



MEETING OF THE BOARD OF GOVERNORS  
Committee on University Governance

October 21, 2020 at 3:00 p.m.  
Via Videoconference and UNC-TV Live Stream  
University of North Carolina System Office  
Center for School Leadership Development, Board Room  
Chapel Hill, North Carolina

**AGENDA**

**OPEN SESSION**

- A-1. Approval of the Minutes of September 16, 2020 ..... David Powers
- A-2. Discussion of Draft Revisions to the UNC Policy Manual..... Thomas Shanahan
  - a. Section 200.7 of the UNC Policy Manual, *Duties, Responsibilities, and Expectations of Board Members*
- A-3. Legal Counsel Statute; Amendments to Section 200.5 of the UNC Policy Manual ..... Thomas Shanahan

**CLOSED SESSION**

- A-4. Approval of the Closed Session Minutes of September 16, 2020 ..... David Powers
- A-5. Legal Affairs Report..... Thomas Shanahan

**OPEN SESSION**

- A-6. Adjourn



## Closed Session Motion

### Motion to go into closed session to:

- Prevent the disclosure of information that is privileged or confidential under Article 7 of Chapter 126 of the North Carolina General Statutes, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- Consult with our attorney to protect attorney-client privilege; and

To consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action for the following cases:

- *Alston, et al. v. UNC System, et al.*
- *DTH v. University of North Carolina*
- *Dieckhaus, et al. v. Board of Governors of the University of North Carolina*
- *Staton v. UNC, et al.*
- *Lannan v. UNC System*

**Pursuant to:** G.S. 143-318.11(a)(1) and (3).

**DRAFT MINUTES**

September 16, 2020  
Via Videoconference and UNC-TV Live Stream  
University of North Carolina System Office  
Center for School Leadership Development, Board Room

This meeting of the Committee on University Governance was presided over by Chair David Powers. The following committee members, constituting a quorum, were also present at the meeting or by videoconference: Pearl Burris-Floyd, C. Philip Byers, Leo Daughtry, Mark Holton, and Terry Hutchens.

Dr. Wesley Burks, Chancellor Karrie Dixon, and Interim Chancellor Ron Mitchelson also participated.

Staff members present included Thomas Shanahan, Meredith McCullen, and others from the UNC System Office.

**1. Call to Order and Approval of OPEN Session Minutes (Item A-1)**

The chair called the meeting to order at 2:01 p.m., on Wednesday, September 16, 2020.

Chair Powers reminded all members of the committee that the meeting would be conducted pursuant to new amendments to the Open Meetings Act, which included that all votes be taken by roll-call vote. The chair also reminded committee members of their duty under the State Government Ethics Act to avoid conflicts of interest and appearances of conflict of interest. The chair asked if there were any conflicts or appearances of a conflict with respect to any matter coming before the committee. No members identified any conflicts at the time.

The chair next called for a motion to approve the open session minutes of July 22, 2020.

**MOTION:** Resolved, that the Committee on University Governance approve the open session minutes of July 22, 2020, as distributed.

**Motion:** C. Philp Byers

**Motion carried**

Roll Call Vote	
Powers	Yes
Hutchens	Yes
Byers	Yes
Burris-Floyd	Yes
Daughtry	Yes
Holton	Yes

## 2. 2019-20 Committee on University Governance Annual Report (Item A-2)

The chair reviewed the committee's work from the 2019-20 fiscal year.

**MOTION:** Resolved, that the Committee on University Governance approve the 2019-20 Annual Report for submission to the full Board.

**Motion:** Mark Holton

**Motion carried**

Roll Call Vote	
Powers	Yes
Hutchens	Yes
Byers	Yes
Burris-Floyd	Yes
Daughtry	Yes
Holton	Yes

## 3. Resolution on Clearance Requirements (A-3)

The chair reiterated that the United States Department of Defense requires the UNC System to maintain a Facility Security Clearance in the performance of classified contracts. In connection with the Facility Security Clearance, certain senior management officials must obtain an individual security clearance. The chair further explained that this resolution is required to exempt members of the Board of Governors and senior officers of the UNC System from the requirement to obtain individual security clearances.

**MOTION:** Resolved, that the Committee on University Governance approve Item A-3 and recommend to the full Board of Governors for a vote through the consent agenda.

**Motion:** Leo Daughtry

**Motion carried**

Roll Call Vote	
Powers	Yes
Hutchens	Yes
Byers	Yes
Burris-Floyd	Yes
Daughtry	Yes
Holton	Yes

## 4. Report on Free Speech and Free Expression Within the University of North Carolina System (Item A-4)

The chair called on Mr. Shanahan to provide the committee with an overview of the 2019-20 Annual Report on Free Speech and Free Expression Within the University of North Carolina. Mr. Shanahan summarized the report and reviewed where the UNC System institutions fall within the Foundation for Individual Rights ratings.

**MOTION:** Resolved, that the Committee on University Governance approve Item A-4, the Report on Free Speech and Free Expression Within the University of North Carolina System.

**Motion:** Leo Daughtry  
**Motion carried**

Roll Call Vote	
Powers	Yes
Hutchens	Yes
Byers	Yes
Burris-Floyd	Yes
Daughtry	Yes
Holton	Yes

**5. Review of the UNC Policy Manual (Item A-5)**

The chair provided an update on Section 200.7 of the UNC Policy Manual, which was on the Board’s September agenda for consideration and approval. After discussion by members of the committee and the Board, it was determined that some language needed clarity and to be further amended. System Office staff will work on updating the policy language and bring the policy back to the committee and Board in October.

The next item for the committee’s consideration was Section 200.5 of the UNC Policy Manual. The chair called on Mr. Shanahan to provide an overview of the policy and discussion by the committee followed. The committee concluded that no further changes were required at this time.

**6. UNC Press Board of Governors Appointment (Item A-6)**

The chair provided background information to the committee on the nomination, as well as the process for nominations, roles, responsibilities, and duties of the UNC Press Board of Governors.

**MOTION:** Resolved, that the Committee on University Governance approve Item A-6 and recommend it to the full Board of Governors for a vote.

**Motion:** Terry Hutchens  
**Motion carried**

Roll Call Vote	
Powers	Yes
Hutchens	Yes
Byers	Yes
Burris-Floyd	Yes
Daughtry	Yes
Holton	Yes

**7. Vidant Medical Center Board of Trustee Appointments (Item A-7)**

The chair provided background information to the committee on the nominations, as well as the process for the nominations, roles, responsibilities, and duties of the Vidant Medical Center Board of Trustees.

**MOTION:** Resolved, that the Committee on University Governance approve Item A-7 and recommend it to the full Board of Governors for a vote.

