

OVERSTRAND MUNICIPALITY

POLICY ON LEGAL REPRESENTATION

INTRODUCTION

Whereas section 109A of the Local Government: Municipal Systems Act, No. 32 of 2000 provides for the provision of legal representation to an employee or councillor of the Municipality where

- (a) legal proceedings have been instituted against the employee or councillor as a result of any act or omission by the employee or councillor in the exercise of his or her powers or the performance of his or her duties; or
- (b) the employee or the councillor has been summoned to attend any inquest or inquiry arising from the exercise of his or her powers or the performance of his or her duties; and

Whereas such legal representation must be subject to terms and conditions determined by the Municipality.

Therefore, the following policy has been adopted by the Overstrand Municipality:

Policy Principles

1. Matters of both a criminal and civil nature will qualify for legal representation in situations as described in (a) and (b) above.
2. All applications by employees for legal representation shall be submitted in writing to the Director: Management Services, all applications by councillors and the Municipal Manager for legal representation shall be submitted in writing to the Executive Mayor and all applications by the Executive Mayor for legal representation shall be submitted in writing to the Municipal Manager, in consultation with the Speaker, and which application(s) shall fully motivate the need for legal representation.
3. If, for whatever reason, it is not possible to submit the original request in writing, the Director: Management Services and or the Executive Mayor and or the Municipal Manager in consultation with the Speaker may in his/her/their discretion(s), consider a verbal request provided that a formal written request is submitted as soon as it is practicable to do so.

4. In the event of the applicant being unable to prepare such a request, the applicant may be assisted by another person e.g a member of the applicant's trade union or fellow councillor.
5. Any employee who has been charged with improper conduct and against whom a disciplinary hearing has been instituted will not be eligible for legal representation paid for by the Municipality.
6. Any councillor who has been charged with an alleged breach of the Code of Conduct for Councillors (Schedule 1 to the Systems Act) and is subject to an investigation in terms of regulation 13, will not be eligible for legal representation paid for by the Municipality.
7. A councillor or employee charged with a criminal offence and which is not subject to an investigation contemplated in terms of items 5 and 6 above, will be entitled to legal representation subject to the undermentioned conditions:
 - an attorney and/or an advocate of the accused's choice, (excluding a senior advocate) may be appointed by the Director: Management Services and/or Executive Mayor and/or Municipal Manager in consultation with the Speaker;
 - the accused must provide surety in the form of a cession of his salary and/or register a bond or second bond over his/her property in favour of the Municipality for an amount equal to a pre-estimate of the legal costs to be incurred;
 - in the event of the accused insisting on the services of a senior advocate, the accused will be required to pay the difference between an advocate and the senior advocate's fees and in the event of both a senior and an advocate being appointed, the accused will be required to pay the full costs of the senior advocate;
 - in the event of the accused being acquitted, the full costs of the criminal legal process will be paid by the Municipality and no claim will be made against the accused or his/her estate;
 - in the event of the accused being found guilty, the full costs of the criminal legal process will be recovered from the accused and/or his estate and for this purpose the Municipality will be entitled to invoke the cession and/or to call up the bond registered referred to above;
 - in the event of the convicted accused's surety being inadequate to cover the taxed costs of the Municipality, the Municipality shall proceed to attain an attachment order in respect of the convicted accused's property with a view of selling off the property so attached.

8. A councillor or employee enjoined with the Municipality as defendants in a civil matter will automatically enjoy the same level of legal assistance as the Municipality itself.
9. In the event of the civil claim succeeding, any defendant ordered by the court to personally pay the legal costs, will be obliged to pay such costs and refund any costs incurred by the Municipality on behalf of such defendant.
10. A councillor or employee who wishes to institute a civil action in his personal capacity must do so in his/her own name and at his/her own cost.

Policy Section:	Legal Services
Current Update:	N/A
Previous Review:	N/A
Approval by Council:	26 November 2008