

Part 9

Coverage and Representation of State Entities and Employees

63G-7-901 Expenses of attorney general, general counsel for state judiciary, and general counsel for the Legislature in representing the state, its branches, members, or employees.

- (1)
 - (a) The Office of the Attorney General has primary responsibility to provide legal representation to the judicial, executive, and legislative branches of state government in cases where coverage under the Risk Management Fund created by Section 63A-4-201 applies.
 - (b) When the attorney general has primary responsibility to provide legal representation to the judicial or legislative branches, the attorney general shall consult with the general counsel for the state judiciary and with the general counsel for the Legislature, to solicit their assistance in defending their respective branch, and in determining strategy and making decisions concerning the disposition of those claims.
 - (c) Notwithstanding Subsection (1)(b), the decision for settlement of monetary claims in those cases lies with the attorney general and the state risk manager.
- (2)
 - (a) If the Judicial Council, after consultation with the general counsel for the state judiciary, determines that the Office of the Attorney General cannot adequately defend the state judiciary, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Judicial Council may direct its general counsel to separately represent and defend it.
 - (b) If the general counsel for the state judiciary undertakes independent legal representation of the state judiciary, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.
 - (c) If the state judiciary elects to be represented by its own counsel under this section, the decision for settlement of claims against the state judiciary, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the state judiciary and the state risk manager.
- (3)
 - (a) If the Legislative Management Committee, after consultation with the general counsel for the Legislature, determines that the Office of the Attorney General cannot adequately defend the legislative branch, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Legislative Management Committee may direct its general counsel to separately represent and defend it.
 - (b) If the general counsel for the Legislature undertakes independent legal representation of the Legislature, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.
 - (c) If the legislative branch elects to be represented by its own counsel under this section, the decision for settlement of claims against the legislative branch, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the Legislature and the state risk manager.
- (4)
 - (a) Notwithstanding the provisions of Section 67-5-3 or any other provision of the Utah Code, the attorney general, the general counsel for the state judiciary, and the general counsel for the Legislature may bill the Department of Administrative Services for all costs and legal fees expended by their respective offices, including attorneys' and secretarial salaries, in

representing the state or any indemnified employee against any claim for which the Risk Management Fund may be liable and in advising state agencies and employees regarding any of those claims.

(b) The risk manager shall draw funds from the Risk Management Fund for this purpose.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-902 Defending government employee -- Request -- Cooperation -- Payment of judgment.

- (1) Except as provided in Subsections (2) and (3), a governmental entity shall defend any action brought against its employee arising from an act or omission occurring:
 - (a) during the performance of the employee's duties;
 - (b) within the scope of the employee's employment; or
 - (c) under color of authority.
- (2)
 - (a) Before a governmental entity may defend its employee against a claim, the employee shall make a written request to the governmental entity to defend the employee:
 - (i) within 10 days after service of process upon the employee; or
 - (ii) within a longer period that would not prejudice the governmental entity in maintaining a defense on the employee's behalf; or
 - (iii) within a period that would not conflict with notice requirements imposed on the entity in connection with insurance carried by the entity relating to the risk involved.
 - (b) If the employee fails to make a request, or fails to reasonably cooperate in the defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.
- (3) The governmental entity may decline to defend, or, subject to any court rule or order, decline to continue to defend, an action against an employee if it determines:
 - (a) that the act or omission in question did not occur:
 - (i) during the performance of the employee's duties;
 - (ii) within the scope of the employee's employment; or
 - (iii) under color of authority; or
 - (b) that the injury or damage on which the claim was based resulted from conditions set forth in Subsection 63G-7-202(3)(c).
- (4)
 - (a) Within 10 days of receiving a written request to defend an employee, the governmental entity shall inform the employee whether or not it shall provide a defense, and, if it refuses to provide a defense, the basis for its refusal.
 - (b) A refusal by the entity to provide a defense is not admissible for any purpose in the action in which the employee is a defendant.
- (5) Except as provided in Subsection (6), if a governmental entity conducts the defense of an employee, the governmental entity shall pay any judgment based upon the claim.
- (6) A governmental entity may conduct the defense of an employee under a reservation of rights under which the governmental entity reserves the right not to pay a judgment if any of the conditions set forth in Subsection (3) are established.
- (7)

- (a) Nothing in this section or Section 63G-7-903 affects the obligation of a governmental entity to provide insurance coverage according to the requirements of Subsection 41-12a-301(3) and Section 63G-7-802.
- (b) When a governmental entity declines to defend, or declines to continue to defend, an action against its employee under any of the conditions set forth in Subsection (3), it shall still provide coverage up to the amount specified in Section 31A-22-304.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-903 Recovery of judgment paid and defense costs by government employee.

- (1) Subject to Subsection (2), if an employee pays a judgment entered against him, or any portion of it, that the governmental entity is required to pay under Section 63G-7-902, the employee may recover from the governmental entity the amount of the payment and the reasonable costs incurred in the employee's defense.
- (2)
 - (a) If a governmental entity does not conduct the defense of an employee against a claim, or conducts the defense under a reservation of rights as provided in Subsection 63G-7-902(6), the employee may recover from the governmental entity under Subsection (1) if the employee can prove that none of the conditions set forth in Subsection 63G-7-202(3)(c) applied.
 - (b) The employee has the burden of proof that none of the conditions set forth in Subsection 63G-7-202(3)(c) applied.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-904 Indemnification of governmental entity by employee not required.

If a governmental entity pays all or part of a judgment, compromise, or settlement based on a claim against the governmental entity or an employee, the employee is not required to indemnify the governmental entity for the payment.

Renumbered and Amended by Chapter 382, 2008 General Session