

POLK-BURNETT ELECTRIC COOPERATIVE

Policy No.: **BD-4**

Subject: **Legal Services**

Objective: The board of directors of Polk-Burnett Electric Cooperative (“Board”) recognizes that competent legal representation and effective use of attorneys are critical to the successful operation of the cooperative. Although an attorney or law firm retained or employed by Polk-Burnett and the attorney’s representation of Polk-Burnett, are governed by rules of professional conduct and other local, state, and federal law, the objective of this policy is to provide additional guidance for, and emphasize important aspects of, the attorney’s representation of the cooperative and its use of legal services provided by the attorney. To the extent this policy is inconsistent with rules of professional conduct or similar requirements governing attorneys, the rules or requirements govern.

Policy:

- A. **System Counsel**. The board shall retain or employ an attorney, to act as system counsel, to provide general legal services to the cooperative. General legal services include, but are not limited to: (1) attending and reviewing minutes of all meetings of the board and all annual and special meetings of the members, and attending all other meetings at the request of the board, the executive committee, or the general manager; (2) negotiating, drafting, and reviewing contracts; (3) providing legal services for the disposition or acquisition of real property and interests in real property; (4) providing legal services for the borrowing or lending of money; (5) providing legal services regarding general business, corporate, cooperative, tax, labor, employment, territorial and electric utility law; and (6) litigating on behalf of the cooperative in court.
- B. **Special Counsel**. As reasonably necessary, and following consultation with or the recommendation of the system counsel, the cooperative may retain or employ an attorney to provide special legal services to the cooperative. Special legal services may be required from time to time when it is necessary for the cooperative to be represented by counsel to avoid conflicts of interest or where a particular set of facts or circumstances require the services of legal counsel with specific competence in a particular field of law. Such competencies may include, but are not limited to: (1) representing the cooperative in federal court, or before a specific state, or federal agency; and (2) providing legal services regarding special tax, antitrust, environmental, or intellectual property law. In providing special legal services to the cooperative, a special counsel shall provide the system counsel copies of all communications, memoranda, briefs, notices, motions, and other documents prepared, filed, received, or sent by the special counsel.
- C. **Competent Legal Representation and Conflicts of Interest**. An attorney shall provide competent legal representation to the cooperative, and shall have or acquire the appropriate knowledge, skills, time, and qualifications necessary to provide competent legal representation. No attorney, however, guarantees, promises, or warrants a successful or favorable outcome regarding legal services provided to the cooperative. An attorney shall comply with conflict of interest requirements prescribed in applicable local, state, and federal law and rules of professional conduct. In addition, an attorney shall comply with the conflict of interest policies, procedures and requirements of the cooperative itself, including, without limitation, Polk-Burnett’s *Code of Ethics* as provided in Policy

E-23, and Policy E-14, the cooperative's *Whistleblower Policy*. An attorney may provide legal services to an entity in which the cooperative owns an interest such as a wholly owned subsidiary, but only if the attorney complies with these conflict of interest requirements. An attorney shall inform the board in writing of any entity the attorney represents or by which the attorney is engaged which is also involved in generating, transmitting, distributing, marketing, or selling electric energy.

