

515 CMR: DEPARTMENT OF STATE POLICE

515 CMR 4.00: INDEMNIFICATION FOR CERTAIN LEGAL FEES

Section

4.01: General Provisions

4.02: Procedures and Standards

4.01: General Provisions

(1) Scope. The procedures and standards set forth in 515 CMR 4.00 shall apply to indemnification by the Commonwealth of public safety employees for private legal fees arising out of any claim, action, award, compromise or settlement, or judgment resulting from any alleged intentional tort or alleged violation of the civil rights of any person to which the provisions of M.G.L. c. 258, § 9A apply.

(2) Authority. 515 CMR 4.00 is jointly promulgated by the Executive Office for Administration and Finance and by the Department of State Police, pursuant to M.G.L. c. 7, § 4 and c. 22C § 3.

(3) Definitions.

Public Safety Employee. A member of the state police or a state employee represented by state bargaining unit five.

Public Safety Employee's Employer. The state agency for which he or she works.

4.02: Procedures and Standards

(1) The public safety employee shall give written notification to his or her employer, at the outset, that he or she has been sued and intends to retain private counsel.

(2) No claim for indemnification of private legal fees and costs shall be approved unless the employer agency has determined that those fees and costs are reasonable and necessary.

(3) Maximum hourly rates for private defense attorneys shall be set at the standard hourly rates which the Attorney General pays to Special Assistant Attorneys General.

(4) No settlement of the underlying tort or civil rights litigation shall be entered into without the employer agency's prior written approval.

(5) As a general rule, the payment of private legal fees and litigation costs shall be made only at the conclusion of the underlying tort or civil rights litigation, at which time the appropriateness of indemnification can be determined. However, an exception to 515 CMR 4.02(5) may be made where delay has occurred in disposing of the underlying case. In such case, the public safety employee may request in writing that the employer pay his or her interim legal fees prior to final disposition of that case.

(a) When making such a request the public safety employee shall agree in writing to reimburse the public employer for all interim legal fees which are disbursed on behalf of the employee during the course of the litigation if, after final disposition of the underlying action, the employer determines that indemnification is inappropriate because it finds that the employee acted beyond the scope of his or her official duties, or in a willful, wanton or malicious manner.

(b) The decision to pay interim legal fees shall be discretionary with the employer. Requests shall be considered on a case-by-case basis, but shall not be denied unreasonably. Special consideration will be given to cases more than 18 months old and to cases on appeal after final judgment in the trial court.

(6) If the public employer in its discretion deems interim legal fees and costs to be appropriate, it may determine the amount of those interim fees in accordance with 515 CMR 4.02(2), and request their appropriation by filing a supplemental budget request for submission to the Massachusetts Legislature.

515 CMR: DEPARTMENT OF STATE POLICE

4.02: continued

(7) An employer which has determined that indemnification is appropriate, shall transmit its file and determination to the Executive Office of Public Safety before authorizing payment or seeking a special appropriation.

REGULATORY AUTHORITY

515 CMR 4.00: M.G.L. c. 7, § 4; c. 22C, § 3 and c. 258 § 9A.