



THE UNIVERSITY  
of NORTH CAROLINA  
at CHAPEL HILL

OFFICE OF UNIVERSITY COUNSEL

110 BYNUM HALL  
CAMPUS BOX 9105  
222 EAST CAMERON AVENUE  
CHAPEL HILL, NC 27599-9105

T 919.962.1219  
F 919.843.1617

June 27, 2017

VIA EMAIL AND UNITED STATES MAIL

Ms. Anna Spangler Nelson  
Chair, Committee on Education, Policies and Programs  
UNC Board of Governors  
652 Hempstead Place  
Charlotte, NC 28207

Re: Submission of the UNC-CH Committee regarding the UNC Center for Civil Rights (the "Center")

Dear Anna:

I am submitting with this letter the supplemental response of the committee appointed by Chancellor Carol Folt (the "UNC-CH Committee") to address the questions raised by the Education Committee of the Board of Governors regarding the Center. In this supplemental response, we address Question 8, which asks for alternatives and options that would allow the Center to pursue its mission without being involved in litigation. This supplemental response sets forth alternatives and options and explains how each alternative would affect the work of the Center. We are also providing a chart that summarizes these alternatives and options and how they affect key attributes of the Center as it currently operates. Based on our current understanding of the new policy being proposed, one or more of these alternatives may be consistent with the policy.

The UNC-CH Committee wants to emphasize that the availability of alternatives is not an assurance of their viability. As explained in the supplemental response, the viability of alternatives will depend on the willingness of current funders of the Center to continue their support if the fundamental nature of the Center changes or on the ability to find new funding sources.

The UNC-CH Committee also wants to make clear that if the Board of Governors approves a policy to prohibit litigation by any Center or Institute, a decision about an alternative structure could not happen instantly. It would require a reasonable period of time in which to determine whether and how alternatives could be put into effect to maintain the important work of the Center to train civil rights lawyers and to advance the civil rights of the clients that it represents.

The UNC-CH Committee would be pleased to answer any questions raised by this supplemental response or its original submission.

With best regards,

A handwritten signature in black ink that reads "Mark W. Merritt". The signature is written in a cursive style with a large initial "M" and a distinct "W".

Mark W. Merritt

Vice Chancellor and General Counsel

CC: President Margaret Spellings  
W. Louis Bissette, Jr., Chairman  
Chancellor Carol Folt  
UNC-CH Committee  
Thomas C. Shanahan

## Organizational Changes and Alternatives for the UNC Center for Civil Rights

In its initial submission to the Committee on Education Policy, Planning and Programs of the Board of Governors (the “Education Committee”), the University of North Carolina at Chapel Hill provided background information on the UNC Center for Civil Rights (the “Center”) in response to Questions 1-7 asked by the Education Committee.

In this submission, UNC-Chapel Hill will address Question 8, which asked for possible options for organizational changes and alternatives to the current structure of the Center.

The committee appointed by Chancellor Carol L. Folt to respond to the Education Committee’s questions (the “UNC-CH Committee”) understands that the proposal before the Education Committee arises from two concerns with respect to the Center. The first concern is that the Center provides legal representation to clients who sue state and local government entities in North Carolina. Those advancing the proposal believe that UNC-CH, or entities within UNC-CH, should not be involved in representing clients who sue other state entities. It should be noted that the proposed policy would prevent a Center from suing any defendant without regard to whether it was a governmental entity. The second concern is that the Center is not tied to the educational mission of the UNC School of Law (the “Law School”) in the same manner and with the same oversight as a clinical program undertaking civil rights work.

In order to evaluate alternative structures for the Center in response to Question 8, the UNC-CH Committee identified the Center’s key attributes. The UNC-CH Committee then analyzed how those key attributes would be affected by several potential alternative structures. Finally, the UNC-CH Committee has attempted to forecast the likely positive and negative effects associated with the potential alternative structures.

This submission summarizes the UNC-CH Committee’s work with respect to the above matters. The UNC-CH Committee wants to make clear that the existence of alternatives for conducting the work of the Center is not an endorsement of the viability of those alternatives for reasons explained below.

