

Retention and Payment of Criminal Defense Attorneys for Town Employees

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1.0 POLICY

The Town of Carolina Beach recognizes there may be a need to assist in the criminal defense of Town employees who may be accused of criminal acts while performing in the course and scope of their employment. Under the doctrine of Respondent Superior the Town is considered liable for the actions by the employee if they were considered as part of the employee's occupation.

2.0 PURPOSE

This policy is to provide information and guidelines for employees and supervisors that pertain to the circumstances upon which the Town of Carolina Beach may provide for the retention and payment of a legal defense for employees. However, this policy is not all inclusive and does not guarantee any employee an absolute right to legal representation.

3.0 SCOPE

All employees are covered by this policy.

4.0 DEFINITIONS

- 4.1 Scope of Employment - This includes all activities or duties of an employee that is owed to the Town and where the Town, through supervisory chain of command, exercises direct or indirect control of the employee's activities. The scope of employment also includes all acts by an employee that could be considered as reasonably necessary or incident to the performance of their work including actions of personal convenience and comfort that do not conflict with specific instructions. However, the scope of employment does not include any acts by an employee that departed from their assigned duties and responsibilities in order to accomplish the purpose of their work.
- 4.2 Types of Crimes - By their nature crimes can be categorized between felonies and misdemeanors.
 - A. Felonies require a warrant for an arrest, secured by a sworn law enforcement officer, and must be based on a judgment that a probable cause exists for the warrant to be secured. The probable cause is a level of proof that indicates that "more likely than not" a crime has occurred. Felony warrants also require a grand jury to issue an indictment against the defendant or a probable cause hearing from a judge. Felony indictments, by their nature, would allege actions which were taken outside the course and scope of a Town employee's duty.
 - B. Misdemeanors are less serious actions and may be issued by a citizen or a sworn law enforcement officer and they generally issued in the form of a warrant or citation. The warrant requires the defendant to undergo arrest and to appear in front of a magistrate to set the terms of pretrial release (e.g., bail). The citation, which cannot be issued by a citizen, requires the defendant to appear in court. However, a criminal charge filed by a sworn law enforcement officer requires probable cause be presented against the defendant.

5.0 ORGANIZATIONAL RULES

- 5.1 Situations Not Eligible for Retention of a Legal Defense or Reimbursement of Fees
 - A. The Town will not provide or retain a criminal defense for an employee if they were arrested on a felony or criminal misdemeanor charge by sworn law enforcement officers
 - B. The Town will not reimburse an employee who was arrested on a felony or criminal misdemeanor even if they defend their actions and later obtain an acquittal
 - C. Some factors (but not limited) to be considered that would indicate a Town employee should not be provided a criminal defense:
 1. Did the employee act or fail to act in apparent or actual fraud, corruption, or malice?
 2. Was the judgment of the employee impaired by use of alcohol, illegal drugs, or prescribed drugs taken in violation of the prescription?
 3. Did the employee act contrary to the directions of their supervisor, the Department Director, or the Town Manager?
 4. Was the action or inaction of the employee gross negligence, or willful and wanton misconduct?
 5. Did the charge arise against the Town employee after they had been reprimanded or terminated?
 6. Have Town employees filed cross warrants against each other as part of a civil dispute or are they seeking to gain advantage in their civil dispute through use of the criminal courts?
- 5.2 Situations Which May Be Eligible for Retention of a Legal Defense or Reimbursement of Fees
 - A. The Town may provide for the retention of a legal defense for an employee if their actions were taken in the scope of their employment and their actions could be considered as reasonably necessary or incident to the performance of their work. This also includes actions by an employee that is of a personal nature and not conflicting with specific instructions.
 - B. Some factors (but not limited) that would be considered whether a Town employee was acting within the course of their employment at the time of the alleged misdemeanor occurred:
 1. Did the actions giving rise to the criminal charge occur while the employee was acting within the course and scope of their employment and carrying out their official duties?
 2. Was the employee acting in good faith in performing those duties?
 3. Is the charge against the Town employee frivolous?

6.0 PROCEDURES

In situations where a citizen obtains a warrant against a Town employee, and the employee requests their supervisor to arrange for their criminal defense, the following steps will be followed:

- 6.1 The supervisor will inform the Town Manager of the request and obtain a copy of the criminal warrant and gather all evidence possible to provide to the Town Manager for his review.
- 6.2 The Town Manager may conduct an investigation of the related facts and consult with the employee's Department Director, Town Attorney, and any other individuals that may provide relevant information.

- 6.3 If it appears the employee was acting with the course and scope of his employment, the Town Manager may approve the retention of a criminal defense attorney to provide for the employee's defense.
- 6.4 If it appears the employee was acting outside the course and scope of his employment, the Town Manager may, at his discretion, deny the employee's request.
- 6.5 If the Town provides a criminal defense for the employee and the case is lost in District Court, it may be appealed to Superior Court for a jury trial. If the jury trial or bench trial is lost, the Town will not seek reimbursement of advanced legal fees from the employee.

7.0 APPENDIX, APPENDICES

None