

**Section 11**      **General Counsel**  
**Issued:**        **January 2019**  
**Replaces:**

---

## **11.1 Guidelines for Outside Litigation Counsel**

These guidelines set forth the parameters and expectations for outside litigation counsel retained by the University. As used herein below, “we” or “our” refers to the University, “you” or “your” refers to the retained counsel.

---

We appreciate your willingness to represent The Board of Trustees of Southern Illinois University (hereinafter “University”). The University’s Office of General Counsel (“OGC”) has retained you based upon your expertise and professionalism. These guidelines are intended to summarize certain basic principles concerning the retention of Outside Counsel by OGC and to give structure and predictability to our relationship. Our goal is to provide quality legal representation in a cost effective manner. As a public institution we are obligated to expend resources efficiently and we look forward to working with you as our partners to achieve this goal while together we provide best-in-class legal services.

### **A. The Relationship**

In order to assist you in representing the University, one of the attorneys from our office will be assigned to supervise the representation and to act as your in-house liaison. This attorney will be your principal contact with the University and its employees. The supervising attorney will facilitate client contacts, approve your budget(s), participate in drafting and review of significant documents and court filings, assist with discovery, attend meetings, depositions and trial where appropriate and review your invoices. We expect that your contact with the supervising attorney will be such that we will have no surprises as to strategies, outcomes, or fees and expenses.

All communication and reporting shall be in accordance with these guidelines unless directed otherwise by the supervising attorney.

All matters between outside counsel and University shall be handled through the OGC. Outside counsel shall not accept retention or assignments from other University employees or representatives without the approval of the OGC.

As outside counsel retained to assist us in litigation, we anticipate at least the following meetings with the supervising attorney:

- Initial meeting with supervising attorney from our office
- Initial case evaluation and proposed budget
- Pre-mediation meeting and mediation
- Pre-trial meeting
- Post-trial meeting

Additionally, the supervising attorney should be provided for review, in advance, significant documents such as dispositive motions and mediation statements. The supervising attorney will assist you in complying with discovery obligations, including e-discovery, so as to ethically and efficiently meet the University's obligations in this regard. As legal research memoranda, major motions and similar documents may already exist, please consult with the supervising attorney before undertaking any significant fact or legal research.

## B. Communication

We will assign all cases in writing via a letter from the OGC with a copy to University Risk Management. These guidelines are expressly incorporated into the terms of such letter of engagement.

Absent other arrangements, in each matter the supervising attorney should routinely receive copies (electronic format preferred) of the following:

- Copies of all Court filings, including all Orders and filings by any party;
- Copies of legal research or factual investigative memos;
- Written discovery responses, including medical records, which address how the information may affect previous assessments of liability and damages;
- All depositions, statements and witness interviews should be followed with a written summary as soon as possible from the responsible attorney. An analysis of the witness testimony should be included in the summary. A separate index or page-by-page report shall not be prepared unless necessary for trial purposes or to increase efficiency of review by retained expert witnesses.

When possible, all routine discovery matters/conflicts/disputes should be resolved informally, i.e., before court hearings are scheduled. Motions and/or court appearances to resolve such matters shall be discussed with the Office of General Counsel in advance. Depositions for or on behalf of the University must be discussed with the supervising attorney prior to scheduling. All depositions of University employees shall be scheduled through the OGC, unless otherwise instructed by the OGC. We expect that you will advise the OGC of any other scheduled depositions in advance so that arrangements can be made to attend, if warranted.

## C. Reporting Requirements

1. General Reporting Procedures. We ask that you provide written quarterly reports to the supervising attorney on all claims and lawsuits with a copy to University Risk Management. For discovery requests directed to University employees, the OGC shall be notified in advance in order to advise the employee of your expected contact. The OGC and University Risk Management shall be copied on all correspondence with University employees or former employees.
2. Insurance Reports. The University is responsible for reporting all newly-opened claims appropriately. Thereafter, please copy the Director of Risk Management on all status reports as requested by the OGC. University Risk Management is responsible for providing information to the excess carrier. At no time shall you forward status reports or other communication directly to an excess insurance carrier, unless otherwise instructed by the

