

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: February 10, 2025

SUBJECT: Conflict of Interest Waiver for Joint Legal Representation of Jefferson County and the Chimacum School District to securing grant funding for a Project Site Location for a new public aquatic facility.

STATEMENT OF ISSUE:

The Washington State Rules of Professional Responsibility require written informed consent through a conflict of interest waiver prior to any joint legal representation.

ANALYSIS:

On January 27, 2025, the BoCC approved Chimacum Creek Primary School as the Project Site Location for the purposes of applying for grant monies to support a new public aquatic facility.

The Jefferson County Prosecuting Attorney's Office (PAO) can provide joint representation to Jefferson County (the County) pursuant to RCW [36.27.020\(1\)](#) and the Chimacum School District (CSD) Board pursuant to RCW [36.27.020\(2\)](#), to support both the County and CSD.

FISCAL IMPACT:

The County and the CSD are expected to be co-applicants on grant(s) applications for the new public aquatic facility. Joint representation allows for a mutually beneficial partnership where the CSD will provide the property for the facility and the PAO will provide legal services related to the matter at no additional cost.

RECOMMENDATION:

Make a motion to:

Delegate signing authority to Jefferson County Board of Commissioners Chair for a Conflict of Interest Waiver for Joint Legal Representation of Jefferson County and the Chimacum School District (CSD) for the purpose stated above.

REVIEWED BY:


Mark McCauley, County Administrator


Date



JAMES M. KENNEDY
Jefferson County Prosecuting Attorney

Philip C. Hunsucker, Chief Civil Deputy Prosecutor
Christopher R. Ashcraft, Chief Criminal Deputy Prosecutor
Anna K. Phillips, Deputy Prosecutor
Melissa Pleimann, Deputy Prosecutor
Holly McKeen, Deputy Prosecutor
Jim Funaro, Victim Services
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February 5, 2025

Heidi Eisenhour, Chair
Jefferson County Board of Commissioners
P.O. Box 1220
Port Townsend, WA 98368

Re: SCOPE OF REPRESENTATION & CONFLICT OF INTEREST WAIVER

Jefferson County Board of Commissioners:

The Jefferson County Prosecuting Attorney's Office (PAO) has determined that Philip Hunsucker, the Chief Civil Deputy Prosecuting Attorney, and Ariel Speser, a Civil Deputy Prosecuting Attorney, can provide joint representation to Jefferson County (the County) pursuant to RCW [36.27.020](#)(1) and the Chimacum School District (CSD) pursuant to RCW [36.27.020](#)(2), in connection with the matter, provided both the County and CSD agree to waive conflicts of interest that may arise from the joint representation in the "matter" described below. The purpose of this letter is to confirm the County's approval of the conflict of interest waiver related to the "matter."

The "matter" is limited to performing legal research, providing legal advice and counsel, and drafting legal instruments for review and execution that are mutually agreeable to the County and CSD for entry into an interlocal agreement between the County and CSD to secure grant funding for use of the Project Site Location at the Chimacum Creek Primary School property. The County intends to create an independent public facilities district (PFD), which would lease land from CSD for the Project Site Location to construct and operate the new aquatic facility. Since the PFD will have an independent governing board, it is important for both the County and CSD to understand that the PFD may decide to make different decisions than are anticipated at this time. It is similarly important to keep in mind that the PFD will be a separate legal entity from the County and CSD. Philip and Ariel will not agree to represent the PFD because RCW [36.27.020](#) does not authorize them to represent it.

Regarding joint representation, the County and CSD are expected to be co-applicants on grants for the public aquatic facility and their interests should align on the future lease to the PFD. Joint representation allows for a mutually beneficial partnership where CSD will provide

the property for the facility and the County will provide legal services related to the matter at no additional cost.

I. RCW 36.27.020

RCW 36.27.020 outlines the prosecuting attorney's duties. RCW 36.27.020(2) authorizes the prosecuting attorney to be the legal adviser to all county and precinct officers and school directors in all matters relating to their official business, and when required draw up all instruments of an official nature for the use of said officers. As Philip and Ariel are deputy prosecuting attorneys, and pursuant to RCW 36.27.040, they have the same power in all respects as the prosecuting attorney.

II. WHAT DOES JOINT REPRESENTATION MEAN?

Philip and Ariel cannot provide representation on matters not within the scope of representation. Philip and Ariel will not advise on legal matters not within the scope of representation identified in this letter. Also, if CSD wishes to take a position adverse to that taken by the County, the Prosecuting Attorneys or appointed counsel may have to withdraw from CSD's representation.

III. ATTORNEY-CLIENT COMMUNICATIONS & CONFIDENTIALITY

Any information provided by the County or CSD in connection with the joint representation will, in the ordinary course, be given to the County. The confidentiality extended to communication between Philip or Ariel and CSD does not fully apply for joint representation. For the matter, where the joint representation exists, Philip and Ariel cannot keep secret confidential information provided by one jointly represented person from any other jointly represented person.

