



TRANSMITTAL LETTER

The University of North Carolina
General Administration

Transmittal Number 109
October 20, 2016

THIS LETTER TRANSMITS CHANGES TO THE *UNC POLICY MANUAL*

200.5

Initiating and Settling Potential and Pending Litigation

- * This policy was amended and approved by the Board of Governors at its meeting on September 9, 2016

200.6

Delegation of Authority to the President

- * This policy was amended and approved by the Board of Governors at its meeting on October 14, 2016

*A redline version reflecting changes to the document is attached herein.

The *UNC Policy Manual* can be accessed online at:
<http://www.northcarolina.edu/apps/policy/index.php>

Initiating and Settling Potential and Pending Litigation

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.

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:

I. 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.¹ 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 Governance Committee before authorizing the litigation if it is practical to do so. If emergency litigation is initiated without the authorization of the Governance Committee, the president, or the president's designee, shall inform the Governance Committee about the litigation at the Committee's next regular or special meeting.

III. 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

¹Pursuant 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.

payment, and the amount claimed was \$75,000 or greater, then the Committee on University Governance is authorized to approve the settlement.²

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.

IV. 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.³

VI. 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.

VII. 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.

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

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

²See Footnote 1.

³See Footnote 1.

Initiating and Settling ~~Lawsuits~~ Potential and Pending Litigation

By virtue of N.C.G.S. § 116-3, the capacity and authority to initiate ~~and litigation, as well as to settle lawsuits~~ 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 lawsuits potential or pending litigation in its own name. ~~Many lawsuits, however, are routine or in nature~~ the name of the University of North Carolina.

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 ~~lawsuits as follows~~ potential and pending litigation only in the circumstances below:

~~I.~~ A constituent institution may initiate ~~a lawsuit~~ 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 ~~a lawsuit~~ 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.¹ 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 ~~Vice President~~ general counsel shall consult with the chair of the Governance Committee before authorizing the litigation if it is practical to do so. If emergency litigation is initiated without the authorization of the Governance Committee, the president, or the president's designee, shall inform the Governance Committee about the litigation at the Committee's next regular or special meeting.

~~III.~~ If a settlement of ~~a lawsuit that has been filed by~~ potential or ~~against~~ 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 lawsuit 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

¹Pursuant to NCGS 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.

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.²

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~~IV. 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 ~~a lawsuit~~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~~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.³

~~6~~VI. 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~~VII. 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.

~~This policy does not apply to administrative proceedings. The chancellors and president are authorized to initiate administrative proceedings and to settle administrative proceedings in which the University or a constituent institution is named as a party.~~

This policy applies to the University of North Carolina Health Care System, to the UNC Physicians and Associates, and to the ECU Medical Faculty Practice plan except as otherwise

²See Footnote 1.

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provided in Policy §§ 1200.4 and 1200.5 and except as otherwise provided by State law, including G.S. § 116-219 *et seq.*

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

Delegation of Authority to the President

I. Pursuant to N.C.G.S. §116-11(13) and other North Carolina law as referenced herein, and notwithstanding *The Code* or any other Board of Governors policy,¹ the Board of Governors delegates the following authorities to the president of the University:

A. Human Resources

1. Authority to establish and administer a human resources program for employees exempt from the State Human Resources Act (N.C.G.S. Chapter 126).

a. “Human resources program” shall include such personnel actions related to the establishment of positions and the administration of salary ranges; recruitment, appointments, salaries, and salary adjustments; promotion and tenure; leave programs; performance management; non-faculty discontinuation, discipline, and discharge; and non-faculty grievance and appeals processes (§300.1.1, §300.1.2, and §300.2.1).

b. The president may approve management flexibility plans for Special Responsibility Constituent Institutions and may delegate limited authority for human resources actions to constituent institutions that are not authorized as Special Responsibility Constituent Institutions (§600.3.4).

c. Notwithstanding the above provisions, unless otherwise delegated:

(1) The Board of Governors shall retain authority over the appointments and compensation for the president, for the chancellors of the constituent institutions, for the chief executive officer of the UNC Health Care System, and for the UNC-TV executive director and general manager. (§300.1.1, *The Code* §500, N.C.G.S. §116-37(c), *The Code* §900, N.C.G.S. §116-37.1(c), and §1200.1).

