
OFFICE OF UNIVERSITY COUNSEL
Temple University - Of The Commonwealth System of Higher Education

OUTSIDE COUNSEL
GUIDELINES

The Office of University Counsel has prepared these Guidelines for attorneys who seek to or are engaged to represent Temple University - Of The Commonwealth System of Higher Education or its subsidiaries, agents or employees.

These Guidelines describe the role of outside counsel and their expected interaction with the Office of University Counsel. The goal is to have a smooth, cooperative and trusting relationship that will ensure that the University's interests are well-served.

Unless expressly modified in writing, these Guidelines are an integral part of and govern the representation relationship. Any questions relating to interpretation of these Guidelines should be directed to University Counsel. Constructive suggestions are always welcome.

THE OFFICE OF UNIVERSITY COUNSEL

The Office of University Counsel provides legal support to Temple University and its subsidiaries.

University Counsel, or his or her designee, refers University legal matters to outside attorneys, and the Office of University Counsel, through its attorneys and paralegals, actively manages matters referred to outside counsel. Outside counsel may not accept any assignments unless retained by the Office of University Counsel. If outside counsel is contacted by any University representative or employee, other than University Counsel, to request the provision of legal services or advice on any matter not previously approved by University Counsel, then

outside counsel must notify University Counsel of the request/new matter and obtain authorization before performing any services in connection with the request/new matter. Services performed by outside counsel prior to receiving such authorization may not be billed and will not be paid.

If any issue arises during the course of representation by outside counsel that touches upon substantive policies of Temple University, involves potentially large exposures, or commits the University's resources in a substantial way, outside counsel must consult with the responsible person in the Office of University Counsel and allow timely opportunity for meaningful review and action by the University.

OUTSIDE COUNSEL

A. Role

The Office of University Counsel maintains a close working relationship with outside counsel, who are considered an extension of the in-house staff. The goal is to provide Temple University with timely, efficient and cost-effective legal services. Accordingly, the resources of the Office of University Counsel and outside counsel should be combined and utilized in the most effective and economical manner at all times. The Office of University Counsel may participate in or reserve partial or complete control of any matter referred to outside counsel. Thus, a matter may be staffed jointly with University Counsel attorneys and paralegals and attorneys and paralegals from one or more outside counsel.

The Office of University Counsel expects and requires the highest degree of professional skills and competence, conduct and ethical standards of all outside counsel representing Temple University at all times.

Outside counsel are expected to use the Office of University Counsel as their primary

contact with Temple University.

Finally, University Counsel reserves the right to discontinue the representation by outside counsel on any matter at any time for any or no reason.

B. Evaluation of Potential Outside Counsel

The Office of University Counsel considers many factors in exercising its discretion to retain outside counsel to perform legal services, including but not limited to:

- a) The reputation of counsel in the legal community;
- b) The experience of counsel in the type of legal work involved;
- c) The capacity of counsel to handle the anticipated volume of work in a timely and cost-effective manner;
- d) Whether counsel's proposed rates and charges are reasonable and reflect discounts from the rates charged to other significant clients;
- e) Counsel's willingness to handle matters on flat, fixed, contingent or other innovative bases;
- f) Counsel's other current or prospective representations that may present actual or potential conflicts of interest;
- g) The extent to which outside counsel subscribes to, reflects or promotes the University's mission and values; and
- h) The expectation that the Office of University Counsel will be able to work in close cooperation with outside counsel.

In addition, outside counsel is expected to provide University Counsel, upon request, with the following information regarding itself and the attorneys and paralegals that outside counsel offers to provide services to the University:

- a) state licenses;
- b) particular area(s) of expertise;
- c) years in practice;
- d) years associated with counsel;
- e) status with counsel (partner, of counsel, associate, paralegal, etc.);
- f) standard billable rates;
- g) proposed discounted rate to the University (if applicable);
- h) lowest billable rate for firm's most important clients and its public sector and non-profit clients; and
- i) malpractice insurance carrier, deductible, extent and duration of coverage, and any exclusions or limitations that may relate to the representation.