IV. POTENTIAL CONFLICT & MULTIPLE PARTIES

By signing this letter, the County is consenting to joint representation with CSD provided by Philip and Ariel. Joint representation leads to cost and time efficiencies and extra value related to information exchange and strategy development. The County is under no obligation to agree to joint representation. If the County has any doubts about agreeing to joint representation, the County should not enter into this joint representation.

V. WAIVER OF CONFLICTS OF INTEREST

The Rules of Professional Conduct that apply to lawyers representing clients address the issue of representing multiple parties. *See* the attached text of Rules of Professional Conduct 1.7 (attached). Because the primary function of Philip, Ariel and the PAO is representing the County, the BoCC agrees to the following waivers of conflicts of interest:

A. Conflict Waiver Related to Representation in Future Matters.

The County agrees that Philip, Ariel and the PAO are authorized to represent the County in any future matter involving the County even if, for whatever reason, Philip and Ariel cease to represent CSD.

The County understands and agrees that there will be future matters likely to occur where the PAO represents the County in providing advice on election matters, including ballot titles or levy lifts proposed by CSD. Philip has been the primary legal advisor to the elections staff at the County since 2017 and has approved ballot titles or levy lifts proposed by CSD. It is possible, but highly unlikely, that Philip and the entire PAO could be conflicted from representing the County in election matters involving CSD, if CSD's conflict waiver is not upheld. This unlikely event would require the PAO to retain a special deputy prosecuting attorney for this purpose, which probably would not require the County to pay for that special deputy prosecuting attorney.

B. Conflict Waiver Related to Representation of the County by Other PAO Attorneys in the Matter.

The County agrees that even if Philip Hunsucker or Ariel Speser receive confidential information in connection with the matter, other attorneys in the PAO may represent the County on its separate interests in the matter, provided the confidential information received by Philip or Ariel shall be physically segregated from all other attorneys in the PAO.

C. Unknown or Future Conflicts of Interest

The County should know that in joint representation, conflicts of interest may exist or may develop later. This could occur, for example, if the jointly represented persons were to disagree on legal strategy. If the County is aware of any circumstances or issues that may create a potential or actual conflict of interest between or among the County and CSD, then the County must immediately advise Philip and Ariel.

VI. POTENTIAL RISKS OF JOINT REPRESENTATION

Philip and Ariel are authorized to represent both the County and CSD in this matter with diligence, competence, and loyalty. The County should be aware that while there are advantages to joint representation, there are also risks that can arise from joint representation. The following includes some of the possibilities of material risk, about which the County should be aware:

- Any information provided by the County about the matter to Philip or Ariel will, in the ordinary course, be given to CSD. Information may be used by the County in any matter, including matters where the County and CSD may be adverse.
- If Philip and Ariel withdraw from representing CSD for any reason, pursuant to the Rules of Professional Conduct Rule 1.9(a), Philip and Ariel shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially

adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

- If any jointly represented party asserts a position adverse to another jointly represented party, or if a non-waivable conflict develops between jointly represented parties, Philip or Ariel may be required to withdraw from representation of CSD, in which case CSD would need to have its own independent counsel;
- In the scenario of a conflict of interest that cannot be waived, it is possible, but highly unlikely, that the entire PAO could be conflicted from representing the County in matters involving CSD, if CSD's conflict waiver is not upheld. This unlikely event would require the PAO to retain a special deputy prosecuting attorney for this purpose, which probably would not require the County to pay for that special deputy prosecuting attorney; and,
- The confidentiality extended to communications between attorney and client does not fully apply as between jointly represented parties. Philip and Ariel cannot have confidential communication affecting the matter that is from decision makers within the County.

VII. EFFECT OF COUNTY'S AGREEMENT TO THE TERMS AND SCOPE OF THIS LETTER

The Board of County Commissioners should carefully review this letter on behalf of the County to be sure that the County understand its contents. If the Board of County Commissioners has any questions concerning the representation being provided under this letter, the Board of County Commissioners can obtain further information about the PAO's perspective on these issues from Philip or Ariel.

By signing this letter, the Jefferson County Board of Commissioners agree to the terms and scope of the representation in the matter on behalf of the County, including all waivers, as outlined in this letter.

If the Board of County Commissioners have any questions, please let Philip or Ariel know as soon as possible.

Sincerely,



Ariel Spenser
Civil Deputy Prosecuting Attorney

cc: Philip Hunsucker, Chief Civil Prosecuting Attorney

I have reviewed, understand and agree to the nature and limitations of the joint representation being provided to the County in this matter, as discussed in this letter. I have been authorized by the Jefferson County Board of Commissioners to agree to the joint representation proposed in this letter.

Heidi Eisenhower, Chair

Date

RPC 1.7
CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).