

RESOLUTION DECLARING THAT THE UNLAWFUL DISTRIBUTION OF PRESCRIPTION CONTROLLED SUBSTANCES HAS CREATED A PUBLIC NUISANCE AND A SERIOUS PUBLIC HEALTH AND SAFETY CRISIS FOR THE CITIZENS OF FRANKLIN COUNTY

WHEREAS, the County Board is the policy-determining body of the County; and

WHEREAS, the County Board has the authority to take action to protect the public health, safety, and welfare of the citizens of Franklin County; and

WHEREAS, there exists a serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality in Franklin County; and

WHEREAS, the diversion of legally produced controlled substances into the illicit market causes or contributes to the serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality in Franklin County; and

WHEREAS, the violation of any laws of Illinois or of the United States of America controlling the distribution of a controlled substance is inimical, harmful, and adverse to the public welfare of the citizens of Franklin County and constitutes a public nuisance; and

WHEREAS, the County Board has the authority to abate, or cause to be abated, any public nuisance including those acts that significantly interfere with the public health, safety, and welfare of the citizens of Franklin County; and

WHEREAS, the County Board has expended, is expending, and will continue to expend in the future County public funds to respond to the serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality in Franklin County, and

WHEREAS, the County Board may sue to obtain any money due the County; and

WHEREAS, the County Board has received information that indicates that the wholesale distributors of controlled substances in Franklin County, and other responsible parties, may have violated Federal laws and regulations that were enacted to prevent the diversion of legally produced controlled substances into the illicit market; and

WHEREAS, the County Board has an affirmative, statutory duty to take suitable and proper measures to prosecute a suit on behalf of the County:

Duty of County Board to prosecute and defend suit. It shall be the duty of the County Boards of each of the counties of this State to take and order suitable and proper measures for the prosecuting and defending of all suits to be brought by or against their respective counties, and all suits which it may become necessary to prosecute or defend to enforce the collection of all taxes charged on the state assessment.

55 ILCS § 5/1-6003 (emphasis added); and

WHEREAS, the State’s Attorney also has an affirmative, statutory duty to commence civil actions on behalf of the County where, as here, the people of the State and County are concerned:

Powers and duties of State’s attorney.

(a) The **duty** of each State’s attorney shall be:

(1) **To commence and prosecute all actions**, suits, indictments and prosecutions, **civil** and criminal, in the circuit court for his county, **in which the people of the State or county may be concerned.**

55 ILCS § 5/3-9005 (emphasis added); and

WHEREAS, the State’s Attorney has the power to procure the necessary services in fulfilling his or her mandatory statutory duties: “The State’s Attorney shall control the internal operations of his or her office **and procure the necessary** equipment, materials, and **services to perform the duties of that office.**” 55 ILCS § 5/3-9006(a) (emphasis added); and

WHEREAS, in order to fulfill these mandatory duties imposed by statute, we find, and the State’s Attorney has found, that the citizens of this County will benefit from retention of outside counsel to investigate and pursue, as appropriate, claims against the wholesale distributors of controlled substances in this County and Illinois, and other responsible parties, on a contingent fee basis, wherein there is no attorney fee or reimbursement of litigation expenses if there is no recovery; and

WHEREAS, there is a substantial need for the legal services; and

WHEREAS, the legal services cannot be adequately performed or provided solely by the attorneys and supporting personnel of the state governmental entity or by the attorneys and supporting personnel and another state governmental entity; and

WHEREAS, the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained and because the County does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees; and,

NOW, THEREFORE, BE IT RESOLVED by the County Board of Franklin County, Illinois:

SECTION I

That the Board hereby declares that opiate abuse, addiction, morbidity and mortality has created a serious public health and safety crisis in Franklin County, Illinois, and is a public nuisance; and

SECTION II

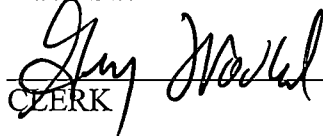
That the Board of Franklin County, Illinois, hereby authorizes, to the extent it is necessary, the State's Attorney to retain the firms of Howerton, Dorris, Stone & Lambert, 309 West Main St., Marion, IL and Goldenberg, Heller & Antognoli, P.C., 2227 S. State Route 157, Edwardsville, IL, and such other legal counsel as needed, as Counsel to represent the County and where appropriate the State, to investigate and, if appropriate, pursue all civil remedies which may be afforded under law as against the companies in the chain of distribution of controlled substances who have caused or contributed to the public nuisance and serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality in Franklin County, with the compensation therefore on a contingent fee basis, in concert with the contingent fee agreement that is designated as "Authority to Represent" which is identified as Exhibit A and attached hereto and made a part hereof in its entirety.

SECTION III

That the Board of Franklin County hereby finds and determines that all formal actions relative to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and its Committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with all applicable legal requirements.

ADOPTED by roll call vote this 18th day of March, 2020.

ATTEST:


CLERK


COUNTY BOARD CHAIRMAN

Exhibit A
AUTHORITY TO REPRESENT

RE: Illinois civil suit against those legally responsible for the wrongful distribution of prescription opiates and damages caused thereby.