Outside counsel also is expected to timely notify University Counsel of existing or potential conflicts of interest throughout the course of the representation.

C. Conflicts of Interest

The University views any matter or transaction involving itself or any of its affiliates as raising a potential, if not actual, conflict of interest when outside counsel seeks to represent another party in any such matter. Waivers of any conflicts must be sought promptly through the Office of University Counsel.

D. Expectations Regarding Rate Structure and Expenses

1. General

Temple University, a state-related institution of higher education and an instrumentality of the Commonwealth of Pennsylvania, expects to receive legal representation at rates that are substantial discounts from outside counsel's usual rate structures.

The University will not pay for the educational or developmental costs of outside counsel becoming familiar with the law pertinent to the University. Outside counsel therefore must agree to absorb the cost of developing an understanding of issues required to represent the University. In addition, the University will not pay for extensive research on routine legal matters or issues that should be known by experienced counsel. Accordingly, all substantial research projects (more than four hours of attorney time or more than 30 minutes of on-hire computer charges) undertaken during the course of representation require the prior approval of University Counsel. Fees and expenses (including Westlaw, Lexis or other on-line computer charges) for unauthorized research may not be billed and will not be paid.

2. Billing Procedures - Fees for Services

a) When billing on an hourly basis, billing increments of 0.1 hours (six minutes) are the minimum.

b) Invoices should be submitted monthly, unless otherwise agreed.

c) Each invoice should contain a detailed itemization of each service provided with the specific date of service, the identity of the authorized person who provided the service, the amount of time spent in providing the service, a description of the work performed, and the amount charged for the service.

d) University Counsel must approve each attorney assigned to work on University matters. No more than two (2) attorneys should work on a particular matter without the prior approval of University Counsel.

e) Unless prior approval has been given, the Office of University Counsel will not pay for more than one representative of outside counsel at meetings, court appearances, hearings, depositions, etc.

f) If intra-office conferences of outside counsel are required for effective representation (other than a brief conference to allocate work responsibilities), the detailed description in the billing statement must list all persons present and the subject matter. Ordinarily, unless specific prior approval has been given by the representative of the Office of University Counsel, billing for extended intra-office conferences is expected to be limited to a single charge for the time spent by the conference participant with the highest authorized billing rate.

g) Attorney travel time outside the metropolitan area in which outside counsel is located should be charged at no more than 50% of the hourly rate charged to the University, whenever charges are based on billable hours. If legal services are billed for services or work performed during travel time, travel time billing should be reduced accordingly.

h) Time devoted to preparation of bills, including accompanying cover letters, should not be included.

i) Time devoted by an attorney to become familiar with a file due to a prior attorney leaving outside counsel's firm may not be billed to the University.

3. Billing Procedures - Expenses

All costs and disbursements must be itemized and reflect actual out-of-pocket costs. Costs listed as "miscellaneous" will not be paid, except in de minimus amounts.

Without prior approval, the following out-of-pocket expenses are not acceptable and will not be paid:

a) standard minimum charges or "flat charges" (for example, "opening file," "closing file," "organization of file");

b) secretarial or clerical overtime (unless occasioned by an emergent situation

created by the University);

- c) charges for word processing, internet access or computer time (except actual charges for on-line computer research authorized under these Guidelines);
- d) markups or administrative surcharges on supplies or services procured from third parties;
- e) charges for photocopying in excess of .10 per page (bills must list the number of pages copied);
- f) charges occasioned by the distribution of copies among members of the outside counsel team;
- g) volume copying not done by outside vendors;
- h) charges for faxes except for long distance telephone charges actually levied for outgoing faxes;
- i) temporary support personnel; and
- j) courier service charges.

Outside counsel are expected to have email capability, and to use the least costly method of communication appropriate to the circumstances.

