

### **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 UNC System Office and the constituent institutions employ attorneys on staff, whose clients are their employing institutions, rather than individual University officers or employees in their personal capacities.
  - 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. 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, and on behalf of the constituent and affiliated institutions, lies exclusively with the Board of Governors. A constituent and affiliated 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 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 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 litigation initiated 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.<sup>3</sup>

6. 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>4</sup>

7. 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.

8. 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.

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<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.

<sup>4</sup>See Footnote 1.