3. OGC. You may be asked to assist in completing excess insurance carrier reports or inquiries but these should always be directed to the OGC. Communication with the excess carrier will be through the University.
4. Initial Case Report. Within 60 days of case assignment, an initial evaluation shall be completed by the responsible attorney, including a preliminary evaluation of exposure, liability, defense strategy, estimated defense costs, outcome potential, and settlement options and range. We expect that you will aggressively pursue dismissal when indicated, for example, if the required expert witness affidavit is not timely filed, or if the University is sued improperly, etc.
5. Quarterly status reports. On the tenth day of each month following the reporting period a quarterly status report will be submitted to the OGC with a copy to University Risk Management. University expects a prompt evaluation of damages on cases assessed as having a high liability potential, or significant public relations concerns. The quarterly report does not replace regular communication or the need to notify the OGC of any significant case developments or other required reporting.
6. Other Required Reporting
  - a. Settlements. We expect to receive written notification of any settlement demands made against the University. Such notification shall include your opinion as to whether settlement should be considered, the rationale, and, if so, the recommended settlement range.
  - b. Mediation. Prior to any agreement to mediate a claim, a demand shall be obtained from the opposing party and provided to the OGC. Mediation requires OGC permission to mediate and approval of the mediator. At least 45 days prior to any mediation we ask that you submit to our office a report of our legal position, estimate of the alleged damages and your estimate of the settlement value.
  - c. Trials. Prompt notice shall be given of all trial settings so that University may discuss the merits of settlement versus trial well in advance of the trial date. A pre-trial report shall be prepared and sent to the OGC at least 90 days before the expected trial date. The pre-trial report shall include a brief summary of the relevant facts and significant testimony, plaintiff's theory of liability and causation, as well as a description of the claimed damages, strengths and weaknesses of the defense, strengths and weaknesses of the plaintiff's case, a brief description of all expert witnesses, the status of settlement negotiations/plaintiff's settlement demands and your evaluation of the expected outcome, including verdict potential. During trial, it is expected that you will report developments to the OGC. University representatives may attend all or portions of any trial.

#### D. Potential Conflicts of Interest

We expect our outside counsel to be vigilant in identifying and avoiding conflicts of interest, or the appearance of such conflicts. Outside counsel must discuss any existing or potential conflict with the supervising attorney at the onset of the representation or as soon as the conflict or potential conflict becomes apparent. All potential or actual conflicts must be resolved to the satisfaction of the University's General Counsel before the representation may begin or continue. Should the University elect to waive the conflict, it will do so in writing. Any such waivers will

be granted on a case-by-case basis. The University will not agree in advance to a blanket waiver of unknown future conflicts involving the assertion of a claim or charge against the University.

E. Budgets

1. General. The University expects no surprises with respect to the cost and expense of legal work on behalf of University. Unless waived by the OGC, counsel should present anticipated budgets and strategies for discussion at an early stage of the representation and on a regular basis thereafter in accordance with the Reporting outlined above.
2. The Initial Budget. The initial budget estimate should be provided within 30 days of assignment to outside counsel. No separate budget is necessary for matters estimated to require fewer than twenty (20) hours of attorney time or less than Ten Thousand Dollars (\$10,000.00) in total fees and expenses, so long as such expectation is shared with the OGC up front; and further provided, however, that if such matters approach the twenty (20) hour or \$10,000.00 threshold, a budget should be submitted before the applicable threshold is reached.
3. Proposed Rates. Rates shall not be increased without pre-approval of the General Counsel. Once you have been retained to represent the University and the budget has been submitted to reflect the rates of those assigned to the case, those rates shall remain in effect for the duration of the matter unless written approval is provided by the General Counsel.
4. Non-Attorney Expenses. Experts should be approved in advance and requests for the use of an expert should include a budget for the work.

