. Delivery by the employee to the County Attorney, or his/her assistant, at his/her office, of the original or a copy of any summons, complaint, process, notice, demand or pleading within 10 days after service on the employee. Such delivery shall be deemed a request by the employee that the County Attorney provide for his defense pursuant to this article.^[1]

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

- B. The full cooperation of the employee in the defense of such action or proceeding and in the defense of any action or proceeding brought against the County based on the same act or omission, and in the prosecution of any appeal.

§ 75-26. Effect on other coverage.

The benefits of this article shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provision of this article be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

§ 75-27. Liability of insurers.

The provisions of this article shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

§ 75-28. Applicability.

The provisions of this article shall apply to all actions and proceedings pending upon the effective date hereof or thereafter instituted.

§ 75-29. Limitations on liability.

Except as otherwise specifically provided in this article, the provisions of this article shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the County of Dutchess, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of any other provision of state or federal statutory or common law.

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