

**CHAPTER 5.12**

**DEFENSE OF ACTIONS AGAINST  
COUNTY OFFICERS AND EMPLOYEES**

**SECTIONS:**

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**5.12.010 PURPOSE.** The purpose of this chapter is to provide for the legal and financial protection of county officers, employees, and their marital communities from personal liability for acts or omissions by such officers and employees while acting in good faith and within the scope of their official county duties. [Ord. 253 (1994) ▪ 1]

**5.12.020 DEFINITIONS.** The following terms, as used in this chapter, shall mean:

(a) Benton County "officer" or "employee" as used in this chapter shall include all past and present employees, elected and appointed officials, and volunteers, whether or not compensated, while acting in their official capacity or for Benton County or on its behalf, including, but not limited to, all commissions, agencies, districts, authorities, boards (including the governing board) or similar entities which operate under Benton County's supervision or control. [Ord. 253 (1994) ▪ 2]

**5.12.030 REQUEST FOR DEFENSE.** Whenever an action for damages is brought against a past or present county officer, employee or volunteer arising from acts or omissions while performing duties on behalf of the county, said officer, employee or volunteer may make a written request to the prosecuting attorney's office for defense

by the county on such form as is attached hereto as Exhibit A and which may be obtained from County department heads or officials. [Ord. 253 (1994) § 3; Ord. 429 (2006) § 1]

**5.12.040 DETERMINATION TO DEFEND.** The county will provide for the defense of the county officer, employee or volunteer, and any spouses thereof to the extent also sued for vicarious liability imposed by community property laws, if the alleged acts or omissions were, or in good faith purported to be, within the scope of the officer, employee or volunteer's official county duties. This determination shall be made by the prosecuting attorney's office in writing and sent to the county officer, employee or volunteer, and is subject to reconsideration at any time prior to a determination by a court of whether the officer, employee or volunteer was, or in good faith purported to be, acting within the scope of their official duties. If the request has been denied by the prosecuting attorney's office, the officer, employee or volunteer shall have ten (10) business days from the date of the prosecuting attorney's determination to file a written appeal with the board of county commissioners. [Ord. 253 (1994) § 4; Ord. 429 (2006) § 2]

**5.12.050 EXPENSES COVERED.** The county will pay any judgment against the officer, employee or volunteer for non-punitive damages imposed while the county is providing a defense required by this Chapter. If the county is obligated to pay a judgment under this section, the judgment creditor shall seek satisfaction for non-punitive damages only from the county and such judgment for non-punitive damages shall not become a lien upon the property of such officer, employee or volunteer. If the defense under this Chapter is not withdrawn prior to judgment, the county may, at its discretion, also pay punitive damages awarded in such circumstances if the prosecuting attorney continues to find the officer, employee or volunteer acted, or in good faith purported to act, within the scope of his or her official duties after the court's judgment is entered. If payment of punitive damages is denied by the prosecuting attorney, the officer, employee or volunteer has ten (10) business days from the date of the prosecuting attorney's determination to file a written appeal with the board of county commissioners. The county will not pay the costs of an attorney retained by the county officer, employee or volunteer unless

specifically approved by the board of county commissioners and prosecuting attorney.  
 [Ord. 253 (1994) § 5; Ord. 429 (2006) § 3]

**5.12.060 WITHDRAWAL OF DEFENSE.** If at any time during defense of an action authorized under BCC 5.12.040 the county officer, employee or volunteer or one of their spouses if being defended by the county fails to cooperate with the prosecuting attorney's office or other attorney retained by the county or the prosecuting attorney determines based on new information that the county officer, employee or volunteer was not acting, or in good faith purporting to act, within the scope of that person's official county duties, the prosecuting attorney's office may withdraw the county's defense in writing. The county officer or employee may appeal this decision in writing to the board of county commissioners within five (5) days from the date of the withdrawal by the prosecuting attorney's office.  
 [Ord. 253 (1994) § 6; Ord. 429 (2006) § 4]

**5.12.070 DUTIES OF COUNTY OFFICER OR EMPLOYEE.** Except as specifically directed by the prosecuting attorney's office or other attorney representing the county, no county agency and no county officer or employee may engage in any of the following acts with respect to actions or proceedings for damages defended pursuant to this chapter:

- (a) Negotiate or otherwise affect the settlement of such action or proceedings for damages against the county;
  - (b) Make an admission of liability involving such an action or proceeding with persons against the county;
  - (c) Discuss with persons who are not county employees incidents which could reasonably lead to actions or proceedings for damages against the county or its officers or employees.
- [Ord. 253 (1994) § 7]



**NOTE:** Page 5-11 through Page 5-13 are hereby reserved.