F. Staffing

1. Number. In general, your work on University matters should be staffed with the minimum number of attorneys consistent with high quality legal services. No more than one partner and one associate should be assigned to a matter without the permission of the OGC. The University will pay for only one partner at a time to defend a case. Staffing of meetings, depositions, mediations and arguments should be as efficient as possible. In general, only one person from the firm should attend unless more are required to accomplish the purpose and the firm has obtained prior approval from the supervising attorney.
2. Level. All matters should be handled at the most cost effective level (partner, associate, paralegal, clerk or secretary) consistent with such high quality legal services. Partner time should be billed only for partner-level work, e.g. sophisticated legal work requiring partner-level experience and expertise; associate time only for associate-level work; and paralegal time for non-clerical work.

The retained managing attorney shall:

- Direct the strategy of the case;

- Evaluate liability and exposure;
  - Supervise the work of firm personnel delegated to assist;
  - Prepare significant status reports;
  - Personally handle significant depositions/discovery matters unless otherwise approved by the OGC;
  - Conduct settlement negotiations and try the case, when necessary, unless otherwise directed by the OGC; and
  - Attend or be available for meetings with the University as requested to discuss assigned cases.
3. Continuity. Within seven (7) days, unless otherwise mutually agreed, we expect you to acknowledge in writing receipt of suit papers/claim information and advise the OGC of any other firm personnel who shall assist with the defense of the case and the role each will take. This information shall also be included in the initial budget. Generally, lawyers initially assigned to a case/matter should remain assigned to it, absent extenuating circumstances. If staffing changes, it should be first approved by the supervising attorney. Similarly, lawyers should not be assigned to a case/matter on a “spot” or one-time basis, absent extenuating circumstances and approval from the supervising attorney. University should not be charged for transition or learning time from such staffing changes.

#### G. Billing

1. General. We expect your invoices to show the same high quality and care you take with your legal work. Fees and expenses should be reviewed by the appropriate firm attorney before the bill is submitted to the University. Fees and expenses, or portions thereof, that are not necessary for the task or are inconsistent with these guidelines should be deleted or modified before they are submitted to the University. Your invoices and the fees and costs you submit should be such that you would be satisfied if you were its recipient.
2. Fees. The hourly rates to be charged by attorneys, paralegals and other professionals should be stated at the outset of the representation, agreed to by the General Counsel and included in any budget or budget revision and shall remain the same throughout the respective engagement. The bills must reflect these agreed upon rates.
3. Invoice Information. All bills should contain at least the following information on fees:
- The date the task was performed
  - The name of the person performing the task and the applicable rate
  - A brief but detailed and specific description of each individual task
  - The time devoted to each task recorded in one-tenth of an hour increments
  - The cost of each task
- Descriptions of tasks should be sufficiently detailed so that OGC can readily understand what was done and why it took the amount of time charged for it without further reference to other items or descriptions. General or cryptic descriptions of tasks will not be paid without further explanation. Impermissible descriptions include “review file,”

“review correspondence,” “interoffice conference,” “draft pleadings,” “draft discovery,” “phone call with” an individual, etc.

4. Block Billing. There should be no summary or combined billings for the day. Each task should be set out separately with an amount of time associated with it. Block-billed time records that lump together several tasks with a single total for the time spent to perform those tasks are not acceptable and will be returned for further clarification. However, a series of email correspondence on the same subject on the same date shall be considered a single task and billed accordingly in lieu of billing each email at a rate of .10 hour.
5. Legal Research. Legal research time should be billed separately, with each topic researched identified, the time spent researching that topic, and the source (e.g. Lexis, Westlaw). The University shall not be billed for the cost of the third party source computerized research (e.g. Lexis, Westlaw) unless approved in advance by the OGC.
6. Summary Information. Bills should contain a summary for the period covered by the bill of time and charges for each person billing and indicating the amount of the budget and the total fees and expenses invoiced to date.
7. Prohibited Fees. Fees for the following time will not be permitted:
  - Preparation of budgets, invoices or responses to billing questions
  - Clerical (as opposed to attorney or paralegal) work performed by attorneys or paralegals
  - Training or educating of personnel
  - Administrative time
  - Basic research on matters presumed to be within the firm’s expertise, e.g. local rules
  - Unnecessary internal conferences about a University matter
  - Responses to requests from University external auditors
  - Miscellaneous charges
8. Expenses. In general, bills should contain an itemization of disbursements and costs, including the date incurred and at whose request each disbursement was made. Unless otherwise specifically addressed by these guidelines or pre-approved in writing by the supervising attorney, an expense is to be billed at the firm’s actual out-of-pocket cost. Out-of-pocket expenses must be accompanied by receipts. If attorney payment is made in advance to pay outside vendors/payees, the invoice from the payee shall be sent to the OGC as support for the requested reimbursement. All requests from University indemnitees or employees for payment or reimbursement of claim expenses incurred shall be referred to the OGC for handling. All claim expenses exceeding One Thousand Dollars (\$1,000.00) per item must be approved in advance by the OGC when possible and submitted directly for payment. All disbursements require a valid invoice/receipt from the payee as well as a valid W-9. Invoices shall be forwarded as soon as possible. University will not be responsible for interest/late charges incurred on invoices not promptly processed by OGC.