**Motion:** Leo Daughtry

**Motion carried**

Roll Call Vote	
Powers	Yes
Hutchens	Yes
Byers	Yes
Burris-Floyd	Yes
Daughtry	Yes
Holton	Yes

**8. Legal Counsel Statute; Amendment to UNC Policy (Item A-8)**

The chair called on Mr. Shanahan to review with the committee a recent amendment to Chapter 116 of the General Statutes, which permits the president to designate legal counsel for the University. Mr. Shanahan explained that the amendment permits the president, with authorization from the Board, to approve the designation of lead counsel. This includes the engagement and expenditure of funds for legal counsel, including private counsel, as needed to represent the interests of the University of North Carolina. Following Mr. Shanahan’s explanation, the chair entertained a motion for the Board to implement the authority provided by statute through the adoption of the proposed resolution.

**MOTION:** Resolved, that:

- a. Consistent with G.S. 116-11(13b), the Board hereby delegates to the president the authority to approve the designation of lead legal counsel and the engagement and expenditure of funds for legal counsel, including private counsel, as needed to represent the interests of the University of North Carolina, the constituent institutions, affiliated educational, research, and public service organizations, and any officer or employee in any legal matter, case, or proceeding;
- b. The president shall present a proposed amendment to the UNC Policy Manual formalizing this delegation; and
- c. The president or his designee shall establish such procedures as he may deem necessary to implement this authority.

**Motion:** Mark Holton

**Motion carried**

Roll Call Vote	
Powers	Yes
Hutchens	Yes

Byers	Yes
Burris-Floyd	Yes
Daughtry	Yes
Holton	Yes

**9. Closed Session**

Mr. Byers moved that the committee go into closed session to prevent the disclosure of information that is privileged or confidential under Article 7 of Chapter 126 of the North Carolina General Statutes, or not considered a public record within the meaning of Chapter 132 of the General Statutes. To consult with our attorney to protect attorney-client privilege; and to consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action for the following cases: *Alston, et al. v. UNC System, et al.*; *DTH v. University of North Carolina*; *Dieckhaus, et al. v. Board of Governors of the University of North Carolina*; and *Staton v. UNC, et al.* Pursuant to G.S. 143-318.11(a)(1) and (3).

**Motion:** C. Philip Byers

**Motion carried**

Roll Call Vote	
Powers	Yes
Hutchens	Yes
Byers	Yes
Burris-Floyd	Yes
Daughtry	Yes
Holton	Yes

**THE MEETING MOVED INTO CLOSED SESSION.**

(The complete minutes of the closed session are record separately.)

**MOTION:** Resolved, that the Committee on University Governance return to open session.

**Motion:** C. Philip Byers

**Motion carried**

Roll Call Vote	
Powers	Yes
Hutchens	Yes
Byers	Yes
Burris-Floyd	Yes
Daughtry	Yes
Holton	Yes

**10. Adjourn**

There being no further business and without objection, the meeting adjourned at 3:18 p.m.

---

C. Philip Byers, Secretary





## AGENDA ITEM

A-2. Draft Revisions to Section 200.7 of the UNC Policy Manual .....Thomas Shanahan

**Situation:** The committee will review additional proposed revisions to Section 200.7 of the UNC Policy Manual, *Duties, Responsibilities, and Expectations of Board Members*. The committee reviewed proposed revisions to the policy during its May, July, and September 2020 meetings. The committee had voted at its July meeting to recommend proposed amendments for approval by the full Board at the September meeting. At the September meeting, following discussion by members of the committee and the Board, it was determined that some language needed clarity and further amendments.

**Background:** Section 200.7 of the UNC Policy Manual details the duties and responsibilities of members of the Board of Governors, boards of trustees of constituent institutions, and the boards of University-affiliated organizations. The policy also establishes the bases and procedures for board member sanctions, including removal or recommendation for removal.

**Assessment:** The draft revisions to Section 200.7 of the UNC Policy Manual expand and clarify the duties and responsibilities of board members. The changes would also establish a more detailed process for receipt, review, and consideration of complaints against board members. The revisions clarify the Board's authority to impose sanctions, including interim sanctions, removal, or recommendation for removal, within the Board's discretion. Language that has been added since the September meeting clarifies that nothing in the policy is intended to prevent a board member from gathering information to prepare for meetings.

**Action:** This item requires a vote by the committee and a vote by the full Board of Governors at the October meeting.

200.7

Adopted 04/10/15

Amended / /20

**Policy on Duties, Responsibilities, and Expectations of Board Members**

I. Applicability and Purpose. This policy sets forth the duties, responsibilities, expectations, and standards of conduct for members of the Board of Governors of the University of North Carolina (UNC System), the boards of trustees of the constituent institutions, and the boards of University-affiliated organizations where membership includes individuals appointed by the Board of Governors.

II. Definitions. For purposes of this policy:

A. "Board" means the Board of Governors, a board of trustees of a constituent institution of the ~~University of North Carolina~~UNC System, or a board of a University-affiliated organization with members appointed by the Board of Governors.

B. "Board member" means any member of the Board of Governors, a board of trustees of a constituent institution of the ~~University of North Carolina~~UNC System, or the board of a University-affiliated organization.

C. "Institution" means the ~~University of North Carolina~~UNC System or a constituent institution of the ~~University of North Carolina~~UNC System.

D. "University-affiliated organization" means an institution or organization that the Board of Governors is authorized to establish or to which it is authorized to appoint board members pursuant to statute, but does not include ~~Associated Entities~~associated entities covered by Section 600.2.5.2[R] of the UNC Policy Manual or ~~Centers~~centers or ~~Institutes~~institutes covered by Section 400.5[R] of the UNC Policy Manual.

~~III. —Duties and Responsibilities. Board members are responsible for performing essential functions that are central to the governance of the University, as described in Chapter 116 of the North Carolina General Statutes, *The Code of the University of North Carolina*, the UNC Policy Manual of the University, and the policies and by-laws of the constituent institutions. ~~Board members shall adhere to the standards of conduct and fulfill duties and expectations set forth in this policy.~~~~

~~A. —Attendance. Board members shall attend board meetings. If a member of the Board of Governors is, for any reason other than ill health or service in the interest of the State or nation, absent for four (4) successive regular meetings of the Board, his or her place as a board member shall be deemed vacant.<sup>1</sup> If a member of a board of trustees of a constituent institution is, for any reason other than ill health or service in the interest of the State or nation, absent for three (3) successive regular meetings of a board of trustees, his or her place as a board member shall be deemed vacant.<sup>2</sup>~~

<sup>1</sup> N.C.G.S. § 116-7(c).

<sup>2</sup> N.C.G.S. § 116-31(j).

~~B. Participation in Policy and Oversight Functions. Board members are expected to prepare for meetings; actively contribute to the work of the board; and act in accordance with the governance, oversight, and advisory functions allocated to the board by:~~

~~1. Reviewing and inquiring about materials that involve the institution or University-affiliated organization, such as board minutes and annual reports;~~

~~2. Understanding and participating appropriately in the oversight function allocated to the board with respect to the finances and effectiveness of the institution or University-affiliated organization;~~

~~3. Seeking information from and consulting appropriately with the chief executive officer of the institution or University-affiliated organization to gain additional context, make well-informed policy decisions, and carry out responsibilities for board-level oversight and monitoring of the affairs of the institution or University-affiliated organization;~~

~~4. Participating as requested in the preparation and revision of long-range plans for the institution or University-affiliated organization;~~

III. Serving on and contributing to the work of assigned committees; Board members shall adhere to the standards of conduct and fulfill duties and expectations set forth in this policy.

