I. PURPOSE

To set forth a policy and general guidelines for employees named in civil actions or proceedings.

II. POLICY

1. Defense of Employees

- Government Code Section 995 obligates the County to provide for the defense of current (or former) employees of any civil action or proceeding brought against the employee arising out of an act or omission occurring within the course and scope of his/her employment with the agency. Government Code section 820.2 provides that a public employee, such as a social worker, is not liable for an injury resulting from an act or omission where the act or omission was the result of the exercise of discretion vested in the employee. Section 821.6 provides that a public employee, such as a social worker, is not liable for injury caused by the institution or prosecution of any judicial or administrative proceeding within the scope of his/her employment. Government Code section 820.21, however, states that social workers are not immune if, with malice, the social worker commits perjury, fabricates evidence, fails to disclose known exculpatory evidence or obtains testimony by duress, fraud or undue influence.Government Code section 820.21 states:“820.2l. (a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice:(1) Perjury.(2) Fabrication of evidence.(3) Failure to disclose known exculpatory evidence.(4) Obtaining testimony by duress, as defined in Section 1569 of the Civil Code, fraud, as defined in either Section 1572 or Section 1573 of the Civil Code, or undue influence, as defined in Section 1575 of the Civil Code.
- (b) As used in this section, “malice” means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others.” Civil liability claims and lawsuits against the County and its employees are defended out of the office of CEO/Risk Management. There are several law firms under contractual agreement with the County used by Risk Management. These law firms also provide for the defense of an individual employee in a case where the employee is named as a defendant and where the employee makes a timely request for the County to provide a defense. If the employee chooses to use his/her own private attorney, the employee must bear the expense of attorney’s fees. However, employees and individuals may be personally responsible for their own defense in situations stemming from inappropriate actions taken outside their scope of their authorized duties, such as actions that would constitute discrimination, sexual harassment, hostile work environment, or other unauthorized actions.

2. Insurance Coverage and Indemnification

- All County employees are protected against claims of malpractice alleged to be committed in the course and scope of their work as County employees by the County’s self-insurance program.The County pays general damages awarded in the course of the action.Punitive or exemplary damages may be awarded when the court or a jury finds the employee acted or failed to act because of actual fraud, corruption or malice on the part of the employee. There is no insurance available from any carrier that would cover such a finding. If the court awards punitive or exemplary damages, the employee may be responsible for the payments.Pursuant to Government Code section 825, although a public entity is never required to indemnify an employee for an award of punitive or exemplary damages, a public entity is authorized to indemnify an employee for such damages if the governing body of the public entity finds that:a. The employee was acting within the scope of employment;b. The employee acted in good faith, without actual malice and in the apparent best interests of the public entity; andc. Payment of the judgment would be in the best interests of the public entity.

3. Lawsuit and Claim-Related Tracking

SSA staff is to advise, via the chain of command, the Division Director or designee, all participation and involvement in lawsuit and claim-related proceedings and communicate all significant information provided and legal strategies discussed. In turn, Division Directors are to notify the SSA Custodian of Records of noteworthy details for inclusion in the monthly Lawsuit Tracking Log.

REFERENCES

County of Orange Administrative Procedures Manual #0192-01

Memo/Letter/Personnel Department, dated 5/31/83 and 7/1/85

State of California Government Code Section 820.2, 820.21, 821.6, 825, 990, 995, 996

County Counsel Opinion 96-33

III. Procedure

1. When a claim against the County is filed, CEO/Risk Management contacts the agency/department involved to obtain any relevant information. The SSA Custodian of Records, located at SSA/Strategic Planning, Building 157B, coordinates the collection of relevant data and/or notifies individual employees named in the claim or lawsuit to contact the attorney defending the matter. If the claim involves Children and Family Services, the SSA Custodian of Records, coordinates with the Children and Family Services Custodian of Records, SSA/C&FS, Building 124.

2. If an employee receives a summons, complaint, or other notification that the agency and/or employee is part of a lawsuit, the employee **immediately** notifies the SSA Custodian of Records and forwards the paperwork to the SSA Custodian of Records, SSA/Strategic Planning, Building 157B. If an employee is named as a defendant in a lawsuit the employee should immediately request that the County provide a defense for them.

3. SSA staff is to advise, via the chain of command, the Division Director or designee, all participation and involvement in lawsuit and claim-related proceedings and communicate all significant information provided and legal strategies discussed. In turn, Division Directors are to notify the SSA Custodian of Records of noteworthy details for inclusion in the monthly Lawsuit Tracking Log.

4. The SSA Custodian of Records sends copies of all summons and complaints received to CEO/Risk Management and County Counsel and retains a copy for the agency records.

5. CEO/Risk Management, County Counsel, or the law firm defending the matter in reference to specific incidents or facts involved in the lawsuit may contact individual employees involved in the lawsuit.

OCSSA