University shall not reimburse for attorney or firm personnel time spent reviewing and processing court reporter invoices or other expenses where direct billing is indicated.

We encourage you to share/coordinate litigation expenses as appropriate with co-litigants. This may include charges for medical records, court reporter fees, expert witness fees and other litigation expenses.

Final bills shall be promptly submitted upon completion of services on a closed file. Once a matter is closed and a final bill has been submitted, University will not accept any further bills for any activity on the matter. Taxable court costs should be discussed at the time the case is reviewed for settlement, trial or closure. University will not pay plaintiff or other defendant's costs, unless agreed to specifically.

The OGC shall review and verify all attorney fees and litigation expenses. Such expenses will then be processed for payment.

9. Travel Related Expenses. Necessary travel-related expenses shall be in accordance with the state-approved *Reimbursement Schedule for Mileage, Meals and Lodging* which shall govern all reimbursement for required travel, including meals. All travel must be by the most economical mode of transportation available considering travel time, costs, number of persons traveling together and work requirements. Travel by train or plane shall be coach accommodations. University requests that you schedule all out-of-town depositions for same day travel and to keep travel-related expenses at a minimum. Travel time shall be billed, if at all, at 50% of the applicable billable rate unless work is being performed during the travel time and documented on bills as set forth above.
10. Expert Witnesses. Experts shall be retained in coordination with the OGC. We expect you to submit a budget for the expert which shall include the expert's hourly rate prior to retention so that the OGC may approve. Prompt discovery of opposing experts' opinions is encouraged. A written report of the outcome of any expert witness evaluations will be submitted to the OGC. Final approval/selection of an expert will be made by University based on your recommendations. Retained experts shall be bound by these guidelines as they pertain to fees and expenses, including but not limited to billing for services, reimbursement for medical research and travel expenses.
11. Prohibited Expenses. The following charges are not permitted:
  - Secretarial, word-processing, proofreading, or other clerical services
  - Photocopy expenses at more than actual cost or 10 cents a page, whichever is less, (unless specifically authorized)
  - Internal computer time
  - Lexis, Westlaw, or other such research-related fees unless approved in advance by the University
  - Costs associated with the maintenance of offices
  - Local telephone expenses
  - Local travel
  - Local outgoing or any incoming faxes
  - Other overhead or capital expenses

- Unidentified or “Miscellaneous” charges
- Meals unless related to out of town travel
- Messenger invoices
- Postage
- Fax Charges
- Entertainment or personal expenses

12. Frequency. Bills must be sent monthly unless some other billing frequency is agreed to by the supervising attorney.

#### H. Compliance

Unless these guidelines have been followed, the University may withhold or refuse to pay all or portions of noncompliant bills. If you believe a component of these guidelines should be modified in light of particular facts and circumstances, such modification must be confirmed in writing by the OGC.

#### I. Conclusion

As stated above, these guidelines are intended to summarize certain basic principles concerning your retention and to give structure and predictability to our engagement, with a goal to provide the University with quality legal representation in a cost effective manner.

Thank you in advance for your service to Southern Illinois University. We look forward to working with you.

---

As aforementioned, these guidelines set forth the parameters and expectations for outside litigation counsel retained by the University.

---

J Kevin Dorsey  
Interim President

---

Date