



## Ohio Revised Code

### Section 120.41 Indemnifying public defender in malpractice action.

Effective: May 1, 1992

Legislation: House Bill 210 - 119th General Assembly

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(A) In connection with any malpractice action filed against a state, county, or joint county public defender or assistant public defender, the state, or the county or district in which the defender office is located when the action is brought against a county or joint county public defender or assistant public defender, shall indemnify the attorney, if he acted in good faith and in the scope of his employment, for any judgment awarded in the malpractice action or amount negotiated in settlement of the malpractice claim asserted in the action, and for any court costs or legal fees incurred in the defense of the malpractice claim asserted in the action.

(B)(1) In connection with any malpractice action filed against an attorney who was either personally selected by an indigent person or appointed by a court pursuant to section 120.33 of the Revised Code, the attorney shall be indemnified in accordance with division (B) of this section for any judgment awarded in the malpractice action or amount negotiated in settlement of the malpractice claim asserted in the action, and for any court costs or legal fees incurred in defense of the malpractice claim asserted in the action.

(2) Subject to division (B)(3) of this section, an indemnification as described in division (B)(1) of this section shall be accomplished only through the following procedure:

(a) The attorney who was either personally selected by an indigent person or appointed by a court pursuant to section 120.33 of the Revised Code, or his counsel in the malpractice action, shall file with the attorney general a request for indemnification pursuant to division (B)(1) of this section, which shall be accompanied by the following types of supportive documentation to the extent that they relate to the request for indemnification:

(i) A certified copy of the judgment entry in the malpractice action;

(ii) A signed copy of any settlement agreement entered into between the parties to the malpractice action;



(iii) A written itemization of all court costs and legal fees incurred in the defense of the malpractice claim asserted in the action.

(b) Upon receipt of a request for indemnification and the requisite supportive documentation required by division (B)(2)(a) of this section, the attorney general shall review the request and documentation; determine whether any of the limitations specified in division (B)(3) of this section apply to the requested indemnification; and, if an indemnification in any amount is permitted under division (B)(1) of this section after applying those limitations, prepare an indemnity agreement. The indemnity agreement shall specify whether the indemnification will be for a judgment awarded in a malpractice action, an amount negotiated in settlement of the malpractice claim asserted in a malpractice action, court costs or legal fees incurred in the defense of the malpractice claim asserted in a malpractice action, or a combination of those items. The indemnity agreement additionally shall specify the total amount of permissible indemnification as determined by the attorney general; itemize the portions of the permissible indemnification that represent the judgment, settlement, court costs, or legal fees covered by the indemnity agreement; specify any limitations applied pursuant to division (B)(3) of this section to reduce the amount of indemnification sought by the attorney involved; name the persons to whom the entire permissible indemnification or portions of it will be paid; state that the permissible indemnification is payable from the state treasury pursuant to division (B)(2)(c) of this section; and be approved by the inclusion of the signatures of the attorney general and the attorney involved.

(c) The attorney general shall forward a copy of the indemnity agreement prepared pursuant to division (B)(2)(b) of this section to the director of budget and management. The director shall make application for the payment of the amount of the permissible indemnification out of the emergency purposes account or any other appropriation for emergencies or contingencies, and payment out of that account or any other appropriation for emergencies or contingencies shall be authorized if there are sufficient moneys greater than the sum total of then pending emergency purposes account requests, or requests for releases from the other appropriation. If sufficient moneys exist in the emergency purposes account or any other appropriation for emergencies or contingencies to pay the permissible indemnification, the director shall cause payment of the appropriate amounts specified in the indemnity agreement to be made to the persons named in it. If sufficient moneys do not exist in the emergency purposes account or any other appropriation for emergencies or contingencies to pay



the permissible indemnification, the attorney involved or his counsel in the malpractice action shall request the general assembly to make an appropriation sufficient to pay the indemnification, and no payment shall be made until the appropriation has been made. The attorney involved or his counsel in the malpractice action shall make the request during the current biennium and during each succeeding biennium until a sufficient appropriation is made.

(3) An indemnification pursuant to divisions (B)(1) and (2) of this section is subject to the following limitations:

(a) The maximum aggregate amount of the indemnification, whether paid to or on behalf of the attorney who was either personally selected by an indigent person or appointed by a court pursuant to section 120.33 of the Revised Code, shall be one million dollars per occurrence, regardless of the number of persons who suffer injury, death, or loss to person or property as a result of the malpractice involved.

(b) The attorney described in division (B)(3)(a) of this section shall not be indemnified to the extent of any amounts covered by a policy of malpractice insurance, for any portion of a judgement that represents punitive or exemplary damages, for any portion of an amount negotiated in settlement of a malpractice claim that is unreasonable, or for any amount described in division (B)(1) of this section unless he acted in good faith and in the scope of his employment.

(c) The attorney described in division (B)(3)(a) of this section shall be indemnified only for the portion of legal fees that is reasonable.

(4) If, pursuant to division (B)(2) of this section, the attorney general denies any indemnification to an attorney who was either personally selected by an indigent person or appointed by a court pursuant to section 120.33 of the Revised Code because of the application of a limitation specified in division (B)(3) of this section, he shall notify that attorney or his counsel in the malpractice action in writing of the denial and of the limitation applied.

(5) If, pursuant to division (B)(4) of this section, an attorney who was either personally selected by an indigent person or appointed by a court pursuant to section 120.33 of the Revised Code or his counsel in the malpractice action receives a denial of indemnification notification, or if that attorney



refuses to approve an indemnity agreement under division (B)(2) of this section because of the proposed application of a limitation specified in division (B)(3) of this section, the attorney may commence a civil action against the attorney general in the court of claims to prove his entitlement to the indemnification sought, to prove that division (B)(3) of this section does not prohibit or otherwise limit the indemnification sought, and to recover a judgment for the amount of indemnification sought. A civil action under this division shall be commenced no later than two years after the receipt of a denial of indemnification notification or, if the attorney refused to approve an indemnity agreement under division (B)(2) of this section because of the proposed application of a limitation specified in division (B)(3) of this section, no later than two years after the refusal. Any judgment of the court of claims in favor of the attorney shall be paid from the state treasury in accordance with division (B)(2) of this section.

(C) In connection with any malpractice action filed against an attorney who has contracted with the Ohio public defender commission or the state public defender, pursuant to authority granted by this chapter, to provide legal services to indigent or other persons, the state shall indemnify the attorney, if he acted in good faith and in the scope of his employment, for any judgment awarded in the malpractice action or amount negotiated in settlement of the malpractice claim asserted in the action, and for any court costs or legal fees incurred in the defense of the malpractice claim asserted in the action.