A. Attendance. Board members shall attend board meetings. If a member of the Board of Governors is, for any reason other than ill health or service in the interest of the State or nation, absent for four (4) successive regular meetings of the Board, his or her place as a board member shall be deemed vacant.<sup>1</sup> If a member of a board of trustees of a constituent institution is, for any reason other than ill health or service in the interest of the State or nation, absent for three (3) successive regular meetings of a board of trustees, his or her place as a board member shall be deemed vacant.<sup>2</sup>

B. Participation in Policy and Oversight Functions. Board members are expected to prepare for meetings; actively contribute to the work of the board; and act in accordance with the governance, oversight, and advisory functions allocated to the board by:

1. Reviewing and inquiring about materials that involve the institution or University-affiliated organization, such as board minutes and annual reports;

2. Understanding and participating appropriately in the oversight function allocated to the board with respect to the finances and effectiveness of the institution or University-affiliated organization;

3. Seeking information from and consulting appropriately with the chief executive officer of the institution or University-affiliated organization to gain additional context, make well-informed policy decisions, and carry out responsibilities for board-level

oversight and monitoring of the affairs of the institution or University-affiliated organization;

4. Participating as requested in the preparation and revision of long-range plans for the institution or University-affiliated organization;

5. Serving on and contributing to the work of assigned committees; and

~~6. —~~Listening to and considering differing opinions, and otherwise making reasonable efforts to conduct oneself in accordance with the practices and customs of formality and decorum articulated in Robert's Rules of Order;<sup>3</sup>

~~6. —~~<sup>3</sup>

C. Referring Scope of Authority. Board members' authority is collective, not individual, and only arises from their participation with other members of the board when officially convened. Individual board members hold no inherent authority under applicable law or University policy to exercise administrative or executive functions on behalf of their institution. Individual board members may not bind the board or the institution, enter into contracts on behalf of the board or the institution, or otherwise act on behalf of or in the name of the board or institution unless clearly authorized to do so in a particular matter by the board itself or the chief executive officer of the institution. Accordingly, and by way of example, board members shall:

1. Refer matters of administration and management to the chief executive officer of the institution or University-affiliated organization for handling;

~~2. Respecting~~2. Respect and following executive leadership, management, and reporting lines when communicating with and seeking information from the University and the constituent institutions, ~~and refraining;~~

3. Refrain from directing matters of administration or executive action except through the chief executive officer of the institution or University-affiliated organization; and

~~7. — Recognizing that board members' authority is collective, not individual, and only arises from their participation with other members of the board when it is officially convened.~~

C. Ethical Conduct. Board members shall adhere to high standards of ethical conduct by complying with laws, regulations, and University policies applicable to their service as board members and public officials, which include the obligations to:

1. Exercise authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence, as required by the State Ethics Act.<sup>4</sup>

<sup>3</sup>Section 202C(4) of *The Code of the University of North Carolina*.

<sup>4</sup>N.C.G.S. § 138A-2.

~~2. Keep confidential all information and records that are required by law to be kept confidential, including, but not limited to, personnel records and information, student records and information, attorney-client communications, and closed session deliberations and information;~~

~~4. Not undertake reviews, background checks, investigations, or any other assessments of University employees or candidates for University employment unless duly and explicitly directed to do so by the president, by the chief executive officer of the employing institution, or by the Board of Governors. Nothing in this provision is intended to prohibit or inhibit a board member's from taking appropriate steps to prepare for meetings, consistent with the duties and responsibilities, preparation for meetings as articulated in section III.B., above.~~

D. Ethical Conduct. Board members shall adhere to high standards of ethical conduct by complying with laws, regulations, and University policies applicable to their service as board members and public officials, which include the obligations to:

1. Exercise authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence, as required by the State Ethics Act.<sup>4</sup>

2. Keep confidential all information and records that are required by law to be kept confidential, including, but not limited to, personnel records and information, student records and information, attorney-client communications, and closed session deliberations and information;

3. Comply with North Carolina open meetings and public records laws; law by conducting hearings, deliberations, and actions of these bodies openly, except when permitted or required to a closed session

4. Comply with applicable public records laws by permitting open access to and inspection of public records in the member's custody, including records created, sent, or received by Board members entirely on non-University accounts or devices, as required by law;

4.5. Bring matters of concern, potential or real conflicts of interest, and reports of unlawful and/or noncompliant activity to the attention of the appropriate institutional or organizational officer, such as the president, chancellor, board chair, or committee chair;

5.6. Avoid any personal or business interest that may conflict with the member's responsibilities to the institution or University-affiliated organization;

6.7. Avoid even the appearance of impropriety when conducting the institution's or University-affiliated organization's business; and

7.8. Recuse oneself from consideration of matters during meetings when required;

9. Conduct oneself at all times in accordance with the University's prohibition about all forms of illegal discrimination or harassment;

10. Not engage in acts of fraud or other violations of law inconsistent with the ethical expectations of a public official;

11. Not act as a registered lobbyist on behalf of any lobbyist principal in any matter or issue that is adverse to the interests of the UNC System, a constituent institution, or a University-affiliated organization; and

12. Not represent, as a practicing attorney, any party in a matter in which the party's interest is adverse to the interests of the UNC System, a constituent institution, or a University-affiliated organization. For purposes of this restriction, members are not generally prohibited from acting as criminal defense counsel to students and employees in criminal prosecution matters.

~~D.E. Fiduciary Responsibilities and~~ Support for the Institution.– Board members shall discharge their duties to the institution with care, skill, prudence, and diligence by:

1. Exercising the degree of diligence, care, and skill that a prudent individual familiar with such matters would use under similar circumstances in a like position;

2. Acting in good faith with the best interest of the institution or University-affiliated organization in mind;

3. Conducting oneself, at all times, in furtherance of the institution's or University-affiliated organization's goals and not the member's personal or business interests;

~~4. Providing oversight to ensure that the institution's or University-affiliated organization's resources are dedicated to the fulfillment of its mission; and~~

~~5. Becoming knowledgeable about issues that affect the University and seeking to understand the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.<sup>5</sup>~~

#### ~~Removal~~

~~4. Providing oversight to ensure that the institution's or University-affiliated organization's resources are dedicated to the fulfillment of its mission; and~~

~~5. Becoming knowledgeable about issues that affect the University and seeking to understand the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.<sup>5</sup>~~

---

<sup>5</sup> N.C.G.S. § 116-7.

IV. Sanctions. A board member may be removed, ~~or~~ recommended for removal, or subject to a lesser sanction for specified cause by any material violation of the duties, responsibilities, and expectations of board members set forth in Section III of this policy. Any sanction shall require an affirmative vote of two-thirds (2/3) of the voting membership of the Board of Governors or board of trustees then in office.