(2) The Board of Governors shall retain authority over certain contract terms for athletic directors and head coaches of the constituent institutions (§1100.3).

(3) The president shall consult with the Board’s Committee on Personnel and Tenure on appointments and compensation for the senior officers of the UNC General Administration who report directly to the president.

¹ The Secretary of the University is authorized to annotate the referenced policies and regulations to cross-reference these delegations.

(4) The Board of Governors shall retain authority over adjustments to base salary for permanent faculty and for employees exempt from the State Human Resources Act when the proposed amount (1) exceeds the established salary range or (2) exceeds twenty-five percent (25%) and twenty-five thousand dollars (\$25,000) of the compensation in effect at the end of the last fiscal year.²

2. Authority to approve all actions relating to the administration of the Optional Retirement Program (N.C.G.S. §135-5.1) and the Phased Retirement Program (§300.7.2).

3. The president shall report in writing on actions taken under the authority of these delegations to the appropriate committee of the Board of Governors no less than annually, or as otherwise requested by the chair of the Board of Governors or the chair of the Committee on Personnel and Tenure.

B. Governance

1. The authority to approve the initiation of a lawsuit in the name of the University if the action is for monetary relief and the amount in controversy is less than \$250,000. (§200.5)

2. The authority to settle potential or pending litigation by or against a constituent institution or the University of North Carolina, if the settlement is solely for monetary relief and the amount the University is to pay pursuant to the settlement is less than \$250,000 or, if the University is to receive a payment, the amount the University claimed is less than \$250,000. (§200.5)

3. Authority to approve the political activities of employees of the University who are candidates for or serving in public office (§300.5.1).

C. Reports

The authority to approve and submit any report the University or the Board of Governors is required to submit to the General Assembly, the State Board of Education or any other State or federal agency or officer.

D. Real Property

1. Except as authorized by b. below, authority to approve leases with at least \$50,000³ but less than \$350,000 annual rental for a term of up to five years, subject to approval by the Department of Administration and the Governor and Council of State (§§600.1.3 and 600.1.4[R]).

2. Authority to approve the acquisition or disposition of real property by lease without the approval of the Department of Administration, the Governor and Council of

² The Board approved further authority delineations at the April 2015 meeting, see “Resolution to Delegate Limited Authority for Approval of Salary Adjustments to the President,” and reaffirmed in March 2016 “Resolution of the Board of Governors Review and Approval of Proposed Salary Adjustments.”

³ Note that leases with annual rent less than \$50,000 may be approved by the boards of trustees or the chancellors without further approval by the Board of Governors or the president. See Regulation §600.1.4[R].

State if the lease is for a term of not more than 10 years. The president's authority may be exercised in the president's discretion on behalf of General Administration, University affiliates or the constituent institutions. (N.C.G.S. §116-31.12, and §600.1.3.1 and 600.1.3.1[R]).

3. Authority to approve acquisition or disposition of an interest in real property, other than a lease, for an amount of at least \$50,000 but less than \$500,000 (§600.1.3 and §600.1.4[R]).

4. Authority to approve capital improvement projects that are projected to cost \$500,000 or less. The president must provide notice of projects the president intends to approve under this provision to the Committee on Budget and Finance at least one week prior to authorizing the project. (§600.1.1).

E. Institutional Trust Funds

Authority to delegate to the chancellors management of institutional trust funds (§600.2.4 and §600.2.4.1).

II. The president will report all actions taken under the authority of the delegations in sections I.B. through I.E. to the appropriate committee of 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.

III. These delegations will remain in effect unless and until the Board of Governors rescinds them in whole or in part.

Delegation of Authority to the President

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III. These delegations will remain in effect unless and until the Board of Governors rescinds them in whole or in part.