



Lewis County Prosecuting Attorney's Office

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JOINT REPRESENTATION AGREEMENT

TO: J.P. Anderson
FROM: Kevin A. McDowell
RE: Joint Representation - Informed Consent
DATE: August 9, 2022

As you know, Rita Payne along with three other former Lewis County employees have sued Lewis County and you individually, alleging age discrimination, retaliation, among several other causes of action. If the court were to find that you engaged in tortious conduct, then that may result in personal liability for you. The County may or may not be permitted to pay expenses that may arise, in including the cost of legal defense, for you.

As a result, you have a choice to make: do you elect (1) to be jointly represented with the County, (2) to have the County supply you with a attorney to defend the suit, or (3) to hire your own attorney to represent you personally.

Option 1: Joint Representation with the County.

The Prosecutor's Office is the attorney for the County, and represents the County above all. This is different than representing you personally. If you believe that your interests and the County's interests are aligned enough that our office can represent you and the County jointly, you can elect to have us do that.

At this time, our office believes that your individual interests are sufficiently aligned with the County's that there will be no conflict of interest, and so joint representation is possible. This is so because the County is likely to defend the lawsuit on the grounds that its action was not illegal.

The benefits of joint representation are that it (1) reduces the cost of litigation to you and the County, (2) avoids pitting one defendant against another, (3) facilitates a unified defense strategy, and (4) increases information sharing among all the defendants.

But there are also some risks:

- **Risk:** A conflict of interest might develop later based on facts we discover while investigating or defending the suit. The most likely such conflict would be evidence that would make one defendant want to blame another for any fault in the suit. If such a conflict arises, our office would have to withdraw from representation.

- **Risk:** Normally, an attorney and client have confidentiality amongst themselves. But if we jointly represent you as well as the other defendants in this matter, we will not be able to hold anything that one defendant says related to this suit confidential from any of the others or other County employees necessary to conducting the litigation.
- **Risk:** You, the County, and the others will have to adopt a joint strategy, so you will not personally control the litigation. If you disagree about strategy and cannot come to an agreement, our office would have to withdraw from representation.

Our office can jointly represent you with the County if and only if you give informed consent, in writing, to joint representation knowing these risks.

Option 2: County Supplies Attorney to Defend the Suit

If you believe that your interests will not be adequately represented through joint representation with the County, the County can pay for a attorney to defend the suit for you. This is true because, at this time, our office is aware of no evidence that you were acting outside the scope of your duties or in bad faith. See RCW 4.96.041.

The benefits of this approach are that you would have more control over the strategy and would have confidentiality with your attorney. You would avoid the risk of having to change attorneys if a conflict arises in joint representation.

The shortcomings of this approach are that it may be more expensive for the County, it may reduce cooperation or information sharing amongst defendants, and one defendant may be pitted against another—that could make the defense less successful for all defendants, including you.

Option 3: You Hire Your Own Attorney

You also absolutely have the right to hire your own attorney to defend you personally.

The benefit to you is that you get control of the representation and the trial strategy, and it can be as encompassing as you and the attorney agree on. You would have confidentiality with your attorney, and would avoid the risk of having to change attorneys if a conflict arises in joint representation.

The shortcomings of this approach are that it will be expensive for you, it may reduce cooperation or information sharing amongst defendants, and one defendant may be pitted against another—that could make the defense less successful for all defendants, including you.

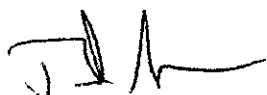
Our Recommendation Based Upon Information Presently Available to the County

Because of the considerable cost savings, unified defense, and information sharing, joint representation is in the County's best interest unless there is some reason that you know a conflict may develop. If you have some reason why you think a conflict of interest may develop, please say so right away. It will waste time and resources if our office has to withdraw after litigating part of the case, and that could end up hurting all of the defendants.

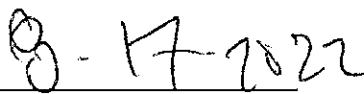
Because we recommend joint representation as the County's attorney, it is important for you to consider the contents of this memo carefully, perhaps in consultation with your own personal attorney, to see if you agree. You should agree only if you think it is in your own best interests to partner with the County in joint representation.

INFORMED CONSENT TO JOINT REPRESENTATION

I, J.P. Anderson, hereby request defense from the Lewis County Prosecuting Attorney's Office in the matter of *Rita Payne, et al. v. Lewis County, et al.*, Thurston County Superior Court Case No. 22-2-02058-34. I also hereby consent to the Lewis County Prosecutor's Office undertaking joint representation of me, the County, and other defendants in this pending litigation, under the terms discussed in this memorandum.



J.P. Anderson



Date

*** TYPE DATE HERE ***

Erik Martin
Lewis County Manager
351 NW North Street
Chehalis, WA 98532

Re: *Rita Payne, et al. v. Lewis County, et al.*
Thurston County Superior Court Case No. 22-2-02058-34

Dear Mr. Martin:

I have been personally named as a defendant in the above referenced lawsuit in conjunction with my actions while serving in my official capacity as Director of Public Health & Social Services for Lewis County. I was acting in good faith in my official capacity as an employee of Lewis County at the time of the alleged incidents.

In accordance with Lewis County Resolution No. 03-042, I am requesting that Lewis County provide defense and indemnity in this action for myself and for my marital community.

Sincerely,


J.P. Anderson

8.17.2012