



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

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MEMORANDUM

TO: Board of County Commissioners
FROM: Dylan Reingold, County Attorney *DR*
DATE: February 20, 2018
SUBJECT: Opioid Litigation

BACKGROUND

Opioids are prescription narcotics possessing properties similar to opium and heroin. While opioids can ease pain, they also can create an addictive euphoric high in users. Currently, the country faces what has been deemed an opioid epidemic, a rapid increase nationally in the use of prescription and non-prescription opioid drugs. Evidence indicates that the pharmaceutical industry has played a key role in causing the current opioid epidemic through alleged deceptive marketing of highly addictive prescription painkillers. State attorneys general, local governments and other public entities nationwide are undertaking investigations and litigation as a result of damages suffered due to the opioid epidemic.

Several firms involved in the opioid litigation have reached out to the Florida Association of Counties, Florida Association of County Attorneys and directly to the Indian River County Attorney's Office. At this time, I am aware of two cases that have been filed by Florida counties, Osceola County and Alachua County. In November, 2017, Osceola County filed a complaint in state court against companies that manufacture, market, and distribute opioids in Florida and Osceola County. Also named in the complaint were doctors across the country who are alleged to have promoted opioids for sale and distribution nationally and in Osceola County. Alachua County filed their lawsuit on January 30, 2018. Many other jurisdictions are considering hiring outside counsel and are conducting some form of search process.

In November 2017, a panel of federal judges decided to combine the more than 100 separate actions filed by various local governmental agencies against the pharmaceutical industry into one single Multi District Litigation in the Northern District of Ohio. The case was assigned to Judge Dan Polster. Judge Polster has announced that he intends to seek a quick and global settlement in the actions.

Many local governments are filing state law claims and seeking to avoid being removed to federal court. There are many reasons to file in state court, including maintaining control over the litigation and litigating the case locally.

Indian River County Emergency Services District data indicates that there were approximately 50 responses to opioid incidents per year in 2012, 2013, and 2014. The number increased to approximately 80, 130 and 150 in 2015, 2016, and 2017, respectively. The total direct costs of a response to a call is \$600. Although it is unknown the amount of insurance proceeds the County has received related to these calls for service, the County averages reimbursement for almost 80% of calls for service. With that being said, one of the attorneys who spoke on a conference call with the Florida Association of County Attorneys claimed that even small counties could have damages between \$5 million and \$10 million.

If the Indian River County Board of County Commissioners (the "Board") entered into a contract with a law firm to represent Indian River County in some form of opioid litigation, it would be anticipated that such contract would be a contingency fee proposal. Also, if the Board wishes to pursue opioid litigation, I would recommend the Board authorize the County Attorney's Office and the Purchasing Division to prepare a request for proposals ("RFP") for potential law firms.

The County Attorney's Office has coordinated with Indian River County Sheriff's Office on email communications and conferences with one of the law firms involved in the opioid litigation.

FUNDING.

If the Indian River County Board of County Commissioners wishes to pursue litigation concerning the opioid epidemic, it would be anticipated that any law firm hired would operate under a contingency fee arraignment. The cost to advertise a RFP in accordance with Chapter 105 of the Indian River County Ordinance Code would be approximately \$85, which would come from the General Fund/County Attorney/Other Professional Services account number 00110214-033190.

RECOMMENDATION.

The County Attorney's Office recommends that the Indian River County Board of County Commissioners provide guidance as to whether the Board wishes to participate in the opioid litigation. If the Board chooses to proceed with seeking to hire counsel to represent Indian River County in opioid litigation, the County Attorney's Office recommends that the Board authorize the County Attorney's Office and the Purchasing Division to prepare a request for proposals for potential law firms.