

Regulation on Engagement of Private Counsel and Designation of Litigation Counsel

I. Purpose. The following regulation (“this regulation”) establishes procedures by which (a) private counsel may be engaged and/or (b) litigation counsel may be designated on behalf of the University by constituent institutions and the UNC System Office in accordance with the authority delegated by the Board of Governors to the president, pursuant to N.C. Gen. Stat. § 116-11(13b) (hereinafter G.S.), and in accordance with Section 200.5 of the UNC Policy Manual. These procedures will be administered by the Office of Legal Affairs at the University of North Carolina System Office (“UNC System Office”).

II. Definitions. The following operational definitions apply to the policy and this regulation:

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. “Office of Legal Affairs” means the Office of Legal Affairs within the University of North Carolina System Office.

E. “University” means the University of North Carolina, a body politic and corporate defined as a single public multi-campus University composed of 17 constituent institutions and other educational, research, and public service organizations.

F. “UNC System Office” means the University of North Carolina System Office.

G. “NC DOJ” means the North Carolina Department of Justice.

III. Authorization of Private Counsel Engagements. Engagements of private counsel for the University, by the constituent institutions and the UNC System Office, must be authorized in accordance with the requirements of this section or must otherwise be authorized by the president.

A. On a periodic basis and with input and participation from the general counsels of the constituent institutions, the UNC System Office shall maintain one or more panels of private law firms to be readily available to provide legal services to the University. Firms on the approved panels shall provide legal services under a master agreement approved by the chief financial officer of the UNC System. Selection of panel firms shall be based on a best value methodology, through which consideration shall be given to the firms’ qualifications, the competitiveness of the firms’ billing rates and charges to the University, and other material information. Preference will be given to North Carolina-based law firms, or firms with substantial operations in North Carolina.

B. A constituent institution or the UNC System Office shall be deemed to have authorization to engage and pay private counsel to provide legal services to the entity concerning a specific legal matter without further approval from the president, provided all of the following requirements are met:

1. The general counsel of the University entity (either the constituent institution or the UNC System Office) that is engaging private counsel has approved and will direct the engagement, after reasonably concluding that there are insufficient legal and personnel resources within the Education Section of the North Carolina Department of Justice (“NC DOJ”) and the University entity to meet the needs presented by the specific legal matter;
2. The chief financial officer of the University entity (either the constituent institution or the UNC System Office) that is engaging private counsel has verified that sufficient funds exist for the engagement and has approved the engagement;
3. The engagement will be with a law firm selected from a pre-approved panel of private counsel assembled by the UNC System Office in accordance with section III.A., of this regulation, using the current master agreement in place with the UNC System Office and the firm, the terms of which will govern the legal representation and include the appropriate State of North Carolina and University terms for the engagement of vendors;
4. The engagement is subject to a maximum fee for the entirety of the representation in the specific legal matter, which does not exceed the institution’s purchasing benchmark, as approved by the Board of Governors in accordance with G.S. 116-31.10. The institution’s purchasing benchmark may not be exceeded without prior approval from the president;
5. If private counsel is expected to be designated as litigation counsel, the University entity has complied with section IV of this regulation; and
6. The University entity engaging private counsel notifies the Office of Legal Affairs of the engagement within five (5) business days after the commencement of work on the engagement.

C. Any engagement of private counsel that does not meet or is expected to no longer meet all criteria listed above in section III.B., requires prior approval from the president. Requests for approval to engage private counsel under this section should be submitted to the Office of Legal Affairs and will be considered based on factors including:

1. Whether there exist sufficient and appropriate legal resources available through the Education Section of the NC DOJ;
2. The time and labor required; the novelty and complexity of the legal needs of the institution; the difficulty of the questions involved; and the skill requisite to perform the attorney services properly;
3. The geographic area where the attorney services are to be provided; and

4. The amount of experience desired for the particular kind of legal services to be provided and the nature of attorney experience with similar issues or cases.

Any request submitted to the president under this section must state that the constituent institution's general counsel and chief financial officer have approved the engagement and that the general counsel will direct the engagement.

IV. Designation of Litigation Counsel. Designation of litigation counsel to represent the University, including the constituent institutions, must be authorized in accordance with the requirements of this section.

A. The Education Section of the NC DOJ serves as the primary outside litigation counsel for the University, including the constituent institutions and the UNC System Office. The general counsels for each of the constituent institutions and the UNC System Office may designate NC DOJ attorneys as litigation counsel, including lead litigation counsel, in any litigation matter for their respective institutions, subject to the acceptance of such designation by NC DOJ.

B. If after conferring with NC DOJ, the general counsel of the constituent institution or the UNC System Office that is a party in a particular litigation matter concludes that the matter requires assistance from private counsel, the general counsel may, in consultation with NC DOJ, select private counsel from a preapproved panel of private counsel assembled by the UNC System Office in accordance with section III.A., to serve as litigation counsel, including lead litigation counsel, for the institution.

C. Those few constituent institutions that generate a significant volume of potential litigation matters and can justify the employment of experienced in-house litigation counsel who devote substantially all of their practice to University litigation matters may obtain, through an agreement with the president, authorization to designate those in-house attorneys as litigation counsel for their respective constituent institutions, including as lead litigation counsel, in any litigation matter. In-house attorneys employed by University entities shall not represent University employees or officials in their personal capacities.

D. Any designation of litigation counsel, or any designation of lead litigation counsel, except as authorized by sections IV.A., IV.B., or IV.C., above, requires prior approval from the president. All other requests for approval to designate litigation counsel, or lead litigation counsel, should be submitted to the Office of Legal Affairs.

V. Additional Procedures. The Office of Legal Affairs may adopt any such other procedures for the implementation of the policy and this regulation at the discretion of the senior vice president and general counsel or his or her designee.

VI. Other Matters

A. Effective Date. This Regulation as amended takes effect on January 30, 2024.

B. Relation to Federal and State Laws. The foregoing regulation as adopted by the president is meant to supplement, and does not purport to supplant or modify, those statutory enactments, regulations, and policies which may govern or related to the subject matter of this regulation.