



Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Legislation Text

File #: 21-3130, Version: 2

**PROPOSED SUBSTITUTE TO FILE 21-3130
(Finance Committee 7/28/2021)**

Sponsored by: PETER N. SILVESTRI, Cook County Board of Commissioners

PROPOSED ORDINANCE AMENDMENT

DIVISION 9 - STATE'S ATTORNEY

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 2 - Administration, Article IV. - Officers and Employees, Division 9. State's Attorney, Sec. 2-329 *et seq.*, is hereby amended as follows:

DIVISION 9. - STATE'S ATTORNEY

Subdivision I. In General

Sec. 2-329. State's Attorney and Special State's Attorneys' reports to the Litigation Subcommittee.

- (a) *Notice of Monetary Counterclaims and Fee Requests.* When representing Cook County, Cook County Departments or Officers, or any County Official in any civil legal action in State or Federal Court, the State's Attorney or a Special State's Attorney shall provide notice to the Litigation Subcommittee of the Finance Committee of the Cook County Board of Commissioners (Litigation Subcommittee) prior to filing a monetary counterclaim, request for monetary sanctions, request for statutory reimbursement and/or request for fees in excess of \$100,000.00. If the State's Attorney or Special State's Attorney is unable to provide notice to the Litigation Subcommittee in advance of filing, the State's Attorney or Special State's 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.
- (b) *Quarterly Inventory of Civil Actions.* The State's Attorney shall give a quarterly inventory report to the Litigation Subcommittee of the Finance Committee of the Cook County Board of Commissioners of all civil actions that Cook County is named as a party in all courts of State or Federal jurisdiction.
- (b) *Settlement.* The State's Attorney or Special State's Attorney shall request authority from the Litigation Subcommittee prior to settling any matter in excess of \$100,000. Attorneys shall provide a written settlement analysis and recommendation to the Litigation Subcommittee and shall be prepared to present that recommendation at a meeting of the Subcommittee. In addition, the State's Attorney or Special State's Attorney 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.
- (c) *Permission to try.* The State's Attorney or Special State's Attorneys shall obtain the approval of the Litigation Subcommittee prior to taking a matter to trial. When the State's Attorney or Special State's Attorney recommends that a civil matter proceed to trial, they shall provide a revised Case Summary and recommendation to the Litigation Subcommittee. That 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 State's Attorney or Special State's Attorneys must present a revised case budget with the estimated cost of the potential trial to the Litigation Subcommittee for approval.

(d) Appeals. The State's Attorney or Special State's Attorneys must notify the Chair of any final and appealable ruling having a negative financial impact on the County in excess of \$100,000 in civil matters within 72 hours of the ruling. If an appeal may result in the imposition of accrued interest upon the County, the State's Attorney or Special State's Attorney must obtain authorization from the Litigation Subcommittee before pursuing the appeal. However, the State's Attorney or Special State's Attorneys shall take all steps necessary to protect the interests and preserve the appeal rights of the parties they represent 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.

(e) Ethics Reports. All Special State's Attorneys shall comply with the requirements of Section 2-110(d) of this Code.

(Ord. No. 17-5249, 1-17-2018.)

Sec. 2-330.State's Attorney's forest preserve district representation special purpose fund.

(a) The State's Attorney shall charge a fee as set out in an intergovernmental agreement for Assistant State's Attorneys assigned from the Civil Actions Bureau of the Office of the State's Attorney to represent the Forest Preserve District in certain civil litigation matters.

(b) Such fee collected shall be placed in a special fund to be held by the Treasurer of the County, to be expended exclusively for the operation of the Office of the State's Attorney.

(Ord. No. 10-O-16, 4-6-2010.)

Subdivision II. Cook County Guidelines for Special State's Attorneys

Sec. 2-331.Guidelines established.

(a) *Short title.* This subdivision shall be known and may be cited as the "Cook County Guidelines for Special State's Attorneys."

(b) *Purpose.* In the event that the Cook County State's Attorney is sick, absent, unable to attend to a case or has an interest in a case, a Special State's Attorney can be appointed by a court of competent jurisdiction pursuant to 55 ILCS 5/3-9008. The appointment of any Special State's Attorney is considered temporary and limited in scope to the instant matter before the appointing court.

