

Jessica Andre

From: Christian Boenisch
Sent: Monday, January 27, 2025 10:07 AM
To: Carolina Rook; Jessica Andre; Kit Johnston; Mary Starrett; Bubba King
Cc: Ken Huffer; Justin Hogue; Nohely Barajas-Montalvo; Jodi Gollehon
Subject: Request for Reimbursement
Attachments: Reimbursement Request.pdf

Attached should be a request for reimbursement under Board Order 00-932. Please let me know if there are any questions; otherwise, I would ask that this be placed on the consent agenda for this Thursday's BOC meeting.

Suggested agenda language:

"Consideration of a request for reimbursement and referral to review committee pursuant to Board Order 00-932. "

Thanks,

Christian

Christian F. Boenisch
Yamhill County
County Counsel
O: (503) 434-7502
C: (503) 883-1003
boenischc@yamhillcounty.gov

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Accepted by Yamhill County
Board of Commissioners on
01/30/2025 by Board Order
25-32

December 31, 2024

Yamhill County Commissioner, Vice-Chair Kit Johnston
Yamhill County Commissioner Mary Starrett
535 NE 5th Street
McMinnville, OR 97128

Delivered via Email only: johnstonk@yamhillcounty.gov, starrettm@yamhillcounty.gov

RE: Formal Request for Defense Funds under Yamhill County Board Order 00-932

Dear Yamhill County Vice-Chair Johnston, Commissioner Starrett:

Please consider this letter my formal request, as a sitting Commissioner, for reimbursement of defense funds under Yamhill County Board Order 00-932 for legal expenses incurred as the result of a complaint made in 2021 arising from the performance of my official duties as a County Commissioner. The total amount of reimbursement requested is \$8,010.00. A receipt of legal expenses is attached to this request, along with a complete copy of Yamhill County Board Order 00-932.

Yamhill County Board Order 00-932 authorizes outside legal representation of county officials in certain proceedings not subject to the Oregon Tort Claims Act. The OTCA does not encompass certain charges or allegations which could be brought against county officials arising from good faith performance of their duties. Board Order 00-932 provides a process and remedy for county officials who experience claims or complaints arising from good faith performance of their duties.

Yamhill County Board Order 00-932 (Section D) states: *"It is in the public interest of the citizens of Yamhill County that the County's officers, employees and agents be free from fear of personal financial hardship from having to defend claims and non-criminal charges beyond the scope of the OTCA so long as the claims or non-criminal charges arise out of their good faith performance of their duties, including ethics claims made to the Government Standards and Practices Commission (GSPC) or complaints of violation of the Code of Professional Responsibility made to the Oregon State Bar"*.

While some of the language in Board Order 00-932 may be outdated, similar standards and practices apply to us as current County Commissioners. Generally, if Oregon Government Ethics Commission (OGEC) complaints are made against us during the course of performance of official duties, legal representation is recommended but not required. If legal representation is sought, generally county commissioners are fronting the cost of that legal representation while an investigation occurs. If the result of the investigation finds that the county official did not violate

government ethics laws, the county commissioner can seek reimbursement for legal expenses through Yamhill County's insurance coverage. This coverage (currently) is capped at \$15,000 per calendar year, which includes all three current county commissioners.

The 2021 complaint giving rise to this request was not an OGEC complaint. It was filed as an internal Human Resources complaint and was responded to as such, even though elected County Commissioners are not considered employees, therefore we are not subject to Yamhill County's employment standards, policies and procedures. What transpired over several months after the internal complaint was filed was a costly, deposition-style interrogation and investigation of my actions during performance of my official duties, and an effort to apply employee standards to an elected official that is not subject to employee standards.

The investigation cost the county tens of thousands of dollars in legal fees from Miller Nash LLP, Attorney Christine Slattery, and also required me to legally defend myself as a sitting county commissioner against allegations that were not only unfounded but did not legally apply to our role as elected officials. The result of the investigation, which concluded in late September of 2021 and resulted in a formal memorandum to the county on September 27, 2021, was as expected: elected county commissioners are not employees and are not subject to employment standards, policies and procedures. Ms. Slattery, an independent third-party investigator, found no violations occurred during the course of good faith performance of my official duties as a Yamhill County Commissioner.

Because the 2021 complaint falls outside of the OTCA and outside of the current process for handling OGEC complaints, Yamhill County Board Order 00-932 applies. Board Order 00-932, Section 1 (B)(i) states: "*Whenever an elected official or the district attorney believes he or she is eligible for payment of funds under this Board Order for costs of defending charges or claims outside the scope of the Oregon Tort Claims Act (OTCA), the elected county official or district attorney shall make a written request to the Board for defense costs or indemnification for defense costs*". The Board Order is silent on when an elected official must make this request to the Board of Commissioners, but it would be reasonable to expect that an elected official could seek the relief the Board Order provides after any allegations or claims have been fully investigated and dispositioned, and within the same term of office in which the allegations or claims occurred.

The purpose of Board Order 00-932 was, in part, to ensure the county had a mechanism for protecting elected county officials from egregious claims made against them during the course of performance of their official duties. The result of this unfounded claim against me resulted in over \$8,000 in legal fees that I personally had to pay. This is the equivalent of nearly two months of county commissioner salary compensation. No resident of Yamhill County, who considers running for public office and serving in this elected role, should fear significant and personal financial hardship by the weaponization of claims and complaints made against elected officials in the course of their official duties. Unfortunately, I've seen too much of this behavior occurring in the past four years of my term. County Commissioners make serious, impactful

decisions every week that can often be controversial. The weaponization of complaints that result in necessary legal defense costs has a chilling effect on an elected official's ability to serve the public.

I respectfully request that the Board consider and approve my formal request for reimbursement of legal defense costs totaling \$8,010.00 which arose from the aforementioned complaint, and the result of which determined I engaged in no wrong-doing, misconduct, or violation of any law or policy of which I had been accused.

Sincerely,



Lindsay Berschauer
Yamhill County Commissioner

CC: Christian Boenisch, Yamhill County Counsel

Delivered via Email only: boenischc@yamhillcounty.gov

BARRAN LIEBMAN LLP

A T T O R N E Y S

Employment | Labor | Benefits | Higher Education

601 SW 2nd Ave, Suite 2300 | Portland, OR 97204

503.228.0500 | www.barran.com

Taxpayer Identification Number 93-1251627

Lindsay Berschauer
P.O. Box 307
Newberg, OR 97132

August 02, 2022

Client #: 711389

RE: 0002 - Carrie Martin

<u>Invoice</u>	<u>Bill Date</u>	<u>Client</u>	<u>Matter</u>	<u>Client Name</u>	<u>Matter Name</u>	<u>Due</u>	<u>Billed</u>
93104.0	06/08/2021	711389	0002	Lindsay Berschauer	Carrie Martin	0	\$2,420.00
93604.0	07/09/2021	711389	0002	Lindsay Berschauer	Carrie Martin	0	\$3,940.00
94094.0	08/16/2021	711389	0002	Lindsay Berschauer	Carrie Martin	0	\$495.00
94884.0	09/11/2021	711389	0002	Lindsay Berschauer	Carrie Martin	0	\$770.00
95379.0	10/13/2021	711389	0002	Lindsay Berschauer	Carrie Martin	0	\$385.00

Grand Totals: \$8,010.00

EXHIBIT A
BO25-32