



Legislation Text

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From time to time, when it is in the best interest of the City to do so, the City Attorney exercises the authority of the City Attorney's Office to enter into Special Counsel Agreements to allow for the legal representation by outside counsel of the City or City employees in a variety of legal actions. Where the value of the contract requires, City Council approval is sought to enter into these agreements.

The Ohio Rules of Professional Conduct are a set of regulations adopted and enforced by the Supreme Court of Ohio that define an attorney's ethical responsibilities. Rules 1.7 through 1.11 prescribe rules regarding conflict of interest and specifically require that a lawyer "shall not accept or continue the representation of a client if a conflict of interest would be created..." unless "each affected client gives informed consent, confirmed in writing." Rule 1.7(b)(2). A conflict of interest, in this context, pertains to an attorney's acceptance or continued representation of a client where that representation would be directly adverse to another current client. Further, this conflict analysis extends to all members of that attorney's law firm.

On occasion, Special Counsel that has been retained by the City Attorney to represent the City or a City employee has a conflict of interest arise. Most often this occurs when another member of the attorney's law firm seeks to represent a client in an action adverse to the City. For instance, the City may have retained an attorney from a local law firm to assist the City with local income tax matters and months later another member of that same firm may be approached to represent a developer in an unrelated development agreement. Even though the matters are not related, a conflict of interest under the Rules of Professional Conduct would exist unless the City consents, in writing, to the firm representing both clients.

The City Attorney is uniquely situated to determine whether or not it is in the legal interest of the City to agree to consent to such a waiver of conflict of interest and this ordinance makes clear that the City Attorney's authority to retain special counsel likewise extends to the authority to waive these potential conflicts of interest on behalf of the City in the representation by the Special Counsel.

The amendment also removes the existing, outdated hourly fee and makes clear that fees are to be paid directly to outside counsel when the City Attorney is required, due to a conflict of interest within the City Attorney's Office, to retain outside representation.

FISCAL IMPACT: No funding is required for this legislation.

To amend Section 125.01 of the Columbus City Codes to codify the City Attorney's authority to waive potential conflicts of interest on behalf of the City of Columbus in matters pertaining to legal representation by special counsel and to remove outdated hourly fees and payment methods for outside counsel retained when there is a conflict of interest in the Office of the City Attorney.

WHEREAS, the City Attorney exercises the authority of the City Attorney's Office to enter into Special Counsel Agreements to allow for the legal representation by outside counsel of the City or City employees in a variety of legal

actions; and

WHEREAS, on occasion, Special Counsel that has been retained by the City Attorney to represent the City or a City employee has a conflict of interest arise under the Ohio Rules of Professional Conduct; and

WHEREAS, the City Attorney is in the best position to determine whether or not it is in the legal interest of the City to agree to consent to such a waiver of conflict of interest; and

WHEREAS, the existing hourly fee rate and method of payment for outside counsel retained when there is a conflict of interest in the office of the City Attorney is outdated; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That Section 125.01 of the Columbus City Codes is hereby amended as follows:

125.01 - Defense of city and city officers.

(a) The city attorney is authorized and directed to defend, on behalf of all officers or employees of the city, all suits brought against such officers or employees arising out of or in the course of their employment with the city.

(b) In the event the city attorney determines that (1) a suit brought against an officer or employee of the city did not arise out of or was not in the course of the officer's or employee's employment with the city thereby causing the city attorney to decline to defend the suit but it is later determined that the suit did arise out of or was in the course of employment with the city, or (2) the city attorney, because of the ethical considerations governing attorneys in the representation of multiple clients, denies a request of an officer or employee of the city for representation, ~~the officer or employee who retains outside retained special counsel,~~ in either event, shall be reimbursed for the reasonable attorney fees incurred by the special counsel officer or employee at a rate not to exceed sixty dollars (\$60.00) per hour when to be approved by ordinance of city council.

(c) The city attorney is authorized to determine the appropriateness of and to execute, on behalf of the City, any waivers of conflict of interest pertaining to the legal representation of the City and/or city officers or employees by special counsel as are consistent with ethical considerations governing attorneys in the representation of multiple clients.

SECTION 2. That existing Section 125.01 of the Columbus City Codes is hereby repealed.

SECTION 3. That this Ordinance shall take effect and be in force from and after the earliest period provided by law.