The County of Franklin by and through their duly authorized agent, Phillip Butler, (hereinafter "CLIENT") hereby retain the law firms of HOWERTON, DORRIS, STONE & LAMBERT, and GOLDENBERG, HELLER & ANTOGNOLI, PC., (hereinafter generally referred to as "COUNSEL" as special counsel, pursuant to the Illinois Rules of Professional Responsibility, on a contingent fee basis, to pursue all civil remedies against those in the chain of distribution of prescription opiates responsible for the opioid epidemic which is plaguing the County of Franklin, Illinois including, but not limited to, filing a claim for public nuisance to abate the damages caused thereby. CLIENT authorizes COUNSEL to employ and/or associate additional counsel, with consent of CLIENT, to assist COUNSEL in the just prosecution of the case. CLIENT consents to the participation of the following firms:

HOWERTON, DORRIS, STONE & LAMBERT,
309 West Main St.
Marion, Illinois

GOLDENBERG HELLER & ANTOGNOLI, P.C.
2227 S. State Route 157
Edwardsville, Illinois

FARRELL LAW
422 Ninth Street, Suite 300
Huntington, West Virginia

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA
316 South Baylen Street
Pensacola, Florida

BARON & BUDD, PC
3102 Oak Lawn Avenue #1100
Dallas, Texas

HILL PETERSON CARPER BEE & DEITZLER PLLC
500 Tracy Way
Charleston, West Virginia

MCHUGH FULLER LAW GROUP
97 Elias Whiddon Rd
Hattiesburg, Mississippi

POWELL AND MAJESTRO
405 Capitol St
Charleston, West Virginia

In consideration, CLIENT agrees to pay “Attorneys’ fees” of Twenty-Five percent (25%) of gross settlement or judgment proceeds. The gross proceeds shall be calculated on the amount obtained before the deduction of costs and expenses. CLIENT grants Attorneys an interest in a fee based on the gross recovery. If a court awards attorneys’ fees, Attorneys shall receive the "greater of” the gross recovery-based contingent fee or the attorneys' fees awarded. **There is no fee if there is no recovery.**

HOWERTON, DORRIS, STONE & LAMBERT, GOLDENBERG HELLER & ANTOGNOLI, P.C. and the other law firms, hereinafter referred to as the “Attorneys,” agree to advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated. **There is no reimbursement of litigation expenses if there is no recovery.**

The CLIENT acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this employment will preclude other employment by the Attorneys, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

This litigation is intended to address a significant problem in the community. The litigation addresses the wholesale distributors and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in opioid addiction, abuse, morbidity and mortality. There is no easy solution and no precedent for such an action against this sector of the industry. Many of the facts of the case are locked behind closed doors. The billion dollar industry denies liability. The litigation will be very expensive and the litigation expenses will be advanced by the Attorneys with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery. Consequently, there must be a clear understanding between the CLIENT and the Attorneys regarding the definition of a “successful recovery.”

The Attorneys intend to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages or equitable remedies (e.g., abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the companies in the chain of sale and distribution of prescription opioid drugs. The CLIENT agrees to compensate the Attorneys, contingent upon prevailing whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, CLIENT agrees to pay the Attorneys’ fees as set forth above of the gross amount to Attorneys as compensation and then reimburse the reasonable

litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), CLIENT agrees to pay the Attorneys' fees, as set forth above, out of the gross value of the equitable relief to the Attorneys as compensation and then reimburse the reasonable litigation expenses. To be clear, Attorneys shall not be paid nor receive reimbursement from public funds. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee. Under no circumstances shall the CLIENT be obligated to pay any Attorneys fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of the CLIENT's claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Attorneys will be paid the designated contingent fee from the resources expended by the defendant(s). CLIENT acknowledges this is a necessary condition required by the Attorneys to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Attorneys should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by the CLIENT. Any division of fees will be governed by the Illinois Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the CLIENT; (2) the CLIENT has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; (3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the CLIENT and each lawyer and shall comply with the terms of Rule 1.5 (c) of the Illinois Rules of Professional Conduct; and (4) the total fee is *reasonable*.

COUNSEL shall keep the CLIENT reasonably informed about the status of the matter in a manner deemed appropriate by the CLIENT. The CLIENT at all times shall retain the authority to decide the disposition of the case and maintain absolute control of the litigation.

Upon conclusion of this matter, COUNSEL shall provide the CLIENT with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyers' fees with a lawyer not in the same firm. The closing statement shall be signed by the CLIENT and each attorney among whom the fee is being divided.

CLIENT understands that it may, through its offices and branches of working government, have to produce documents, either to demonstrate the CLIENT's ability to be an adequate plaintiff, or to support the CLIENT's claims. In addition to the production of documents, this may include assisting with answering written discovery, having employees' depositions taken, giving oral testimony and/or appearing at trial. The Attorneys understand and appreciate that the CLIENT may object to an opposing party's unchecked access to its government information and the

Attorneys will vigorously oppose the production of any irrelevant, unrelated information and seek protective orders that limit any defendant's access to any information that contains confidential information (including attorney-client communications); BUT, there is no guarantee, as the production of information is left to the sound discretion of the court.

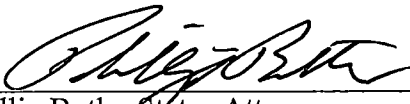
This Authority to Represent is between a unit of government and attorneys in private practice. As such, the CLIENT acknowledges that information from the CLIENT to its Attorneys, and vice versa, should not be produced in response to FOIA requests or discussed at public meetings because it is covered by the attorney-client privilege and is an exception under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

Nothing in this Agreement and nothing in the Attorneys' statement to the CLIENT may be construed as a promise or guarantee about the outcome of this matter. The Attorneys make no such promises or guarantees. Attorneys' comments about the outcome of this matter are expressions of opinion only and the Attorneys make no guarantee as to the outcome of any litigation, settlement or trial proceedings.

The undersigned represents that he is authorized by his office to enter into the above agreement and agrees to the express terms and conditions as set forth in this Authority to Represent.

SIGNED, this 18th day of March, 2020.

Franklin County



Phillip Butler States Attorney

Accepted:

Howerton, Dorris, Stone & Lambert,
309 West Main St.
Marion, IL 62959

By _____

Doug Dorris

Counsel

_____ Date