



## Legislation Text

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### PROPOSED ORDINANCE

#### OUTSIDE COUNSEL AND LEGAL FEES

**BE IT ORDAINED**, by the Forest Preserve District of Cook County Board of Commissioners that Chapter 19 of Title 1 of the Forest Preserve District of Cook County Code of Ordinances is hereby enacted as follows:

#### **A. District Reports to Litigation Subcommittee.**

- 1. Notice of Monetary Counterclaims and Fee Requests.** If the Forest Preserve District of Cook County is a party to any civil legal action in state or federal court, the District's Chief Attorney shall provide notice to the Litigation Subcommittee (as defined below) prior to a filing for monetary counterclaim, request for monetary sanctions, request for statutory reimbursement and/or request for fees in excess of \$50,000. If the Chief Attorney is unable to provide notice to the Litigation Subcommittee in advance of filing, the Chief Attorney shall inform the Chair of the Litigation Subcommittee in advance of filing and provide notice to the Litigation Subcommittee at its next scheduled meeting.
- 2. Settlement.** The District shall request authority from the Litigation Subcommittee prior to settling any matter in excess of \$30,000. District attorneys shall provide a written settlement analysis and recommendation to the Subcommittee and shall be prepared to present that recommendation at a meeting of the Subcommittee. In addition, District attorneys shall provide the Litigation Subcommittee written information regarding cases anticipated to settle in excess of \$500,000 and shall place that informational item on the Litigation Subcommittee's agenda at least one month in advance of seeking authority to settle.
- 3. Permission to Try.** The District shall obtain the approval of the Litigation Subcommittee prior to taking a matter to trial in state or federal court. When the District recommends that a civil matter proceed to trial, it shall provide a revised Case Summary (as defined below) and recommendation to the Litigation Subcommittee. The Chief Attorney shall be prepared to present that recommendation at a meeting of the Subcommittee. Prior to seeking the authority to bring a matter to trial, the District must present a revised Case Budget (as defined below) with the estimated cost of the potential trial to the Litigation Subcommittee for approval.
- 4. Appeals.** The Chief Attorney must notify the Chair of any final and appealable ruling having a negative financial impact on the District in excess of \$50,000 in civil matters within 72 hours of the ruling. If an appeal may result in the imposition of accrued interest upon the District, the Chief Attorney must obtain authorization from the Litigation Subcommittee before pursuing the appeal. However, the District shall take all steps necessary to protect the interests and preserve the appeal rights of the District pending a decision to appeal, including the filing of appropriate post-trial motions or a notice of appeal when necessary. The decision to appeal must be approved by the Litigation Subcommittee.

5. **Exceptions.** The provisions of this Section shall not apply to litigation or settlements subject to the Illinois Workers' Compensation Act. (820 ILCS 305/1 *et seq.*)

**B. State's Attorneys Forest Preserve District of Cook County Representation**

The District may engage Assistant State's Attorneys assigned from the Cook County State's Attorney's Office to represent the District in certain civil litigation matters at rates and terms set forth in the then-applicable intergovernmental agreement.

**C. District Guidelines for Outside Counsel**

1. **Short title.** This subdivision shall be known and may be cited as the "District Guidelines for Outside Counsel."
2. **Purpose.** The Forest Preserve District of Cook County may engage Outside Counsel to operate under the direction of the District's Chief Attorney or Responsible Attorney (see defined terms below).
3. **Definitions.** The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
  - a. *Case Budget* means the estimate of legal fees and expenses through the time of judgment or other completion including costs associated with the use of third-party vendors.
  - b. *Case Summary* means the report prepared by Outside Counsel and submitted to the Litigation Subcommittee that updates the Litigation Subcommittee on the progress and status of the case assigned to Outside Counsel.
  - c. *Chair of the Litigation Subcommittee* or *Chair* means the chairperson of the Finance Subcommittee on Litigation of the Forest Preserve District of Cook County Board of Commissioners.
  - d. *Litigation Subcommittee* or *Subcommittee* means the Finance Subcommittee on Litigation of the Forest Preserve District of Cook County Board of Commissioners.
  - e. *Non-Contested Matter* means any matter that requires legal analysis, but is not adversarial litigation.
  - f. *Outside Counsel* is a law firm or individual attorney engaged by the District to represent it in an assigned legal matter under the direction of a Responsible Attorney.
  - g. *Quarterly Status Reports* means the written reports that update the status of the case, made in writing and submitted to the Chair of the Subcommittee on Litigation at least four times annually.
  - h. *Responsible Attorney* is a designated staff attorney employed by the District.

4. **Applicability.** This Chapter shall apply to all Outside Counsel engaged by the District. All Outside Counsel who represents the District in multiple litigation matters, must comply fully with the terms of this Chapter for each separate matter of representation. No attorney may file an appearance in a lawsuit on behalf of the District unless they have been authorized by the General Superintendent, Chief Attorney or Responsible Attorney to file an appearance.

#### **D. Case Management.**

1. **Case Management.** Each Outside Counsel who has filed an appearance on behalf of the District:
  - a. Shall submit a Case Budget and a Case Summary to the Litigation Subcommittee within thirty (30) days of their engagement or as soon thereafter as the Subcommittee meets, unless there is a conflict of interests in disclosing such information to the Litigation Subcommittee. This information and other communications between Outside Counsel and the Litigation Subcommittee shall constitute privileged and confidential attorney-client communications; and
  - b. Shall include in the Case Summary the major activities anticipated for a successful outcome of the case. The Case Summary shall also include estimates of potential liability, whether the case is appropriate for settlement, and the assessment of the probable outcome of litigation; and
  - c. Shall report any modifications or deviations to the initial Case Summary in Quarterly Status Reports to the Chair.
2. **Review of Case Summary and Budget.** The Subcommittee shall review the Case Summary and Budget. The Responsible Attorney is not prohibited from initiating legal activities reasonably necessary to adequately protect the legal interests of the District prior to the Subcommittee's review of the Case Summary and Budget.
3. **Estimated Case Budget.** The Case Budget shall include an estimate of legal fees and expenses through the time of judgment or other completion and shall allocate the fees and expenses associated with each phase.
4. **Workers' Compensation.** For claims subject to the Illinois Workers' Compensation Act, the Case Summary and Budget shall be submitted to the Finance Subcommittee on Workers' Compensation.