A. Removal of a Member of a Board of Trustees or University-affiliated Organization. The Board of Governors may remove from the board of trustees of a constituent institution or from the board of a University-affiliated organization a board member who was elected by the Board of Governors. With respect to a member of a board of trustees who was appointed by ~~the Governor~~ a different appointing authority, the Board of Governors may vote to recommend to the ~~Governor~~ appointing authority that the member be removed.

B. Removal of a Member of the Board of Governors. The Board of Governors may recommend to the State House of Representatives or State Senate, whichever chamber elected the member, that a member of the Board of Governors be removed.

C. Other Sanctions. A board member, regardless of their appointing authority, may be subject to other sanctions lesser than removal (ex: public censure, suspension of voting rights, removal of committee assignments).

D. Complaints.

1. Complaints against a board member may be made to the chair of the Committee on University Governance.

2. Upon receipt of a complaint, the chair of the Committee on University Governance shall determine whether, assuming all of the facts alleged are true, the complaint alleges a material violation of the duties, responsibilities, and expectations of board members. If the complaint does not meet this threshold, the chair of the Committee on University Governance may dismiss the complaint and shall report the dismissal to the Committee on University Governance.

3. If the complaint is against a member of a board of trustees or University-affiliated organization, then the Committee on University Governance may retain the complaint for review and adjudication by the Governance Committee under section F, or it may direct the complaint to the board of trustees with directions for appropriate action. The committee's determination should be based on the allegations of the complaint, the board of trustee's capacity to review the complaint, and all other relevant circumstances.

4. The chair of the committee may, after consultation with the membership of the Committee, refer the complaint to the State Ethics Commission.

E. Interim Sanctions

1. A board member may be subject to an interim sanction(s) for an alleged material violation of the duties, responsibilities, and expectations of board members prior to

review and adjudication of a complaint. Interim sanctions should be temporary in duration, and should balance the severity of the interim sanction against the severity of the alleged violation. Removal of a board member shall not be issued as an interim sanction.

2. The Committee on University Governance may recommend to the Board of Governors an interim sanction against a member of the Board of Governors that the committee deems appropriate. The Committee on University Governance may recommend interim sanction(s) against a member of a board of trustees or University-affiliated organization as part of the committee's referral of a complaint to a board of trustees with directions for appropriate action.

3. Any interim sanction shall require an affirmative vote of two-thirds (2/3) of the voting membership of the Board of Governors or board of trustees then in office.

C.F. Procedure for ~~Removal~~Sanctions; Specification of Cause; Notice and Opportunity to Respond.

1. The chair of the Committee on University Governance shall send the ~~board member~~respondent a written specification of ~~reasons to consider~~the complaint(s) ~~against~~ the board ~~member's removal~~member. In the event that the chair of the Committee on University Governance is the subject of the board's consideration ~~of a recommendation of removal~~, the vice chair of the Committee on University Governance will temporarily serve in the chair's role. The notice shall state that the board member may submit a written response to the chair of the Committee on University Governance ~~and the complaining board member~~ within five (5) business days of receipt of the written notice.

~~The Committee on University Governance shall consider the written response of the board member and recommend to the Board of Governors action that the committee deems appropriate.~~ If the board member submits no written response to the chair of the Committee on University Governance within the specified timeframe, the Committee on University Governance may ~~continue with its consideration of removal of the board member, or a recommendation that the appropriate appointing or electing authority remove the board member~~proceed to consider the complaint.

3. In its consideration of each matter, the Committee on University Governance shall ensure that all material facts are presented to the committee. The committee may select one or more committee members or another qualified individual to investigate the allegations and provide the committee with factual findings and a recommendation. The committee may review any documents ~~or establish any procedures~~ it considers necessary based on the particular circumstances involved.

4. Following the deadline for the respondent's written response and the conclusion of any investigation, the Committee on University Governance shall conduct a hearing to consider the complaint against the board member. The chair of the Committee on



University Governance shall preside over the hearing, which shall include a full and accurate presentation of all relevant facts. During this hearing, the respondent member shall be permitted to be heard.

3.5. At the conclusion of the hearing, the Committee on University Governance shall assess the evidence presented using a preponderance of the evidence standard and recommend to the Board of Governors findings and action that the committee deems appropriate.

V. Other Matters

A. Effective Date. The requirements of this policy shall be effective on the date of adoption by the Board of Governors.

B. Relation to State Laws. The foregoing policies as adopted by the Board of Governors are meant to supplement, and do not purport to supplant or modify, those statutory enactments which may govern the activities of public officials.

C. Regulations and Guidelines. These policies shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

---

<sup>1</sup> [.G.S. 116-7\(c\).](#)

<sup>2</sup> [.G.S. 116-31\(i\).](#)

<sup>3</sup> [Section 202 C\(4\) of \*The Code\*.](#)

<sup>4</sup> [G.S. 138A-2.](#)

<sup>5</sup> [G.S. 116-7.](#)

### Policy on Duties, Responsibilities, and Expectations of Board Members

I. **Applicability and Purpose.** This policy sets forth the duties, responsibilities, expectations, and standards of conduct for members of the Board of Governors of the University of North Carolina (UNC) System, the boards of trustees of the constituent institutions, and the boards of University-affiliated organizations where membership includes individuals appointed by the Board of Governors.

II. **Definitions.** For purposes of this policy:

A. “Board” means the Board of Governors, a board of trustees of a constituent institution of the UNC System, or a board of a University-affiliated organization with members appointed by the Board of Governors.

B. “Board member” means any member of the Board of Governors, a board of trustees of a constituent institution of the UNC System, or the board of a University-affiliated organization.

C. “Institution” means the UNC System or a constituent institution of the UNC System.

D. “University-affiliated organization” means an institution or organization that the Board of Governors is authorized to establish or to which it is authorized to appoint board members pursuant to statute, but does not include associated entities covered by Section 600.2.5.2[R] of the UNC Policy Manual or centers or institutes covered by Section 400.5[R] of the UNC Policy Manual.

III. **Duties and Responsibilities.** Board members are responsible for performing essential functions that are central to the governance of the University, as described in Chapter 116 of the North Carolina General Statutes, *The Code* of the University of North Carolina, the UNC Policy Manual, and the policies and by-laws of the constituent institutions. Board members shall adhere to the standards of conduct and fulfill duties and expectations set forth in this policy.

