

# **ATLANTIC COUNTY MUNICIPAL JOINT INSURANCE FUND**

## RESOLUTION 2017 - 12

### ADOPTING AND ESTABLISHING A CONFLICT OF INTEREST POLICY

**Whereas**, the Atlantic County Municipal Joint Insurance Fund has been organized pursuant to NJSA 40A:10-36 et seq., and

**Whereas**, the Atlantic County Municipal Joint Insurance Fund is duly constituted as a Municipal Self Insurance Fund to provide insurance coverage to its member municipalities, and

**Whereas**, the Commissioners of the Atlantic County Municipal Joint Insurance Fund have determined that the Atlantic County Municipal Joint Insurance Fund is distinguished from commercial insurance providers by virtue of the fact that it is formed by municipalities, it is funded by public monies appropriated by the member municipalities, it serves a public purpose and is responsible for the discharge of its function in a manner consistent with ethical policies applicable to municipal government, and

**Whereas**, the Commissioners of the Atlantic County Municipal Joint Insurance Fund find that it is appropriate to establish certain policies applicable to potential conflicts of interest by the officials and professional staff of the Atlantic County Municipal Joint Insurance Fund,

**Now, THEREFORE, BE IT RESOLVED** by the Commissioners of the Atlantic County Municipal Joint Insurance Fund, assembled in a public session on January 18, 2017, that:

#### **Findings:**

1. The Atlantic County Municipal Joint Insurance Fund is a joint enterprise of the following municipalities:

Absecon, Avalon, Brigantine, Buena, Cape May, Cape May Point, Corbin City, Commercial, Deerfield, Dennis, Downe, Egg Harbor Township, Estell Manor, Folsom, Galloway, Hamilton, Linwood, Longport, Lower, Margate, Middle, Millville, Mullica, Newfield, North Wildwood, Northfield, Ocean City, Pleasantville, Sea Isle City, Somers Point, Stone Harbor, Upper, Upper Deerfield, Ventnor, Waterford, Weymouth, West Cape May, West Wildwood, Wildwood, Wildwood Crest, Woodbine

providing those municipalities with general liability, police professional and workers' compensation coverage.

2. The municipalities which are members of the Atlantic County Municipal Joint Insurance Fund are jointly responsible for the defense and payment of claims against each other in accordance with the standards and limitations applicable to the Atlantic County Municipal Joint Insurance Fund.
3. While in some aspects of its activity the Atlantic County Municipal Joint Insurance Fund functions in a manner similar to that of a commercial insurance provider, it is clearly distinguished by the fact that it is created by the member municipalities; it is governed by

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Commissioners appointed by the member municipalities; its funding is provided exclusively by the member municipalities and thereby constitute public funds; those associated with the Atlantic County Municipal Joint Insurance Fund are compensated with those public funds; the function of the Atlantic County Municipal Joint Insurance Fund is to fulfill a public purpose by providing insurance coverage exclusively to its member municipalities; there is a need for those appointed by the Atlantic County Municipal Joint Insurance Fund to freely discuss and evaluate potential liability exposures of the member municipalities and to receive information on municipal activities and operations in the same manner as those directly appointed by the member municipalities to advise them; and the Atlantic County Municipal Joint Insurance Fund is bound by many of the same laws and regulations applicable to municipalities with regard to financial records, public contracts and public meetings.

