

KIUC BOARD POLICY NO. 10
LEGAL REPRESENTATION AND USE OF ATTORNEYS

PURPOSE OF POLICY:

Although attorneys retained or employed by KIUC and the attorneys' representation of KIUC, 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 the representation of all attorneys who represent KIUC, and KIUC's use of attorneys. To the extent this policy is inconsistent with rules of professional conduct or similar requirements governing attorneys, the rules or requirements govern.

POLICY CONTENT:

I. Retention of Counsel

- A. General Counsel.** The Board shall retain or employ an attorney on behalf of KIUC to continually provide general legal services to KIUC ("General Counsel"). General legal services include, but are not limited to: (1) attending and drafting or reviewing the minutes of all meetings of the Board, and all annual and special meetings of KIUC members; (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; and (5) providing legal services regarding general business, cooperative, tax, and electric utility law.
- B. Special Counsel.** As reasonably necessary, and following consultation with the General Counsel, KIUC may retain or employ attorneys to provide special legal services to KIUC ("Special Counsel"). Special legal services require competence in a particular field of law. The General Counsel may also provide special legal services to KIUC in areas of the General Counsel's competency.
- C. Board Counsel.** As determined by the Board, the Board may retain, employ, direct, and discharge an attorney other than the General Counsel, or Special Counsel, or their law firms, to periodically provide legal services directly to the Board ("Board Counsel"), with the Board Counsel representing the Board as client. To the extent practical, a Board Counsel's representation of the Board must be governed in a manner similar to the manner in which an attorney's representation of KIUC is governed under this policy.

II. Competent Legal Representation and Conflicts of Interest

An attorney shall provide competent legal representation to KIUC, 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 KIUC. An attorney shall inform the CEO, or person authorized by the CEO in writing of any other entity engaged in generating, transmitting, distributing, marketing, or selling electric energy to which the attorney provides legal services.

III. Retaining, Employing, and Discharging Attorneys

The Board shall make decisions regarding retaining, employing, and discharging the General Counsel and shall annually evaluate the performance of the General Counsel. Following consultation with the General Counsel, the CEO shall make decisions regarding retaining, employing, and discharging any other attorney.

IV. Directing Attorneys

Only the Board, the Board Chair, or the CEO may request an attorney provide legal services to KIUC; provided, however, if KIUC's General Counsel is requested to perform services that are thought by the General Counsel to be outside the scope of the General Counsel's general retainer, the general Counsel shall so advise the requestor, and, if the requestor is not the Board, Board Chair, or CEO, have the requestor obtain the necessary approval from the Board, Board Chair, or CEO, as applicable, pursuant to this policy prior to undertaking the requested services. The CEO and attorney shall keep the Board reasonably informed regarding any matter for which an attorney is providing legal services to KIUC. In consultation with the Board or as directed by the Board, the CEO shall direct an attorney. In providing legal services to KIUC, and subject to the Board or CEO's direction, an attorney may act on KIUC's behalf in any manner reasonably believed to be in KIUC's best interest. Unless the CEO gives his or her prior consent, an attorney may not make a statement outside of a tribunal regarding the attorney's provision of legal services to KIUC, which statement the attorney knows or reasonably should know will be disseminated by means of public communication. No KIUC director, officer, employee, consultant, agent, or representative may interfere with the attorney's ability to exercise independent professional judgment and render candid advice.

V. Attorney Fees and Expenses

KIUC shall pay its attorneys a reasonable fee and reasonable expenses. All attorneys shall provide legal services to KIUC in a cost-effective and efficient manner. The fees and expenses for attorneys retained by KIUC must be specified in an appropriate attorney engagement agreement. KIUC shall indemnify its attorneys for liability and expenses, including reasonable attorney fees, to which KIUC has exposed the attorney without the attorney's fault. The CEO shall cause KIUC's attorneys to be paid appropriate monthly fees and expenses in accordance with their respective engagement agreements, and within budgeted and delegated authority.

VI. KIUC as Client

In providing legal services to KIUC, an attorney represents KIUC as client, acting through its authorized directors, officers, employees, and members. In representing KIUC, an attorney does not represent KIUC'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 individual KIUC directors, officers, employees, and members in matters related to the attorney's representation of KIUC.

VII. Attorney-Client Privilege

Confidential communications between KIUC, 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 KIUC are protected by the attorney-client privilege. KIUC 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 KIUC employees, consultants, agents, or representatives, they must only be disclosed to individuals who reasonably need to know of the communications.

VIII. Attorney's Duty to Inform and Consult

An attorney shall keep the Board and the CEO reasonably informed regarding a matter for which the attorney is providing legal services to KIUC. For decisions regarding the matter to be made by KIUC, the attorney shall explain the matter to the Board and the CEO to the extent reasonably necessary to permit KIUC to make an informed decision. An attorney shall promptly comply with KIUC's reasonable request for information.

IX. Reliance

In providing legal services to KIUC, an attorney may rely upon information provided by KIUC, unless the attorney knows that the reliance is unwarranted. In performing his or her duties, a KIUC 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.

X. Evidence of Violation of Law or Breach of Duty

If an attorney, other than the General 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 KIUC, by KIUC or by any KIUC director, officer, employee, consultant, agent, or representative then the attorney shall report the evidence to the General Counsel. If the General Counsel knows or reasonably should know of any evidence, then the General Counsel shall report the evidence to the CEO.

Within thirty (30) days of evidence being first reported, the General Counsel or the CEO, as determined by the CEO, shall investigate the evidence, respond appropriately to the evidence, and inform the reporting attorney regarding the investigation and the response. If an attorney, other than the General Counsel, reasonably believes neither the General Counsel nor the CEO has investigated or responded appropriately to the evidence, or if the attorney believes it is reasonably necessary in the best interest of KIUC, then the attorney shall report the evidence to the Board in person and without the presence of any other person, except a person invited by the attorney. If the General Counsel reasonably believes the CEO has not investigated or responded appropriately to the evidence, or if the General Counsel believes it is reasonably necessary in the best interest of KIUC, then the General Counsel shall report the evidence to the Board in person and without the presence of any other person, except a person invited by the General Counsel.

XI. Legal Programs, Publications, and Memberships

KIUC shall encourage the General 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 electric 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 electric cooperatives located within the state.

Adopted on this 23rd day of November, 2021.


Calvin Murashige (Dec 17, 2021 11:48 HST)

Calvin Murashige
Secretary

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