#### **E. Fees, Expenses, and Rates**

1. **Fees and Expenses.** Outside Counsel shall be paid reasonable fees and costs based on the type and nature of the case. Such fees and costs shall conform to the fees and costs authorized under this Section. Outside Counsel must pay for all expenses in advance unless otherwise expressly directed by the court or the Chief Attorney or Responsible Attorney. Reimbursement of expenses shall be requested as part of Outside Counsel's invoices. Expenses shall be reimbursed as follows:
  - a. *Photocopying.* Reasonable photocopying at actual cost, not to exceed \$0.10 per page.

- b. *Messenger service.* The use of messengers when there is a genuine need for expedited delivery at actual charges of a third-party vendor or, when an in-house firm messenger is used, at actual cost (not at the paralegal or legal assistant billing rate).
  - c. *Computerized research.* Actual costs of reasonably necessary computerized research services.
  - d. *Experts.* The reasonable fees of qualified consulting and testifying experts retained to provide opinions necessary to the defense or prosecution of the litigation, except that all expert fees must be pre-approved by the Chief Attorney if they are anticipated to exceed \$500.
  - e. *Travel.* Air travel expenses must not exceed the highest fare coach rate for the flight. Mileage expenses shall be at the Internal Revenue Service deductible rates. Hotels, car rental companies and airlines offering moderate prices and discounted corporate rates shall be used. Outside Counsel shall reduce the hourly rate charged by fifty percent (50%) while an attorney or paraprofessional is traveling, unless legal work is being performed and is documented.
- 2. General business costs.** Law firm overhead expenses including, but not limited to, rent, electricity, supplies, secretarial and support services, computer system expenses, overtime expenses, local telephone service and other similar expenses, shall be considered part of the Outside Counsel's hourly rate.
- 3. Miscellaneous costs.** Outside Counsel shall not seek reimbursement of fees for:
- a. Preparing an invoice;
  - b. Conducting a conflicts check;
  - c. Entertainment expenses;
  - d. Food and beverages while working and/or hosting meetings;
  - e. Excessive staffing;
  - f. Work resulting from attorney error;
  - g. Purely clerical work;
  - h. Preparing an estimated Case Budget;
  - i. Court filing and appearance fees from which the District is exempt.

Under most circumstances, only one attorney should bill for attending court appearances, depositions, client conferences, and Litigation Subcommittee meetings. Outside Counsel shall seek prior approval from the Chief Attorney if the Outside Counsel seeks to have more than one attorney in appearance.

- 4. Invoices.** Unless otherwise expressly directed by the court, Outside Counsel shall submit invoices for work performed on a periodic basis, no more frequently than monthly and no less frequently than quarterly. If the accumulated charges for the period are less than \$500, the charges shall be included in the next periodic invoice. The time spent performing the chargeable services shall be recorded on a daily basis to the nearest 1/10th of an hour and shall be broken down in detail, describing the work performed by each individual during that time period. Invoices shall contain the amount charged for each attorney and paraprofessional, including the time, the hourly rate and summary total for each. Invoices shall itemize expenses according to categories including the following: photocopying, messenger service, computerized research, experts and travel. Invoices shall be paid subject to the approval of the Litigation

Subcommittee and the District Board of Commissioners. For Non-Contested Matters, invoices totaling less than \$5,000 per such matter may be approved at the discretion of the Chief Attorney.

- 5. Rate structure.** The District expects Outside Counsel to take reasonable steps to minimize the amount of costs and disbursements charged to District matters, consistent with applicable time and responsiveness constraints. Outside Counsel shall bill for their services on an hourly basis in an amount not to exceed rates negotiated with and accepted by the District, but in no event shall rates exceed \$290 per hour per attorney and \$90 per hour per paralegal, without approval of the Litigation Subcommittee. Outside Counsel shall not bill for the use of law clerk(s) without prior authorization from the Chief Attorney. Outside Counsel may propose alternative fee structures such as blended, flat or contingent rate upon approval of the Litigation Subcommittee.
6. The provisions of this Ordinance shall supersede Forest Preserve District of Cook County Resolution 08-R-09.
7. To the fullest extent consistent with this Chapter, Outside Counsel shall adhere to any Billing Guidelines for Outside Counsel issued by the District's Legal Department, as published on its website and as may be amended from time to time.

**8. Conflicts of Interests.**

- a. Modification of Guidelines.* There may be circumstances in which the District Guidelines for Outside Counsel requires modification. The Litigation Subcommittee shall examine these situations on a case-by-case basis and may modify the Guidelines accordingly for the course of that representation.
- b. Conflicts Check.* Before rendering any legal services, Outside Counsel must conduct a conflict of interest review and provide the Responsible Attorney with a written list of all actual or potential conflicts of interest and matters that may present the appearance of a conflict.
- c. Timely Notification.* Outside Counsel must provide the Responsible Attorney a written notice of any actual or potential conflicts or the appearance of a conflict within five (5) days of learning of the conflict.
- d. Waiver.* Outside Counsel must be free of any conflict of interest under the rules of professional conduct unless the conflict is waived by the District.

**Effective date:** This ordinance shall be in effect September 1, 2021.