### **Conflict of Interest Policy**

1. It is hereby determined by the Commissioners of the Atlantic County Municipal Joint Insurance Fund that it is in the best interests of the Atlantic County Municipal Joint Insurance Fund and the member municipalities to establish a policy regarding potential conflicts of interest affecting those appointed or retained by the Atlantic County Municipal Joint Insurance Fund.
2. It is further determined that it would be inappropriate for an individual appointed or retained by the Atlantic County Municipal Joint Insurance Fund, or for any person owning or employed by the business entity with which the appointed individual is associated, to undertake the representation or appearance on behalf of a party in a matter or claim adverse to that of the member municipalities. The potential conflict of interest or appearance of a conflict of interest specifically extends to the assertion of claims against the member municipalities and to appearances before agencies of those municipalities.
1. The ACMJIF has determined that it is a conflict of interest for a ACMJIF defense attorney to represent any plaintiff, claimant or interest in any legal action, except as stated herein, against any member municipality, regardless of Fund affiliation, including but not limited to the Municipal Excess Liability Fund. It shall be deemed to be a violation of this Conflict of Interest Policy, by any designated defense attorney of the ACMJIF to take on such representation enjoined by this paragraph. Any ACMJIF defense attorney that knowingly violates this policy is subject to be removed from the list of approved defense attorneys.
2. In determining the nature and extent of the conflict of interest policy, guidance can be drawn from the Opinions of the Advisory Committee on Professional Ethics that address the restrictions on municipal attorneys and those associated with their law offices and the reasons underlying those Opinions. In adopting this Policy, however, the Commissioners of the Atlantic County Municipal Joint Insurance Fund are aware of Opinion No. 640 issued for attorneys by the Advisory Committee on Professional Ethics which compared a Municipal Joint Insurance Fund to a commercial insurance company and determined that there was not a conflict between representing a Joint Insurance Fund and appearing before a municipal agency. To the extent of the policy adopted by this Resolution, the Commissioners of the Atlantic County Municipal Joint Insurance Fund do not adopt the rationale of Opinion No. 640 and hereby determine that the nature of the Atlantic County Municipal Joint Insurance Fund; its

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creation by the member municipalities; its funding by the member municipalities; its governance by the municipal officials appointed by the member municipalities and the need to share confidential information regarding potential liabilities affecting the member municipalities is sufficient to present a potential conflict of interest or the potential for an appearance of a conflict of interest and that it must be avoided by those associated with the Atlantic County Municipal Joint Insurance Fund.

### **Exceptions.**

1. The general policy prohibiting those retained or appointed by the Atlantic County Municipal Joint Insurance Fund from appearing before agencies of the member municipalities shall not be applicable to the representation of parties in the Municipal Court for motor vehicle violations, including drunk driving, provided that the defense is not based upon and the parties are not asserting any claim against a police officer, a municipal employee or the municipality for any alleged wrongful or improper action. It is noted that even traffic violations require sensitivity to potential conflicts, since charges arising out of a motor vehicle accident, could well result in a subsequent claim against the municipality. Those situations which would present a conflict of interest between the representation of a client and the representation of municipal interests should be avoided. Claims against municipal members will need to be evaluated and defended by the Atlantic County Municipal Joint Insurance Fund and the defense should not be compromised by the representation of a party asserting a claim.
2. The general policy prohibiting those retained or appointed by the Atlantic County Municipal Joint Insurance Fund from appearing before agencies of the member municipalities may be waived with regard to the representation of parties with minor development applications before the Planning Board or the Zoning Board of Adjustment. Where a person retained or appointed by the Atlantic County Municipal Joint Insurance Fund seeks to appear before the Planning Board or the Zoning Board of Adjustment of a member municipality for any relatively minor application, in which there is not a substantial adversarial relationship to the municipality, a waiver of the conflict of interest policy may be requested for that application. The request for the waiver shall be reviewed by the Executive Director and the Solicitor for the Atlantic County Municipal Joint Insurance Fund and the Commissioner representing the municipality in which the application is to be considered to the Atlantic County Municipal Joint Insurance Fund to determine whether a waiver shall be allowed in the particular matter after considering the nature of the application and whether any use or significant bulk variances are requested.
3. Nothing in the policy adopted herein shall bar an individual from representing or appearing for himself or herself or a member of his or her immediate family residing with him or her before any municipal agency.

**Be It Further Resolved**, that copies of this Resolution shall be provided to each of the officials, professionals, and defense attorneys appointed by the Atlantic County Municipal Joint Insurance Fund for their information and attention.

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This resolution was duly adopted by the Atlantic County Municipal Joint Insurance Fund at a public meeting held on January 18, 2017.

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BY: *Greg R. Somich*  
CHAIRPERSON

ATTEST: *Constance A. Nelson*  
SECRETARY

DATE: *1-18-2017*