A. **Attendance.** Board members shall attend board meetings. If a member of the Board of Governors is, for any reason other than ill health or service in the interest of the State or nation, absent for four (4) successive regular meetings of the Board, his or her place as a board member shall be deemed vacant.<sup>1</sup> If a member of a board of trustees of a constituent institution is, for any reason other than ill health or service in the interest of the State or nation, absent for three (3) successive regular meetings of a board of trustees, his or her place as a board member shall be deemed vacant.<sup>2</sup>

B. **Participation in Policy and Oversight Functions.** Board members are expected to prepare for meetings; actively contribute to the work of the board; and act in accordance with the governance, oversight, and advisory functions allocated to the board by:

1. Reviewing and inquiring about materials that involve the institution or University-affiliated organization, such as board minutes and annual reports;
2. Understanding and participating appropriately in the oversight function allocated to the board with respect to the finances and effectiveness of the institution or University-affiliated organization;
3. Seeking information from and consulting appropriately with the chief executive officer of the institution or University-affiliated organization to gain additional context, make well-informed policy decisions, and carry out responsibilities for board-level oversight and monitoring of the affairs of the institution or University-affiliated organization;
4. Participating as requested in the preparation and revision of long-range plans for the institution or University-affiliated organization;
5. Serving on and contributing to the work of assigned committees; and
6. Listening to and considering differing opinions, and otherwise making reasonable efforts to conduct oneself in accordance with the practices and customs of formality and decorum articulated in Robert's Rules of Order.<sup>3</sup>

C. Scope of Authority. Board members' authority is collective, not individual, and only arises from their participation with other members of the board when officially convened. Individual board members hold no inherent authority under applicable law or University policy to exercise administrative or executive functions on behalf of their institution. Individual board members may not bind the board or the institution, enter into contracts on behalf of the board or the institution, or otherwise act on behalf of or in the name of the board or institution unless clearly authorized to do so in a particular matter by the board itself or the chief executive officer of the institution. Accordingly, and by way of example, board members shall:

1. Refer matters of administration and management to the chief executive officer of the institution or University-affiliated organization for handling;
2. Respect and follow executive leadership, management, and reporting lines when communicating with and seeking information from the University and the constituent institutions;
3. Refrain from directing matters of administration or executive action except through the chief executive officer of the institution or University-affiliated organization; and
4. Not undertake reviews, background checks, investigations, or any other assessments of University employees or candidates for University employment unless duly and explicitly directed to do so by the president, by the chief executive officer of the employing institution, or by the Board of Governors. Nothing in this provision is intended

to limit a board member from taking appropriate steps to prepare for meetings, consistent with the duties and responsibilities articulated in section III.B., above.

D. Ethical Conduct. Board members shall adhere to high standards of ethical conduct by complying with laws, regulations, and University policies applicable to their service as board members and public officials, which include the obligations to:

1. Exercise authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence, as required by the State Ethics Act.<sup>4</sup>
2. Keep confidential all information and records that are required by law to be kept confidential, including, but not limited to, personnel records and information, student records and information, attorney-client communications, and closed session deliberations and information;
3. Comply with North Carolina open meetings law by conducting hearings, deliberations, and actions of these bodies openly, except when permitted or required to a closed session
4. Comply with applicable public records laws by permitting open access to and inspection of public records in the member's custody, including records created, sent, or received by Board members entirely on non-University accounts or devices, as required by law;
5. Bring matters of concern, potential or real conflicts of interest, and reports of unlawful and/or noncompliant activity to the attention of the appropriate institutional or organizational officer, such as the president, chancellor, board chair, or committee chair;
6. Avoid any personal or business interest that may conflict with the member's responsibilities to the institution or University-affiliated organization;
7. Avoid even the appearance of impropriety when conducting the institution's or University-affiliated organization's business;
8. Recuse oneself from consideration of matters during meetings when required;
9. Conduct oneself at all times in accordance with the University's prohibition about all forms of illegal discrimination or harassment;
10. Not engage in acts of fraud or other violations of law inconsistent with the ethical expectations of a public official;
11. Not act as a registered lobbyist on behalf of any lobbyist principal in any matter or issue that is adverse to the interests of the UNC System, a constituent institution, or a University-affiliated organization; and

12. Not represent, as a practicing attorney, any party in a matter in which the party's interest is adverse to the interests of the UNC System, a constituent institution, or a University-affiliated organization. For purposes of this restriction, members are not generally prohibited from acting as criminal defense counsel to students and employees in criminal prosecution matters.

E. Fiduciary Responsibilities and Support for the Institution. Board members shall discharge their duties to the institution with care, skill, prudence, and diligence by:

1. Exercising the degree of diligence, care, and skill that a prudent individual familiar with such matters would use under similar circumstances in a like position;
2. Acting in good faith with the best interest of the institution or University-affiliated organization in mind;
3. Conducting oneself, at all times, in furtherance of the institution's or University-affiliated organization's goals and not the member's personal or business interests;
4. Providing oversight to ensure that the institution's or University-affiliated organization's resources are dedicated to the fulfillment of its mission; and
5. Becoming knowledgeable about issues that affect the University and seeking to understand the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.<sup>5</sup>

IV. Sanctions. A board member may be removed, recommended for removal, or subject to a lesser sanction for any material violation of the duties, responsibilities, and expectations of board members set forth in Section III of this policy. Any sanction shall require an affirmative vote of two-thirds (2/3) of the voting membership of the Board of Governors or board of trustees then in office.

A. Removal of a Member of a Board of Trustees or University-affiliated Organization. The Board of Governors may remove from the board of trustees of a constituent institution or from the board of a University-affiliated organization a board member who was elected by the Board of Governors. With respect to a member of a board of trustees who was appointed by a different appointing authority, the Board of Governors may vote to recommend to the appointing authority that the member be removed.

B. Removal of a Member of the Board of Governors. The Board of Governors may recommend to the State House of Representatives or State Senate, whichever chamber elected the member, that a member of the Board of Governors be removed.

C. Other Sanctions. A board member, regardless of their appointing authority, may be subject to other sanctions lesser than removal (ex: public censure, suspension of voting rights, removal of committee assignments).

D. Complaints.

1. Complaints against a board member may be made to the chair of the Committee on University Governance.
2. Upon receipt of a complaint, the chair of the Committee on University Governance shall determine whether, assuming all of the facts alleged are true, the complaint alleges a material violation of the duties, responsibilities, and expectations of board members. If the complaint does not meet this threshold, the chair of the Committee on University Governance may dismiss the complaint and shall report the dismissal to the Committee on University Governance.
3. If the complaint is against a member of a board of trustees or University-affiliated organization, then the Committee on University Governance may retain the complaint for review and adjudication by the Governance Committee under section F, or it may direct the complaint to the board of trustees with directions for appropriate action. The committee's determination should be based on the allegations of the complaint, the board of trustee's capacity to review the complaint, and all other relevant circumstances.
4. The chair of the committee may, after consultation with the membership of the Committee, refer the complaint to the State Ethics Commission.

E. Interim Sanctions

1. A board member may be subject to an interim sanction(s) for an alleged material violation of the duties, responsibilities, and expectations of board members prior to review and adjudication of a complaint. Interim sanctions should be temporary in duration, and should balance the severity of the interim sanction against the severity of the alleged violation. Removal of a board member shall not be issued as an interim sanction.
2. The Committee on University Governance may recommend to the Board of Governors an interim sanction against a member of the Board of Governors that the committee deems appropriate. The Committee on University Governance may recommend interim sanction(s) against a member of a board of trustees or University-affiliated organization as part of the committee's referral of a complaint to a board of trustees with directions for appropriate action.
3. Any interim sanction shall require an affirmative vote of two-thirds (2/3) of the voting membership of the Board of Governors or board of trustees then in office.