(c) *Definitions.* The following words, terms and phrases, when used in this [sub]division, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Attorney is an Attorney appointed by a court of competent jurisdiction, pursuant to 55 ILCS 5/3-9008 and who has fully complied with the Notice Provision contained in Section 2-332 of this subdivision.

Litigation Subcommittee or *Subcommittee* means the Finance Subcommittee on Litigation of the Cook County Board of Commissioners.

Chair of the Litigation Subcommittee or *Chair* means the chairperson of the Finance Subcommittee on Litigation of the Cook County Board of Commissioners.

Case Summary means the report prepared by the Attorney and submitted to the Litigation Subcommittee that updates the Litigation Subcommittee on the progress and status of the case assigned to the Attorney.

Case Management means the regular documentation of the Attorneys' work on an individual case, including, but not limited to, a Case Budget (if applicable), Case Summary, modifications and Quarterly Status Reports.

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.

Modification of Approved Case Summary means the required report made within five business days to the Chair of the Litigation Subcommittee of any major deviations to the budget that would significantly expand the planned activities set forth in the Case Summary.

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.

- (d) *Applicability.* This Subdivision shall apply to all Attorneys appointed as Cook County Special State's Attorneys by a court of competent jurisdiction, pursuant to 55 ILCS 5/3-9008 to represent the county or a county office, officer, board, commission, employee and/or agent.
- (e) *[Compliance required.]* All Attorneys who represent a Cook County party in multiple litigation matters as an Attorney, must comply fully with the terms of this Subdivision for each separate matter of representation.
- (f) *[Filing appearances.]* No Attorney may file an appearance in a lawsuit on behalf of an elected official of Cook County or County Office unless they are appointed as a Special State's Attorney by a court of competent jurisdiction or have been authorized by the Office of the Cook County State's Attorney to file an appearance.

(Ord. No. 13-O-48, 10-2-2013.)

Sec. 2-332.Notice.

Notices of a motion seeking a Special State's Attorney appointment shall be provided at least 48 hours in advance to Cook County; courtesy copies of said Notices and Motions seeking Special State's Attorney appointment shall also be provided at least 48 hours in advance of the motion being heard to the Chief of the Civil Actions Bureau, the Chair of the Litigation Subcommittee and the President of the County Board. Within 48 hours of appointment by a court of competent jurisdiction, all Attorneys shall provide written notice to the Chair, the President of the County Board and the Chief of the Civil Actions Bureau of the Cook County State's Attorney's Office of their appointment by a court of competent jurisdiction. The Chief of the Civil Actions Bureau shall send a copy of this Subdivision to each Attorney and advise them of the County's request that they comply with the Cook County Guidelines for Special State's Attorneys.

(Ord. No. 13-O-48, 10-2-2013.)

Sec. 2-333.Case management.

- (a) *Case management.* Each Attorney who has filed an appearance on behalf of Cook County:
 - (1) Shall submit a Case Budget and a Case Summary to the County Board through its Litigation Subcommittee within 30 days of their Appointment or as soon thereafter as the Subcommittee meets. This information and other communications between the Attorney and the Board or Subcommittee shall constitute privileged and confidential Attorney-client communications, unless there is a conflict of interests in disclosing that information or communication between the represented party and the Cook County Board of Commissioners;
 - (2) Shall include in the Case Summary the major activities anticipated for the successful defense or prosecution 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
 - (3) Shall report any modifications or deviations to the initial Case Summary in quarterly reports to the Chair.
- (b) *Review and approval of Case Summary and Budget.* The Subcommittee shall review ~~and approve~~ the Case Summary and Budget. The Attorney is not prohibited from initiating legal activities reasonably necessary to adequately protect the legal interests of their client prior to the Committee's ~~approval~~ review of the Case Summary and Budget. Special State's Attorneys appointed in criminal matters shall not be required to submit a Case Summary to the Litigation Subcommittee.
- (c) *Estimated Case Budget.* The 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. Should the court determine that an expansion of the representation is necessary that substantially increases the Case budget, the Attorney shall inform the Chair

who may provide the court with information on the financial impact of that expansion on the County, pursuant to 55 ILCS 5/3-9008.