### Key Attributes of the Center

The Center is an approved center under the Policies and Procedures Governing Centers and Institutes. The Center is associated with the Law School, is thus part of UNC-CH but is funded by private donations. The positive attributes of the Center in providing training to law students and justice to its clients were stated in the prior submission to the Education Committee and will not be detailed here. The Center has routinely and productively collaborated with other schools at UNC-CH and other campuses in the UNC System to support its work. The Center has established credibility in the communities it serves due to its history of advocating for and obtaining good results for its clients. The Center also benefits from the

legacy of its founder, Julius L. Chambers, a preeminent civil rights lawyer both within North Carolina and nationally.

The Center has three main functions: the training of law students, research, and advocacy, which in some circumstances involves litigation. The Center believes that training the next generation of civil rights advocates requires exposing them to the full range of legal advocacy available to their clients, which includes training in litigation. The Center regards these functions as interconnected, believing that its research drives its advocacy and that its advocacy is credible and effective only when litigation is available as an enforcement mechanism. When the Center is performing these functions, and especially in filing litigation on behalf of its clients, its work is aided by the credibility that comes from the Center's association with UNC-CH and the Law School. In its current structure, the Center may file suit on behalf of clients only with the approval of the Dean of the Law School. The requirement of the Dean's approval ensures a level of review outside of the Center before any lawsuit is filed against a state or local governmental entity or any other party.

With respect to each of its core functions (training law students, research, and advocacy), the Center provides opportunities for experiential learning to Law School students through field placements satisfying applicable American Bar Association standards, including ABA Standard 303 (Curriculum).<sup>1</sup> The Center also provides law students the opportunity to fulfill pro bono requirements that are part of ABA Standard 303. The Center's work is supported entirely by private funds contributed to and administered by the U.N.C. Law Foundation, Inc., a 501(c)(3) entity independent of the Law School whose primary function is to hold a portion of the Law School's endowment.

Based on the Center's history, structure and work, the UNC-CH Committee has concluded that the Center's key attributes that must be analyzed in order to evaluate potential alternative structures are:

1. Will the alternative structure replicate the degree of association that now exists between the Center, on the one hand, and UNC-CH and the Law School, on the other?
2. Will the alternative structure build on the Center's successful history of forging ties with communities across North Carolina?
3. Will the alternative structure carry on the Center's core functions of training law students, research, advocacy, and litigation?
4. Will the alternative structure collaborate effectively with other parts of UNC-CH?

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<sup>1</sup> The Section of Legal Education and Admissions to the Bar of the American Bar Association, through its section Council and Accreditation Committee, is recognized by the U.S. Department of Education (DOE) as the national accrediting agency for American law schools. The ABA promulgates Standards that govern the educational activities of accredited law schools, including the UNC School of Law, including Standard 303 referenced here.

5. Will the alternative structure provide experiential learning and pro bono opportunities to law students in a manner that satisfies ABA accreditation standards?
6. Will the alternative structure be able to attract private funding and continue the work of the Center?
7. Will the alternative structure carry on the Center's current practices with regard to representing clients in litigation against private parties and governmental entities?

The UNC-CH Committee also examined whether the name of the Center itself, which closely ties the Center to the Law School, could be changed to address the concern about one state entity having a role in representing clients suing another state entity.

Alternative 1:  
Re-Name the Center and Define its Educational Role More Precisely

As noted above, the stated concern underlying the proposal before the Education Committee relates to the Center's representation of clients who sue other state and local government entities. The concern is that a center plainly associated with the University – the "UNC Center for Civil Rights" – should not be in the business of representing clients who sue other branches of the state.

One way to address this concern would be to re-name the Center so that its name is not tied to UNC. The Center could, for example, be named for its founder – the "Julius L. Chambers Center for Civil Rights."

