

3/20/18

March 20, 2018 - Regular Meeting
Agenda Item #52

Subject

Opioid litigation

Briefings

All

Contact and/or Presenter Information

Mitchell O. Palmer, County Attorney, ext. 3750

Action Requested

Authorization for the County Attorney to permit the filing and prosecution of a lawsuit in either the circuit court or the federal court against one or more opioid manufacturers and distributors, utilizing outside counsel to be chosen by the County Attorney under a contingency fee arrangement to be negotiated by the County Attorney, which contingency fee shall not exceed 25 percent.

Enabling/Regulating Authority

Chapter 125, Florida Statutes

Background Discussion

The Board of County Commissioners has expressed interest in the recent lawsuits filed by various cities and counties across the country, relative to the well-recognized and well-documented opioid crisis.

These lawsuits seek compensation from opioid manufactures and distributors for costs incurred by local governments for healthcare, maintenance and deployment of first responders (to include the administration of Narcan and other antidote medications), maintenance and deployment of law enforcement, incarceration-related costs, drug abuse programs, social services, drug courts, autopsies, etc.

The lawsuits also typically seek from the defendants the "go-forward" funding of rehabilitative and educational services, and counseling services.

Finally, the lawsuits typically seek injunctive relief regarding marketing practices.

The theories of liability center around allegations of fraudulent marketing schemes wherein the manufacturers and distributors promoted the use of opioids for non-malignant pain, underplayed the potential of opioid addiction and falsely denied or trivialized the risks of opioid usage.

The theories of liability also include allegations of failure to report suspicious orders for opioids, as required by Federal law.

Some of the more common brands of prescription opioids are OxyContin, Vicoden and Percocet. The class of drugs known as opioids also includes the illegal drug heroin, and synthetic opioids such as fentanyl.

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The County Attorney has interviewed a variety of law firm consortia that are pursuing this type of litigation on behalf of local governments nationwide. The consortia that the County Attorney has interviewed are as follows:

- Napoli Shkolnik (New York) / Stull Stull & Brody (New York)
- Branstetter Stranch & Jennings (Nashville) / Ventura Law (Danbury, CT) / Trenam Law (Tampa)
- Motley Rice (Washington, DC) / Whittemore Law Group (St. Petersburg)
- Baron & Budd (Dallas) / Levin Papantonio (Pensacola)

In addition, the County Attorney received a mailed solicitation from:

- Scott & Scott (New York).

Thus far, two Florida counties (Alachua and Osceola) have filed suit. The Pasco County Commission approved the filing of an action on January 23. Numerous other Florida counties are in a similar position to Manatee, wherein they are interviewing law firm consortia and considering the possibility of litigating. Among Florida cities, the City of Delray Beach has filed an action.

The almost universal arrangement is a contingency attorney's fee of 25%, with the costs of litigation being fronted by the consortia for later reimbursement by the client.

The County Attorney will provide additional information at the time of presentation and answer questions from Commissioners.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

This is a County Attorney item.

Emailed 3/22/18

Reviewing Attorney

Palmer

Instructions to Board Records

Assuming approval of the item, please provide one copy of the agenda item bearing the approved stamp to County Attorney Mitchell O. Palmer at mitchell.palmer@mymanatee.org.

Cost and Funds Source Account Number and Name

Unknown at this time

Amount and Frequency of Recurring Costs

N/A

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