(d) *Rejection of Attorneys who have filed an appearance on behalf of Cook County in Federal or Circuit Court without Being Appointed as a Special State's Attorney by a Court.* At any time, the Litigation Subcommittee may reject the representation of any Attorney who has not been appointed as a Special State's Attorney. Upon rejection, the Litigation Subcommittee may ask the State's Attorney to provide representation or petition the respective court to appoint an appropriate Attorney. The Litigation Subcommittee may also reject any Attorney from providing representation if they have failed to comply with the Cook County Guidelines for Special State's Attorneys in previous representations of Cook County parties.

(Ord. No. 13-O-48, 10-2-2013.)

Sec. 2-334.Fees, expenses, rates and fee petitions.

(a) *Fees and expenses.* Attorneys 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. The Attorney must pay for all expenses in advance unless otherwise expressly directed by the court or agreed to in writing by the Litigation Subcommittee. Reimbursement of expenses shall be requested as part of Attorney's fee petitions. Expenses shall be reimbursed as follows:

(1) *Photocopying.* Reasonable photocopying at actual cost, not to exceed \$0.10 per page.

(2) *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).

(3) *Computerized research.* Actual costs of reasonably necessary computerized research services.

(4) *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 of the Civil Actions Bureau if they are anticipated to exceed \$500.

(5) *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. Attorneys shall reduce the hourly rate charged by 50 percent while an Attorney or paraprofessional is traveling, unless legal work in being performed and is documented.

(b) *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 Attorneys' hourly rate.

(c) *Miscellaneous costs.* Attorneys shall not seek reimbursement of fees for:

(1) Preparing a fee petition;

(2) Conducting a conflicts check;

(3) Entertainment expenses;

(4) Food and beverages while working and/or hosting meetings;

(5) Excessive staffing;

(6) Work resulting from Attorney error;

(7) Purely clerical work;

(8) Preparing an estimated case budget.

~~Attorneys' appearances and depositions shall, under most circumstances, be based on the work of a~~

single only one Attorney should bill for attending court appearances, depositions, client conferences, and Litigation Subcommittee meetings. The Attorney shall seek prior approval from the Chief of the Civil Actions Bureau, or the Chief's

delegate if the Attorney seeks to have more than one attorney in attendance.

- (d) *Fee petitions.* Unless otherwise expressly directed by the court, Attorneys shall submit fee petitions either monthly or quarterly. If the accumulated charges for a quarter are less than \$500.00, the charges shall be included in the next quarterly fee petition. Attorneys shall submit all fee petitions to the Chair in a time appropriate for referral to and review by the Subcommittee prior to filing the fee petition with the court. The time spent performing the chargeable services shall be recorded on a daily basis to the nearest $\frac{1}{10}$ th of an hour and shall be broken down in detail, describing the work performed by each individual during that time period. The fee petition shall contain the amount charged for each Attorney and paraprofessional, including the time, the hourly rate and summary total for each. The fee petition shall itemize expenses according to categories including the following: photocopying, messenger service, computerized research, experts and travel.
- (e) *Rate structure.* Unless otherwise expressly directed by the court or the Subcommittee, Attorneys shall bill for their services on an hourly basis, and in accordance with the Fee Schedule set forth below, as approved and amended from time to time by the Board. The Fee Schedule shall establish the maximum hourly charges payable for the type of service provided. Hourly rates for each individual civil matter shall be negotiated with the Chief of the Civil Actions Bureau, with attorney fees not to exceed \$290 per hour, and paralegal/legal assistant rates not to exceed \$90 per hour, without approval of the Subcommittee. Law clerks shall not bill for their time without prior permission of the Chief of the Civil Actions Bureau. Attorneys may propose alternative fee structures such as blended, flat or contingent rate upon approval of the Subcommittee. In criminal matters, the hourly rates for attorneys shall not exceed \$205, and the hourly rates for paralegals shall not exceed \$90, without approval of the Subcommittee.