A name change could also include a more defined commitment by the Center to provide field placements and pro bono opportunities to law students, as required by ABA Standard 303. Such a commitment would address the concern that the mission of the Center be more clearly and formally aligned with the Law School's lawyer-training mission. The Center's charter from UNC could be revised to require that students be engaged in all three aspects of the Center's core mission in specific ways. This alternative leaves the Center in its current format but with a different name and a more well-defined commitment to training civil rights lawyers.

*Advantages:*

This structure is preserves all of the key attributes and work of the Center while limiting the Center's perceived association with UNC.

*Disadvantages:*

A name change alone, of course, would not address the concern that an entity affiliated with UNC would still be involved in representing clients in suing other state and local governmental entities.

Alternative 2:  
Change the Center into a Law School Civil Rights Clinic

A second alternative would be to fold the Center into the Law School's existing clinical programs, changing the Center from a standalone center into a clinic.

As a civil rights clinic, the work would be done in the context of a year-long or semester long course on civil rights that would involve clinical work in ongoing civil rights litigation. The typical ratio of students to teachers in a clinical program would be 8 to 1. The education and training in civil rights law provided by the clinic would involve both classroom time and hands-on experience in civil rights litigation. As part of the Law School's curriculum, the work of the clinic would be subject to the oversight of the Dean of the Law School and the Provost.

*Advantages:*

This approach would have several advantages:

- It would maintain some of the key attributes of the current Center.
- The degree of association with the Law School and its educational mission could be strengthened.
- The change would align the Center and Law School with how most other law schools teach civil rights law and advocacy.

*Disadvantages:*

There are significant disadvantages and challenges with changing the Center into a civil rights clinic:

- Currently the Law School does not have the physical space for an additional clinical program.
- It would be challenging to maintain a clinical program exclusively on the private funding currently available to the Center. The Law School's present clinics are supported by a mixture of state appropriations, tuition revenue, and private funds. If converted into a clinic, the expenses associated with the Center would have to be accounted for separately from those of the Law School clinics as a whole if the present model of exclusively private support is to be maintained.
- There is also uncertainty with respect to whether current outside funders would be as willing to financially support a civil rights clinic in the same manner as they have historically supported the Center. The outside funders did not contribute to support a clinical program.
- The concern with respect to one state entity, the Law School, being involved in suing other state entities, would remain. As detailed in the UNC-CH Committee's

previous submission to the BOG, many other state university law schools have clinics that sue state and local governments. UNC Law School and North Carolina Central School of Law maintain clinics that are involved in bringing lawsuits on behalf of clients against governmental entities.

- Some of the attributes of the current Center would come into question. Clinics do not necessarily conduct research or do community advocacy in the same manner as a center that may have a broader scope. Clinics are, in essence, hands-on lawyer-training programs. Moreover, the mix of cases could change as civil rights clinics tend to focus on representing individuals as opposed to conducting litigation that may have more systemic effects.

### Alternative 3: Outsource Litigation with Ongoing Support

A third alternative would be to keep the Center and its association with the University and Law School essentially the same as it now is, but to require the Center to enlist outside attorneys to bring lawsuits for the clients the Center serves and forego direct involvement in those lawsuits by the Center and its staff. In this model, the Center's attorneys would be able to support the outside attorneys by working up cases towards an initial court filing and providing ongoing litigation advice and support in an advisory capacity. Center lawyers would not be actually filing the litigation or appearing in court, however.

#### *Advantages:*

- This alternative would allow the research and advocacy work of the Center to continue in its present form.
- It would also continue to allow collaboration with other parts of the University.
- The ability of the Center to provide experiential learning opportunities in research, advocacy and certain pre-litigation activities would be maintained.
- The possibility of litigation as a last-choice alternative for the Center's clients – the absence of which would fundamentally transform and weaken the current Center – would be maintained.
- To the extent that private law firms are willing to undertake cases and involve law students, opportunities for hands-on litigation experience would be maintained.
- Because the Center would no longer be filing cases directly, this alternative would lessen the concern that the Center's attorneys were filing litigation on behalf of clients pursuing civil rights claims against other state entities.