F. Procedure for Sanctions; Specification of Cause; Notice and Opportunity to Respond.

1. The chair of the Committee on University Governance shall send the respondent a written specification of the complaint(s) against the board member. In the event that the chair of the Committee on University Governance is the subject of the board's consideration, the vice chair of the Committee on University Governance will temporarily serve in the chair's role. The notice shall state that the board member may submit a

written response to the chair of the Committee on University Governance and the complaining board member within five (5) business days of receipt of the written notice.

2. If the board member submits no written response to the chair of the Committee on University Governance within the specified timeframe, the Committee on University Governance may proceed to consider the complaint.

3. In its consideration of each matter, the Committee on University Governance shall ensure that all material facts are presented to the committee. The committee may select one or more committee members or another qualified individual to investigate the allegations and provide the committee with factual findings and a recommendation. The committee may review any documents it considers necessary based on the particular circumstances involved.

4. Following the deadline for the respondent's written response and the conclusion of any investigation, the Committee on University Governance shall conduct a hearing to consider the complaint against the board member. The chair of the Committee on University Governance shall preside over the hearing, which shall include a full and accurate presentation of all relevant facts. During this hearing, the respondent member shall be permitted to be heard.

5. At the conclusion of the hearing, the Committee on University Governance shall assess the evidence presented using a preponderance of the evidence standard and recommend to the Board of Governors findings and action that the committee deems appropriate.

## V. Other Matters

A. **Effective Date.** The requirements of this policy shall be effective on the date of adoption by the Board of Governors.

B. **Relation to State Laws.** The foregoing policies as adopted by the Board of Governors are meant to supplement, and do not purport to supplant or modify, those statutory enactments which may govern the activities of public officials.

C. **Regulations and Guidelines.** These policies shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

---

<sup>1</sup> .G.S. 116-7(c).

<sup>2</sup> .G.S. 116-31(j).

<sup>3</sup> Section 202 C(4) of *The Code*.

<sup>4</sup> G.S. 138A-2.

<sup>5</sup> G.S. 116-7.



## AGENDA ITEM

- A-3. Legal Counsel Statute; Amendments to Section 200.5 of the  
UNC Policy Manual ..... Thomas Shanahan

**Situation:** Chapter 116 of the General Statutes permits the president to designate legal counsel for the University, with appropriate authorization from the Board of Governors. The Board has directed the president to present a proposed amendment to the UNC Policy Manual formalizing this delegation.

**Background:** N.C. Gen. Stat. § 116-11(13b) (G.S.) permits the Board to authorize the president to approve the designation of lead legal counsel and the engagement and expenditure of funds for legal counsel, including private counsel, as needed to represent the interests of the University of North Carolina System, including the constituent institutions, and any officer or employee in any legal matter, case, or proceeding. At the September Board meeting, the president was delegated the authority to approve the designation of lead legal counsel and the engagement and expenditure of funds for legal counsel as needed to represent the interest of the UNC System.

**Assessment:** The proposed amendments to Section 200.5 of the UNC Policy Manual incorporate the following provisions: (1) a statement of the identity of the client with respect to attorneys employed by the University; (2) requirements for licensure that were previously set forth at Section 300.1.3 of the policy manual; (3) prohibitions on University attorneys providing legal advice to employees on personal matters; and (4) delegation of the authorities found at G.S. 116-11(13b).

**Action:** This item requires a vote by the committee, with a vote by the full Board of Governors through the consent agenda at the next meeting.



**Policy on Legal Affairs; Initiating and Settling Potential and Pending Litigation**

I. Purpose. This policy governs legal affairs and the initiation and settlement of litigation within the University of North Carolina.

II. Definitions. For purposes of this policy:

A. "Chancellor" means the administrative and executive head of a constituent institution of the University of North Carolina, as described in Section 502 of *The Code*.

B. "Constituent institution" means one of the 17 degree/diploma granting institutions that comprise the University of North Carolina.

C. "President" means the chief administrative and executive officer of the University of North Carolina, as described in Section 501 of *The Code*.

D. "University" means the University of North Carolina, a body politic and corporate defined as a single public multi-campus University composed of seventeen (17) constituent institutions and other educational, research, and public service organizations.

III. Legal Counsel

A. The University employs attorneys on staff within the University of North Carolina System Office and at the constituent institutions and affiliated entities. With respect to the general counsel of the University, the North Carolina Rules of Professional Conduct identify the client as the University of North Carolina, inclusive of the constituent institutions and affiliated educational, research, and public service organizations, rather than the individual officers or employees of the University in their personal capacities. With respect to the general counsels of the constituent institutions, the Rules of Professional Conduct identify the client as the constituent institution, as a component part of the University of North Carolina.

B. Every person employed within the University of North Carolina, including any of its constituent institutions, to serve as an attorney shall be licensed to practice law in the State of North Carolina at the time that the person is employed. If a person is licensed to practice law in another state, but is not licensed to practice law in the State of North Carolina, the person may be provisionally employed conditioned on the person's obtaining a license to practice law in North Carolina within one year after the date of the person's initial employment. The president is authorized to make an exception to this requirement if the particular position for which the person is employed requires that the person offer advice and counsel predominantly in areas of federal law.

C. Any person employed as an attorney on staff to serve as an attorney for the University is prohibited from providing legal advice or legal counsel to University employees, officials, and staff members concerning personal matters or matters not pertaining to or affecting the University.

D. With the exception of the general counsel of the University and the general counsels of the constituent institutions, every person or firm employed or retained to serve as a lawyer or legal advisor for the University must report to either the general counsel of the University or to the general counsel of the constituent institution.

E. Pursuant to N.C. Gen. Stat. § 116-11(13b) (hereinafter G.S.), the president shall, subject to University procedures, have the authority to (1) authorize the designation of legal counsel, including private counsel, to provide legal advice, counsel, and representation to the University of North Carolina, the constituent institutions, and University officers and employees in any legal matter, case, or proceeding; and (2) authorize the expenditure of funds for private counsel or other outside counsel for the legal services they provide.

#### IV. Initiating and Settling Potential and Pending Litigation

A. By virtue of ~~N.C.G.S. §~~ 116-3, the capacity and authority to initiate litigation, as well as to settle potential and pending litigation, in the name of the University of North Carolina, and on behalf of the constituent institutions, lies exclusively with the Board of Governors. A constituent institution has no independent capacity or authority to initiate litigation or to settle potential or pending litigation in its own name or in the name of the University of North Carolina.

B. Potential or pending litigation may involve issues and claims that do not require the attention of the Board of Governors to approve their initiation or settlement. The Board of Governors therefore delegates the authority to initiate and settle potential and pending litigation only in the circumstances below:

†

1. A constituent institution may initiate litigation in the name of the University of North Carolina or the constituent institution if the amount in controversy is less than the jurisdictional amount for civil actions in superior court as set out in ~~N.C.G.S. §~~ 7A-243 upon the approval of the chancellor. The University of North Carolina may initiate litigation concerning issues that do not arise at a constituent institution, or that arise at more than one constituent institution, if the amount in controversy is less than the jurisdictional amount for civil actions in superior court as set out in ~~N.C.G.S. §~~ 7A-243 upon the approval of the president.