Fee schedule

Partner Hourly Rate: \$170.00-\$185.00

Associate Hourly Rate: \$140.00-\$155.00

Paralegal/Law Clerk Hourly Rate: \$65.00

- (f) To the fullest extent consistent with this Section, Attorneys in civil matters shall adhere to the Billing Guidelines for Outside Counsel issued by the Civil Actions Bureau of the Cook County State's Attorney's Office, as published and as may be amended from time to time.

(Ord. No. 13-O-48, 10-2-2013.)

Sec. 2-335. Reserved.

~~Sec. 2-335. Litigation resolution.~~

- (a) *Alternative dispute resolution.* If an Attorney believes that alternative dispute resolution is appropriate to resolve a matter, that Attorney shall bring a proposal recommending such action to the Litigation Subcommittee for its consideration and approval.
- (b) *Settlement.* Attorneys shall communicate all settlement proposals to the Subcommittee in a timely manner. Attorneys shall provide a written settlement analysis and recommendation to the Litigation Subcommittee and shall be prepared to present that recommendation at a meeting of the Subcommittee.
- (c) *Permission to try.* Attorneys shall obtain the approval of the Litigation Subcommittee prior to taking a matter to trial. When an Attorney recommends that a civil matter proceed to trial, that Attorney shall provide a revised Case Summary and recommendation to the Litigation Subcommittee. That 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, Attorneys must present a revised case budget with the estimated cost of the potential trial to the Litigation Subcommittee for approval.
- (d) *Appeals.* Attorneys must notify the Chair of any final and appealable ruling in civil matters within 72 hours of the ruling. If an appeal may result in the imposition of accrued interest upon the County, the Attorney must obtain authorization from the Litigation Subcommittee before pursuing the appeal. However, Attorneys shall take all steps necessary to protect the interests and preserve the appeal rights of the parties they represent 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 Subcommittee on Litigation.

(Ord. No. 13-O-48, 10-2-2013)

Sec. 2-336. Conflicts of interest.

- (a) *Modification of guidelines.* There may be circumstances in which the Cook County Guidelines for Appointment of Special State's Attorneys requires modification. The Litigation Subcommittee shall examine these situations on a case-by-case basis and shall modify the Cook County Guidelines for Special State's Attorneys accordingly for the course of that representation. In unusual circumstances in which an Attorney believes that strict compliance with the Cook County Guidelines for Special State's Attorneys would interfere with the exercise of their professional judgment or otherwise violate their professional responsibilities, they shall promptly seek appropriate guidance from the court. Pending the receipt of such guidance, they shall be relieved of the obligation to comply with the Cook County Guidelines for Special State's Attorney, but only to the extent necessary to avoid the perceived problems that prompted the request for guidance.
- (b) *Conflicts check.* Before accepting a court appointment, when applicable, or before rendering any services, Attorneys must conduct a conflict of interest review and ~~provide the Litigation Subcommittee with a written list~~ advise the Office of the Cook County State's Attorney of all actual or potential conflicts of interest and matters that may present the appearance of a conflict.
- (c) *Timely notification.* Attorneys must provide the Office of the Cook County State's Attorney ~~Chair~~ a written notice of any actual or potential conflicts or the appearance of a conflict within five days of learning of the conflict.
- (d) *Waiver.* Attorneys must be free of any conflict of interest under the rules of professional conduct unless the conflict is waived by the ~~Litigation Subcommittee and the~~ party represented by the Attorney.

(Ord. No. 13-O-48, 10-2-2013.)

Sec. 2-337. Penalties.

- (a) If an Attorney fails to comply with Sections 2-331 through 2-335, the Litigation Subcommittee may delay or deny the payment of any accrued or future fees and costs for the matter of representation.
- (b) An Attorney who files an appearance without being appointed as a Special State's Attorney by a court shall not be paid for any time or costs accrued prior to their appointment by a court or the State's Attorney.

(Ord. No. 13-O-48, 10-2-2013.)

Sec. 2-338. Quarterly reporting.

- (a) The State's Attorney shall report to the Board of Commissioners quarterly on the cost that the office incurs due to processing court cases involving firearms.

(Ord. No. 18-1750, 2-7-2018.)

Secs. 2-339-2-340. Reserved.

Effective date: This ordinance shall be in effect immediately upon adoption.