

RESOLUTION OF THE BOARD OF SUPERVISORS OF MARICOPA COUNTY CONCERNING DISPUTES BETWEEN COUNTY OFFICERS

WHEREAS, the Board of Supervisors understands that litigation between County Officers is a disruptive, time-consuming, and costly manner in which to resolve disputes between County Officers; and

WHEREAS, the public interest would be served by County Officers engaging in alternative dispute resolution procedures prior to a County Officer filing a lawsuit against another County Officer; and

WHEREAS, on-going disputes and lawsuits between County Officers have created unexpected and unfunded costs for Maricopa County; and

WHEREAS, routine budget policy of Maricopa County requires that actions taken by departments, offices and agencies of Maricopa County be paid from the initiating department, office or agency's annual lump-sum budget¹; and

WHEREAS, the Board of Supervisors wishes to institute an Alternative Dispute Resolution (ADR) Policy that requires County Officers to exhaust certain procedures prior to instigating any litigation against another County Officer;

NOW THEREFORE, BE IT RESOLVED THAT: Pursuant to A.R.S. §§ 11-201 & 251, Maricopa County adopts, finds and decrees that no County Officer shall file a lawsuit, or expend any County resources, including funds, preparing a lawsuit, until the following alternative dispute resolution procedures are exhausted. The following procedures are adopted to govern disputes between County Officers related to any legal claim or controversy.

A. DEFINITIONS: The following definitions apply throughout this document:

1. **Board:** The Board of Supervisors of Maricopa County.
2. **County Manager:** The County Manager of Maricopa County.
3. **Law:** All statutes, rules, administrative orders, court orders or case law binding in the State of Arizona.
4. **Costs and Fees:** Attorneys' fees and costs associated with litigation.

¹ Section 7, Budgeting for Results Accountability Policy, which states in part that "departments have the flexibility to incur expenditures that vary from their detailed budgets for the remainder of the current fiscal year, so long as they comply with the appropriated budget."

5. **County Officer**: All County Constitutional officers as follows:
- (a) Sheriff;
 - (b) Recorder;
 - (c) Treasurer;
 - (d) School Superintendent;
 - (e) County Attorney;
 - (f) Assessor; and
 - (g) County Supervisors.

The definition of "County Officer" shall also include:

- (a) the Clerk of the Board of Supervisors;
- (b) Justices of the Peace;
- (c) Constables; and
- (d) to the extent a County Officer has a claim against either the Maricopa County Superior Court, any of its judges, or the Clerk of the Superior Court, then these officials shall also be considered County Officers.

B. POLICY

1. Initial Discussion

In the event that a legal claim or controversy arises between County Officers, the County Officers shall personally meet in good faith to attempt to resolve any such claim or controversy.

If the claim or controversy involves the Board, the meeting shall be a public meeting of the Board at which the basis of the claim or controversy is presented in detail and solutions are suggested. Each County Officer subject to the claim or controversy shall respond to it and, if necessary, suggest alternative solutions. Because the Board must strictly adhere to Arizona's Open Meeting Law, it may not be possible for the Board to respond without noticing additional meetings. A County Officer shall attend any additional meetings needed as a result of Open Meeting Law compliance.

The Board may designate the County Manager in order to continue discussions with County Officer(s) prior to any additional meetings of the Board.

2. **Mediation**

In the event the Initial Discussion procedure does not resolve the claim or controversy, the County Officers involved shall engage in mediation with a third party mediator agreed to by the parties.

Each County Officer shall submit a written position statement to the mediator. A County Officer shall personally appear for the mediation; however, in the case of the Board, and because of Arizona's Open Meeting Law requirements, the County Manager or his designee may appear for the mediation on behalf of the Board.

3. **Neutral Evaluation by Hearing Officer**

In the event that mediation does not solve a claim or controversy between County Officers, the parties shall submit the claim or controversy to an administrative hearing officer for a neutral evaluation.

The case or controversy shall be submitted to the hearing officer in writing via an opening statement, response statement and, if ordered by the hearing officer, a reply statement. The hearing officer may also order oral argument. In the case of the Board, and because of Arizona's Open Meeting Law requirements, the County Manager or his designee may make any presentation on behalf of the Board. Oral argument, if ordered, shall be open to the public.

The hearing officer may order any schedule it deems appropriate but, in any event, shall receive all statements, hold any oral argument, and issue a written report and recommendation to the parties within 60 days of the claim or controversy being submitted by a County Officer. The parties may accept or reject the hearing officer's recommendation. If either or both parties reject the hearing officer's recommendation, then a County Officer may seek resolution to the claim or controversy by filing litigation in an appropriate venue.

4. **Waiver/Exhaustion**

On agreement of all parties to a claim or controversy between County Officers, the parties may waive one or more of the foregoing procedures. If a County Officer fails to exhaust these procedures, then a County Officer is prohibited from using any County funds or resources to commence litigation against another County Officer.

5. **Costs and Fees**

A County Officer who initiates litigation against another County Officer must provide for the Costs and Fees associated within its legal representation within

its annual lump-sum budget, as with any other expenditure allowed by law.² County Officers are responsible for approving payments for Costs and Fees incurred by their offices as a result of litigation commenced against other County Officers. Payments for such expenses must be:

- (a) verified by the County Officer as to the legitimacy and appropriateness of the services rendered;
- (b) covered within the County Officer's lump-sum annual budget; and
- (c) in compliance with the applicable County legal services contract.

The policy contained in this Resolution shall apply to any Costs and Fees associated with legal representation pending at the time this Resolution is adopted.

Adopted this 21st day of October, 2009.

MARICOPA COUNTY
BOARD OF SUPERVISORS

Chairman

ATTEST:

Clerk of the Board

Approved as to form:

Counsel to the Board

² If a County Officer's lump-sum budget is unable to provide for the Costs and Fees of litigation commenced by the County Officer, then a County Officer is free to submit a request to the Board of Supervisors to appropriate sufficient funding, as provided for by the Budgeting for Results Accountability Policy, Section 5, which states in relevant part that "appropriated budgets shall be changed during the fiscal year only with the Board of Supervisors/Board of Directors approval."