*Disadvantages:*

- The Center's ability to offer experiential learning opportunities to law students in the context of actual litigation is dependent on (a) private firms being willing to take the lead role on civil rights cases and (b) allowing law students to have a meaningful role in that litigation. Private law firms often use litigation of this nature to train their less experienced lawyers and to meet the pro bono commitments of their law firms. This would limit opportunities for law students.
- The willingness of private firms to undertake civil rights litigation is a substantial limiting factor. The Center exists in part because of the reality that private firms are reluctant to take on civil rights cases, which are often protracted and offer limited potential for payment.
- Private law firms, even with the ongoing support of the Center, may lack needed depth of experience in litigating the cases currently pursued by the Center on behalf of their clients. Civil rights law is a complex area, driven by decades of statutory and case law development. Those who seek to learn it in order to handle an occasional case face a daunting task and the potential for missing essential points. This is why the ongoing involvement of Center staff is critical.
- There is also a likelihood that the Center's current staff would leave. They want to be actively involved in the litigation as part of their professional work.
- The current private funders of the Center value its ability to file lawsuits on behalf of clients, with ongoing representation by the experienced civil rights attorneys on its staff. They are less likely to fund the Center if that capability is not in place. To the extent that private law firms are not willing to take cases, the Center's advocacy would be compromised. Defendants in these cases will have no incentive to reach a compromise or settlement if there is no possibility of litigation as an enforcement mechanism. Private funders of the Center would need to be persuaded that the Center would continue to be effective and worthy of support under this alternative.

Alternative 4:

Outsource Litigation with No Ongoing Support

A fourth alternative is for the Center to have no involvement in filing litigation. If the Center had a matter in which its clients needed litigation to be filed, that litigation would have to be conducted by a private firm or other advocacy group with no ongoing support from the Center (this is the primary difference between Alternatives 4 and 3). The Center would limit its activities to its research and advocacy functions.

*Advantages:*

- Collaboration opportunities with other parts of the University would be maintained, but only for research and advocacy that did not involve litigation.
- The concern about one state entity representing clients in lawsuits against another state entity would be eliminated.

*Disadvantages:*

- This alternative is the furthest from the current model, and would effectively end the center that Julius Chambers designed – thus removing a significant part of his legacy from UNC and the Law School.
- The civil rights of the clients with whom the Center worked would likely be compromised. Few firms will be likely to take on civil rights litigation without the Center providing ongoing support. Clients would be less likely to pursue matters without a trusted partner like the Center to be part of the litigation.
- The effectiveness of the Center’s advocacy work will be compromised. There would be no enforcement mechanism to prompt changes in behavior if advocacy short of litigation does not achieve results.
- Law students will lose experiential learning opportunities in civil rights litigation, which is core training for future civil rights attorneys. If communities become less likely to engage the Center to address potential violations of civil rights, opportunities for experiential learning and pro bono activities for law students could be diminished.
- Current funders of the Center who are committed to the advancement of civil rights will be less inclined to support a structure that does not fully represent clients in pursuing their civil rights, with the option of bringing litigation if necessary.

Alternative 5:

Move the Center into a Non-profit Structure Not Associated with the University

In this alternative structure, the Center would no longer be associated with the Law School or the University but would be moved to a non-profit, charitable status under the tax code.

*Advantages:*

- This alternative would completely address the concern that a University-affiliated entity not be involved in advocacy or in bringing lawsuits on behalf of clients against another state or local government entity.

- This alternative would also eliminate any concerns about how the Center provides educational value to the Law School or the University, because the Center would no longer be part of or affiliated with UNC-Chapel Hill.
- The Center could carry on research, advocacy and litigation unencumbered by any political concerns that may result from being associated with a public university.
- If the Center remained in Chapel Hill or in the area, it could continue to provide experiential learning opportunities to law students through field placements provided that the requirements of ABA Standard 303 are met. The Center could also continue to provide pro bono opportunities that satisfy accreditation requirements provided that the requirements of ABA Standard 303 are met.