~~II. The Committee on University Governance may authorize the initiation of litigation in the name of the University of North Carolina if the amount in controversy is greater than the jurisdictional amount for civil actions in superior court, or if injunctive relief is sought.<sup>‡</sup> A request to initiate litigation shall be made by the chancellor of a constituent institution, or by the request of the president for issues that do not arise at a constituent institution or that arise at more than one constituent institution.~~

2. The Committee on University Governance may authorize the initiation of litigation in the name of the University of North Carolina if the amount in controversy is greater than the jurisdictional amount for civil actions in superior court, or if injunctive relief is sought.<sup>1</sup>

---

<sup>1</sup>Pursuant to N.C.G.S. § 116-11(13), and notwithstanding *The Code* or any other Board of Governors policy, the Board of Governors has delegated certain authorities to the president of the University. See UNC Policy 200.6, *Delegation Authority to the President of the University*, adopted 11/13/06.

A request to initiate litigation shall be made by the chancellor of a constituent institution, or by the request of the president for issues that do not arise at a constituent institution or that arise at more than one constituent institution. In an emergency, if a constituent institution or the University needs to seek an order from a court sooner than it is practical to call a meeting of the Governance Committee, the constituent institution or the University may initiate litigation on the authorization of the president or the senior vice president and general counsel of the University. The president or general counsel shall consult with the chair of the Committee on University Governance~~Committee~~ before authorizing the litigation if it is practical to do so. If emergency litigation is initiated without the authorization of the Committee on University Governance~~Committee~~, the president, or the president's designee, shall inform the Committee on University Governance~~Committee~~ about the litigation at the ~~Committee's~~committee's next regular or special meeting.

##

3. If a settlement of potential or pending litigation involving a constituent institution or the University of North Carolina:

A

a. Is solely for monetary relief, and if the amount that the University of North Carolina is to pay pursuant to an agreement to settle the potential or pending litigation is less than \$75,000, or if the University is to receive a payment, and the amount claimed was less than \$75,000, then the chancellor of a constituent institution is authorized to approve the settlement. If a matter did not arise at a constituent institution or involves more than one constituent institution, the president is authorized to approve the settlement.

~~B. Is solely for monetary relief, and if the amount that the University of North Carolina is to pay is \$75,000 or greater, or if the University will receive a payment, and the amount claimed was \$75,000 or greater, then the Committee on University Governance is authorized to approve the settlement.<sup>2</sup>~~

C

b. Is solely for monetary relief, and if the amount that the University of North Carolina is to pay is \$75,000 or greater, or if the University will receive a payment, and the amount claimed was \$75,000 or greater, then the Committee on University Governance is authorized to approve the settlement.<sup>2</sup>

c. Includes an agreement by the University, or one or more constituent institutions, to take, or refrain from taking, a specific action, and the agreement affects only the named parties in the litigation or parties reasonably anticipated to be named in potential litigation, such as actions that affect only named employees or students, then the president or the chancellor of the constituent institution may authorize the settlement agreement.

D

d. Includes an agreement by the University, or one or more constituent institutions, to take or refrain from taking a specific action which affects a group or class of people or which results in changing a University or constituent institution policy, procedure or regulation, then the Committee on University Governance is authorized to approve the settlement.

~~IV~~

---

<sup>2</sup>See Footnote 1.

4. The Committee on University Governance may refer a request to initiate or settle potential or pending litigation to the Board of Governors, in the committee's discretion. The president may refer a request to settle potential or pending litigation to the Committee on University Governance in the president's discretion. If the president makes such a referral, the Committee on University Governance is authorized to decide the matter, or it may make a recommendation to the Board of Governors.

~~V. Any settlement approved pursuant to this policy shall be reported to the Committee on University Governance and to the Board of Governors either in writing before the next regular meeting of the Board of Governors or at the next regular meeting of the Board of Governors after the settlement is finalized.<sup>3</sup>~~

~~VI~~

5. Any settlement approved pursuant to this policy shall be reported to the Committee on University Governance and to the Board of Governors either in writing before the next regular meeting of the Board of Governors or at the next regular meeting of the Board of Governors after the settlement is finalized.<sup>3</sup>

6. The University of North Carolina may appear as *amicus curiae* in a lawsuit or judicial proceeding only after receiving the approval of the Committee on University Governance. The ~~Committee~~committee, in its discretion, may refer the question to the Board of Governors.

~~VII~~

7. A constituent institution, or a school or college of a constituent institution, may appear as *amicus curiae* in a lawsuit or judicial proceeding only after receiving the approval of the chancellor of the institution and after providing advance written notice to the president. Nothing in this section is intended to limit the ability of an individual University employee or group of employees to appear as *amicus curiae* in the individual's or employee group's name.

V. This policy applies to the ~~University of North Carolina-UNC~~ Health Care System, to the UNC ~~Faculty Physicians and Associates~~, and to the ECU ~~Medical Faculty Practice plan~~Physicians except as otherwise provided in ~~Policy §§Sections~~ 1200.4 and 1200.5 of the UNC Policy Manual and except as otherwise provided by ~~State~~state law, including G.S. ~~§-116-219~~, *et seq.*

#### VI. Other Matters

A. The requirements of this policy shall be effective on the date of adoption by the Board of Governors.

B. The foregoing policy is meant to supplement, and does not supplant or modify, those statutory enactments which may govern the initiation and resolution of legal claims.

C. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

---

<sup>3</sup>See Footnote 1.

---

<sup>1</sup>Pursuant to G.S. 116-11(13), and notwithstanding *The Code* or any other Board of Governors policy, the Board of Governors has delegated certain authorities to the president of the University. See Section 200.6 of the UNC Policy Manual, *Policy on Delegation Authority to the President*.

<sup>2</sup>See Footnote 1.

<sup>3</sup>See Footnote 1.

### **Policy on Legal Affairs; Initiating and Settling Potential and Pending Litigation**

I. Purpose. This policy governs legal affairs and the initiation and settlement of litigation within the University of North Carolina.

II. Definitions. For purposes of this policy:

A. "Chancellor" means the administrative and executive head of a constituent institution of the University of North Carolina, as described in Section 502 of *The Code*.

B. "Constituent institution" means one of the 17 degree/diploma granting institutions that comprise the University of North Carolina.

C. "President" means the chief administrative and executive officer of the University of North Carolina, as described in Section 501 of *The Code*.

D. "University" means the University of North Carolina, a body politic and corporate defined as a single public multi-campus University composed of seventeen (17) constituent institutions and other educational, research, and public service organizations.

