



September 14, 2023

BCC Agenda Date/Item: _____

Stephen L. Madkour
County Counsel

Scott C. Ciecko
Amanda Keller
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Hong Huynh
Caleb Huegel
Assistants

Board of County Commissioners
Clackamas County

**Authorization for Chair to Provide Written Consent to
Representation by the Office of County Counsel in Lawsuit Filed by Trevor Whisman**

Previous Board Action/Review	This Board has been briefed on this matter during a previous executive session.		
Performance Clackamas	Build public trust through good government.		
Counsel Review	Yes	Procurement Review	N/A
Contact Person	Shawn Lillegren	Contact Phone	503-742-5393

EXECUTIVE SUMMARY: The Office of County Counsel requests the consent of this Board for the Office of County Counsel to provide legal representation to Clackamas County in a lawsuit filed by plaintiff Trevor Whisman, a person who seeks money damages for personal injuries sustained when riding his bicycle on SE Johnson Creek Boulevard. In this lawsuit, plaintiff has sued both Clackamas County and Water Environment Services. The Office of County Counsel presently provides legal representation to Water Environment Services on unrelated matters. Informed written consent is required in this matter because Clackamas County and Water Environment Services are potentially adverse.

RECOMMENDATION: The Office of County Counsel requests this Board to approve and authorize Chair Tootie Smith to sign the attached conflict waiver letter, providing consent to the Office of County Counsel to represent Clackamas County in this matter.

Respectfully submitted,

Shawn A. Lillegren
Assistant County Counsel

For Filing Use Only



OFFICE OF COUNTY COUNSEL

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Board of County Commissioners
Clackamas County
2051 Kaen Road
Oregon City, OR 97045

Re: *Whisman v. Water Environment Services et al*
Clackamas County Circuit Court Case No. 23CV22707

Dear Board of County Commissioners:

As you know, you have asked the Office of County Counsel to represent Clackamas County against Water Environment Services (“WES”) with respect to a lawsuit filed by Trevor Whisman, a person who alleges that he sustained personal injuries when his bicycle fell between the slats of a storm grate located on SE Johnson Creek Boulevard near SE 67th Avenue. Through an IGA with the County, WES contracts for representation from the Office of County Counsel with respect to advisory, transactional, litigation, and labor and employment related matters. Insofar as I can presently tell, the factual and legal issues likely to arise in the work that you have asked us to do in this lawsuit appears to be unrelated to the work we are presently doing or appear likely to do for WES.

Under the Oregon Rules of Professional Conduct, which apply to all Oregon attorneys, the Office of County Counsel may not oppose a current client, even on an unrelated matter, without the informed consent of all affected clients after an explanation about the material risks of and reasonable alternatives to consenting. This means that I must explain to both WES and you the pros and cons of consenting and that I cannot proceed to represent you unless both WES and you consent.

In deciding whether to consent, you should consider how our representation of WES as described above could or might affect you. For example, clients that are asked to waive or consent to conflicts typically should consider whether there is any material risk that “their” attorney will be less zealous or eager on their behalf due to the conflict. Similarly, clients should consider whether there is any material risk that their confidences or secrets will be used adversely to them due to the conflict.

In the present case, I personally do not believe that there is a material risk of either type because of the unrelated nature of the work for the two clients. That is because we are unaware of any confidences related to our work with WES on advisory and transactional matters that would have any relevance to our defense of Clackamas County in this lawsuit concerning the storm grate at issue. Nevertheless, these are issues that you should consider for yourself. In fact, the Oregon Rules of Professional Conduct also require that I recommend that you seek independent counsel to assist you in deciding whether to consent. You do not have to do so if you do not wish to, however. Whether or not you consult such counsel is up to you.

Please review this matter carefully. If you have any questions that you would like me to answer prior to reaching a decision on this issue, please let me know. If you are willing to consent after such review as you believe appropriate, please direct your Chair to sign the enclosed extra copy of this letter in the space provided and return it to me for my files.

Very truly yours,



Shawn A. Lillegren
Assistant County Counsel

I hereby consent to the terms of representation set forth above:

Dated: _____

Chair Tootie Smith
Board of County Commissioners
Clackamas County