- D. **Retaining, Employing, and Discharging Attorney.** The board shall make decisions regarding retaining, employing, and discharging the system counsel and shall annually evaluate the performance of the system counsel. By providing written notice to an attorney, the cooperative may discharge the attorney, and terminate any attorney engagement agreement, at any time for any reason. By providing written notice to the cooperative, and as required or allowed by applicable law and rules of professional conduct, an attorney shall or may withdraw from representing the cooperative and terminate any attorney engagement agreement.
- E. **Directing Attorney.** Only the board as a whole, the president of the board, the executive committee, or the general manager may request that an attorney provide legal services to the cooperative. As requested by an attorney, and as reasonably necessary or helpful in providing legal services to the cooperative, the cooperative shall provide the attorney reasonable access to its directors, officers, employees, consultants, agents, representatives, records, and documents. The general manager and attorney shall keep the board reasonably informed regarding any matter for which the attorney is providing legal services to the cooperative. In providing legal services to the cooperative, and subject to the board or general manager's direction, an attorney may act on the cooperative's behalf in any manner reasonably believed to be in the cooperative's best interest.
- F. **Attorney Fees and Expenses.** The cooperative shall pay an attorney a reasonable fee and reasonable expenses. An attorney shall provide legal services to the cooperative in a cost-effective and efficient manner. The fees and expenses for an attorney retained by the cooperative must be specified in an attorney engagement agreement.
- G. **Cooperative as Client.** In providing legal services to the cooperative, an attorney represents the cooperative as client, acting through its authorized directors, officers, employees, and members. In representing the cooperative, an attorney does not represent the cooperative's directors, officers, employees, or members. If the board gives its informed, written, and prior consent, and if an attorney complies with applicable conflict of interest requirements, then the attorney may represent an affiliated entity such as a wholly owned subsidiary, and the attorney may represent individual cooperative directors, officers, employees, and members in matters related to the attorney's representation of the cooperative.
- H. **Attorney-Client Privilege.** Confidential communications between the cooperative, or its agent or representative, and the attorney, or the attorney's agent or representative, made to facilitate the attorney's provision of legal services to the cooperative are protected by the attorney-client privilege. Cooperative directors, officers, employees, consultants, agents, and representatives shall not disclose these communications to third parties, other than those to whom disclosure is made in furtherance of this provision of legal services, or those reasonably necessary for transmitting the communications. To the extent these communications are disclosed to cooperative employees, consultants, agents, or representatives, they must only be disclosed to individuals who reasonably need to know of the communications.
- I. **Attorney's Duty to Inform and Consult.** An attorney shall keep the board and the general manager reasonably informed regarding a matter for which the attorney is providing legal services to the cooperative. For decisions regarding the matter to be made by the cooperative, the attorney shall explain the matter to the board and the general manager to the extent reasonably necessary to permit the cooperative to make an informed decision. An attorney shall promptly comply with the cooperative's reasonable request for information.

- J. **Reliance.** In providing legal services to the cooperative, an attorney may rely upon information provided by the cooperative, unless the attorney knows that the reliance is unwarranted. In performing his or her duties, a cooperative director, officer, or employee may rely upon information, opinions, reports, and statements prepared or presented by an attorney. A director, officer, or employee's reliance, however, is only permitted regarding matters involving skills or expertise that he or she reasonably believes are within the attorney's professional or expert competence. Further, this reliance is only permitted if the director, officer, or employee acts in good faith and reasonably believes that the reliance is warranted and that the attorney merits confidence.
- K. **Evidence of Violation of Law or Breach of Duty.** If an attorney, other than the system counsel, knows or reasonably should know of any evidence of an actual or intended material violation of law or material breach of duty, or evidence of an actual or intended violation of law or breach of duty likely to result in substantial injury to the cooperative, by the cooperative or by any cooperative director, officer, employee, consultant, agent, or representative, then the attorney shall report the evidence to the system counsel. If the system counsel knows or reasonably should know of any such evidence, then the system counsel shall report the evidence to the general manager, the president of the board, the executive committee of the board, or to the board as a whole depending on the facts and circumstances of any particular situation in order to facilitate the investigation, pursuit and resolution of any such matters alleged.
- L. **Legal Programs, Publications, and Memberships.** The cooperative shall encourage the system counsel to: (1) attend legal programs sponsored by, and to subscribe to legal publications published by, the National Rural Electric Cooperative Association and any association of cooperatives located within the state; and (2) be a member of, and attend programs sponsored by, the Electric Cooperative Bar Association and any association of attorneys representing cooperatives located within the state. The payment of any fees and expenses related to a system counsel retained by the cooperative attending these legal programs, subscribing to these legal publications, or being a member of these associations must be specified in an attorney engagement agreement.
- M. **Reporting.** The system counsel shall have a direct reporting relationship with the board, and a working relationship with the general manager.

Edward O. Gullickson, President
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