

Denver Board of Water Commissioners

Title:

Legal Representation for Denver Water Supervisors and Manager

Meeting Date: 8/12/2009

Contract/Proposal

Action by Consent

Action

Information

On June 30, 2009, Denver Water was served with a federal district court complaint filed by former employee James Phillips: Phillips v. City and County of Denver, et al., 09-cv-01515. The complaint names as defendants Denver Water and three employees in their individual capacities: Robert Mahoney, Director of Engineering, Michael Leister, Engineer V, and Hamlet J. Barry, Manager.

The complaint contains three causes of action: a First Amendment claim under 42 U.S.C. § 1983, and race discrimination claims under 42 U.S.C. § 1981 and Title VII. Although the employees are named in their individual capacities, the plaintiff under §§ 1983 and 1981 must establish that the individual defendants were acting "under color of state law", i.e., within the scope of their employment as government employees.

When a Denver Water employee is named in litigation, § 14-32-(2) of the *Personnel Policies* states that the Board will provide legal representation and pay any judgment or settlement for claims arising from an act or omission occurring during the performance of the employee's duties and within the scope of employment, unless the behavior was willful and wanton. Under the policy, the General Counsel is to determine if this section applies, and if so, will recommend that the Board provide legal representation and indemnification to the employees. In this case, the General Counsel believes that all three employees named by Mr. Phillips were properly acting within the scope of their employment as supervisors. In addition, General Counsel has determined that outside counsel should be engaged to represent the individual defendants.

RECOMMENDATION:

It is recommended that the Board: (1) authorize legal representation by the Legal Division and outside counsel for Mr. Mahoney, Mr. Leister and Mr. Barry, and (2) indemnify Mr. Mahoney, Mr. Leister and Mr. Barry for any award of damages (including punitive damages) or costs against them in this matter, whether resulting from judgment or settlement agreement.

Approvals:


Patricia L. Wells, General Counsel


Manager Approval:

Documents Attached:

File Attachment