*Disadvantages:*

- The ability of a severed Center to raise funds may be compromised if it is no longer associated with the University.
- A severed Center would lose certain administrative support functions, such as payroll administration and advancement support that come with being part of the University.
- A severed Center would lose the credibility that comes with being associated with the University and the Law School.
- Loss of funding and the associational credibility that comes with being part of the Law School would diminish the ability of a severed Center to represent clients.
- The ability of a severed Center to collaborate with other parts of the University may be negatively affected if direct association with the University is eliminated.
- Although a severed Center could still provide experiential learning opportunities to law students, it would not be compelled to do so. A severed Center would have incentive to provide such opportunities to students attending other law schools if its association with the UNC Law School were to end.
- If the Center were no longer associated with UNC-Chapel Hill, the University would lose an important historical connection to the legacy of Julius Chambers, to the civil rights movement and to its own journey to address the effects of racial discrimination. Julius Chambers is an important historical figure in the life of the Law School, the University and the State of North Carolina. Julius Chambers was one of, if not the, preeminent civil rights lawyer of his generation, and his legal work helped transform North Carolina away from a history of segregation based on race. The University's association with that legacy in a positive, supportive and meaningful way reinforces important values that we as a University community have chosen to embrace.

## Conclusion

The UNC-CH Committee wants to emphasize in closing that the availability of these alternatives is not an assurance that any of these alternatives is viable. Each alternative other than Alternative 1 depends on current outside funders being willing to commit their resources to a program that differs from the Center in ways that are material. In addition, changing the current format of the Center to any of the alternatives other than Alternative 1 will require a suitable transition period provided that funding can be maintained. For example, moving to a clinical format would require the hiring of clinical professors, finding space in which to house the clinic and determining how to integrate the Center's current research functions into a clinical program format. There also must be adequate transition time to ensure that the Center's attorneys who are involved in litigation can meet the ethical duties that they owe to their existing clients if the Center can no longer litigate on their behalf. It would not be fair to assume that the Center can survive these challenges, and the UNC-CH Committee does not want its identification of alternatives to be seen as an endorsement of their viability.

## Summary of Alternatives

Alternative Structures/Attributes	Change name and define commitment	Change to Clinical Program	Outsource Litigation with CCR Support	Outsource Litigation/no CCR support	Center Becomes Separate 501(c)(3)
Association with UNC and Law School	Same	Same	Same with limited scope	Same with more limited scope	Greatly reduced
Community ties	Same	Same	More limited trust with outside firms	Impaired due to inherent distrust of outside firms	Similar but historical association with UNC and UNC Law reduced
Ability to conduct and train students in research, advocacy and litigation	Same	Same and unaffected by proposed policy	Research and advocacy unaffected; litigation ability compromised and dependent on outside firms participating	Research unaffected; advocacy diminished and litigation ability compromised and completely dependent on outside firms	Ability to conduct research, advocacy and litigation preserved and not affected by political concerns
Collaboration with other parts of UNC	Same	Same	Same	Limited in scope	At risk as historical tie with UNC severed
Experiential Learning consistent with ABA 303	Same	Same and possibly expanded	Same for research and advocacy, limited for litigation due to dependence on outside firms.	Same for research; limited for advocacy and litigation due to dependence on outside firms.	Same if CCR can meet ABA 303 for experiential learning
Private funding	Same	Similar	Similar or slightly compromised due to more limited scope	More compromised due to limited scope	Possibly compromised if relationship to UNC Law important to donors
Suing state entities	Same	Same	Same	Limited to referrals	Not an issue
Training lawyers to be civil rights attorneys	Same	Same	Dependent on outside firms involving students	Limited and dependent on outside firms for practical skills training	Dependent on CCR to take UNC students in field placements
Accreditation for experiential learning and pro bono requirements	Same	Same	Similar only if outside firms involve students	Potentially undermines compliance with ABA Standards	Potential impairment as association with UNC Law eliminated
Ability to vindicate civil rights of clients	Same	Scope of cases likely limited	Limited because dependent on involvement of outside firms	Impaired	Potential impairment as association with UNC Law eliminated