III. Legal Counsel

A. The University employs attorneys on staff within the University of North Carolina System Office and at the constituent institutions and affiliated entities. With respect to the general counsel of the University, the North Carolina Rules of Professional Conduct identify the client as the University of North Carolina, inclusive of the constituent institutions and affiliated educational, research, and public service organizations, rather than the individual officers or employees of the University in their personal capacities. With respect to the general counsels of the constituent institutions, the Rules of Professional Conduct identify the client as the constituent institution, as a component part of the University of North Carolina.

B. Every person employed within the University of North Carolina, including any of its constituent institutions, to serve as an attorney shall be licensed to practice law in the State of North Carolina at the time that the person is employed. If a person is licensed to practice law in another state, but is not licensed to practice law in the State of North Carolina, the person may be provisionally employed conditioned on the person's obtaining a license to practice law in North Carolina within one year after the date of the person's initial employment. The president is authorized to make an exception to this requirement if the particular position for which the person is employed requires that the person offer advice and counsel predominantly in areas of federal law.

C. Any person employed as an attorney on staff to serve as an attorney for the University is prohibited from providing legal advice or legal counsel to University employees, officials, and staff members concerning personal matters or matters not pertaining to or affecting the University.

D. With the exception of the general counsel of the University and the general counsels of the constituent institutions, every person or firm employed or retained to serve as a lawyer or legal advisor for the University must report to either the general counsel of the University or to the general counsel of the constituent institution.

E. Pursuant to N.C. Gen. Stat. § 116-11(13b) (hereinafter G.S.), the president shall, subject to University procedures, have the authority to (1) authorize the designation of legal counsel, including private counsel, to provide legal advice, counsel, and representation to the University of North Carolina, the constituent institutions, and University officers and employees in any legal matter, case, or proceeding; and (2) authorize the expenditure of funds for private counsel or other outside counsel for the legal services they provide.

#### IV. Initiating and Settling Potential and Pending Litigation

A. By virtue of G.S. 116-3, the capacity and authority to initiate litigation, as well as to settle potential and pending litigation, in the name of the University of North Carolina, and on behalf of the constituent institutions, lies exclusively with the Board of Governors. A constituent institution has no independent capacity or authority to initiate litigation or to settle potential or pending litigation in its own name or in the name of the University of North Carolina.

B. Potential or pending litigation may involve issues and claims that do not require the attention of the Board of Governors to approve their initiation or settlement. The Board of Governors therefore delegates the authority to initiate and settle potential and pending litigation only in the circumstances below:

1. A constituent institution may initiate litigation in the name of the University of North Carolina or the constituent institution if the amount in controversy is less than the jurisdictional amount for civil actions in superior court as set out in G.S. 7A-243 upon the approval of the chancellor. The University of North Carolina may initiate litigation concerning issues that do not arise at a constituent institution, or that arise at more than one constituent institution, if the amount in controversy is less than the jurisdictional amount for civil actions in superior court as set out in G.S. 7A-243 upon the approval of the president.

2. The Committee on University Governance may authorize the initiation of litigation in the name of the University of North Carolina if the amount in controversy is greater than the jurisdictional amount for civil actions in superior court, or if injunctive relief is sought.<sup>1</sup> A request to initiate litigation shall be made by the chancellor of a constituent institution, or by the request of the president for issues that do not arise at a constituent institution or that arise at more than one constituent institution. In an emergency, if a constituent institution or the University needs to seek an order from a court sooner than it is practical to call a meeting of the Governance Committee, the constituent institution or the University may initiate litigation on the authorization of the president or the senior vice president and general counsel of the University. The president or general counsel shall consult with the chair of the Committee on University Governance before authorizing the litigation if it is practical to do so. If emergency litigation is initiated without the

authorization of the Committee on University Governance, the president, or the president's designee, shall inform the Committee on University Governance about the litigation at the committee's next regular or special meeting.

3. If a settlement of potential or pending litigation involving a constituent institution or the University of North Carolina:

a. Is solely for monetary relief, and if the amount that the University of North Carolina is to pay pursuant to an agreement to settle the potential or pending litigation is less than \$75,000, or if the University is to receive a payment, and the amount claimed was less than \$75,000, then the chancellor of a constituent institution is authorized to approve the settlement. If a matter did not arise at a constituent institution or involves more than one constituent institution, the president is authorized to approve the settlement.

b. Is solely for monetary relief, and if the amount that the University of North Carolina is to pay is \$75,000 or greater, or if the University will receive a payment, and the amount claimed was \$75,000 or greater, then the Committee on University Governance is authorized to approve the settlement.<sup>2</sup>

c. Includes an agreement by the University, or one or more constituent institutions, to take, or refrain from taking, a specific action, and the agreement affects only the named parties in the litigation or parties reasonably anticipated to be named in potential litigation, such as actions that affect only named employees or students, then the president or the chancellor of the constituent institution may authorize the settlement agreement.

d. Includes an agreement by the University, or one or more constituent institutions, to take or refrain from taking a specific action which affects a group or class of people or which results in changing a University or constituent institution policy, procedure or regulation, then the Committee on University Governance is authorized to approve the settlement.

4. The Committee on University Governance may refer a request to initiate or settle potential or pending litigation to the Board of Governors, in the committee's discretion. The president may refer a request to settle potential or pending litigation to the Committee on University Governance in the president's discretion. If the president makes such a referral, the Committee on University Governance is authorized to decide the matter, or it may make a recommendation to the Board of Governors.

5. Any settlement approved pursuant to this policy shall be reported to the Committee on University Governance and to the Board of Governors either in writing before the next regular meeting of the Board of Governors or at the next regular meeting of the Board of Governors after the settlement is finalized.<sup>3</sup>

6. The University of North Carolina may appear as *amicus curiae* in a lawsuit or judicial proceeding only after receiving the approval of the Committee on University Governance. The committee, in its discretion, may refer the question to the Board of Governors.



7. A constituent institution, or a school or college of a constituent institution, may appear as *amicus curiae* in a lawsuit or judicial proceeding only after receiving the approval of the chancellor of the institution and after providing advance written notice to the president. Nothing in this section is intended to limit the ability of an individual University employee or group of employees to appear as *amicus curiae* in the individual's or employee group's name.

V. This policy applies to the UNC Health Care System, to the UNC Faculty Physicians, and to the ECU Physicians except as otherwise provided in Sections 1200.4 and 1200.5 of the UNC Policy Manual and except as otherwise provided by state law, including G.S. 116-219, *et seq.*

VI. Other Matters

A. The requirements of this policy shall be effective on the date of adoption by the Board of Governors.

B. The foregoing policy is meant to supplement, and does not supplant or modify, those statutory enactments which may govern the initiation and resolution of legal claims.

C. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

---

<sup>1</sup>Pursuant to G.S. 116-11(13), and notwithstanding *The Code* or any other Board of Governors policy, the Board of Governors has delegated certain authorities to the president of the University. See Section 200.6 of the UNC Policy Manual, *Policy on Delegation Authority to the President*.

<sup>2</sup>See Footnote 1.

<sup>3</sup>See Footnote 1.