Prior to the retention of any expert or consultant, the curriculum vitae and fee schedule of the expert or consultant must be submitted to the Office of University Counsel and approval obtained. Bills from expert witnesses and consultants may be included with the statement of outside counsel, or sent separately to the Office of University Counsel. All such bills should include a detailed account of the services provided and the person's or firm's tax identification number.

All hotel arrangements for persons traveling to Philadelphia, for which hotel expense

reimbursement will be sought, should be made through the Office of University Counsel. The University will reimburse required air travel at tourist or economy class rates.

4. Billing Statements

Billing statements that do not conform with these Guidelines and require adjustments to the amounts owed in order to conform to these Guidelines will be returned to outside counsel to be rescinded and reissued (in order to avoid unapproved balances being carried forward).

E. General Requirements for All Representations

Following an initial investigation at the beginning of each assignment, outside counsel is expected to prepare a written case/matter plan and budget that outlines the objectives to be achieved, one or more course of action to achieve those objectives, and a detailed estimate of the length of time and expense of the assignment.

As a general rule and depending on the assignment, a University Counsel attorney and/or paralegal will:

- a) help outside counsel define the objectives to be achieved;
- b) assist in outlining the respective duties and responsibilities of outside counsel and University Counsel;
- c) review the case/matter plan and budget and monitor progress throughout the representation;
- d) approve any changes to the objectives, case/matter plan and budget;
- e) keep University Counsel informed of the status of the matter and significant developments; and
- f) coordinate contacts between outside counsel and other University personnel.

The Office of University Counsel evaluates the performance of outside counsel on an ongoing basis, including: quality of services provided, responsiveness to University personnel and University Counsel representatives, efficiency and effective management of the matter, results obtained, and compliance with policies and procedures of the Office of University Counsel.

F. Litigation Philosophy and Handling

The University's overall objective is to conduct litigation in an expeditious and cost-effective manner to obtain the best and earliest resolution at the lowest practicable cost. When appropriate and in consultation with the Office of University Counsel, motions to dismiss or for summary judgment should be employed to narrow, simplify and dispose of as many issues in the dispute as possible. Because the University may often suffer the cost of delays in resolution of a matter, University Counsel requires an assertive, forthright approach that identifies issues and risks as early as possible and generally avoids delays.

1. Case Plan

Promptly upon commencement of a litigation assignment, outside counsel will prepare a case plan and a detailed litigation budget that includes the objective of the representation, the strategies proposed for the successful pursuit and conclusion of the litigation, a schedule and budget for various phases (e.g., investigation, answer and other pleadings, alternative dispute resolution, discovery, dispositive motions, pretrial requirements, expert witnesses, trial preparation and trial) of a case, estimates of potential exposures, and provide an opinion as to probability of success. The plan should emphasize opportunities and strategies for an early resolution. Case plans must be approved by a University Counsel attorney.

The scope and detail of a case plan should be commensurate with the significance of the

matter. A standard case plan may be developed for repetitive, routine cases, subject to approval by a University Counsel attorney.

2. Reporting

Outside counsel is expected to report significant developments and important case information (such as that set forth in a case plan) to the Office of University Counsel and elsewhere as directed by University Counsel.

3. Discovery

Because of the nature of the University culture and administrative requirements, outside counsel must immediately forward to the responsible University Counsel attorney or paralegal any discovery materials or subpoenas directed to the University or its employees. The responsible University Counsel attorney or paralegal will coordinate a response with outside counsel.

The Office of University Counsel reserves the right to designate a court reporting service for all depositions conducted by outside counsel, as well as a copying service to be used for volume copying.

4. Review by University Counsel

Final drafts of all pleadings, discovery, motions, briefs and other substantive matters to be filed with a court or served upon opposing parties should always be submitted to the responsible University Counsel attorney, sufficiently in advance of any response or filing deadlines, to allow adequate opportunity for review and approval. Unless cleared with the responsible University Counsel attorney, outside counsel should not circulate copies of correspondence, pleadings or other filings to any University personnel outside the Office of University Counsel.

5. Settlement

The settlement possibilities of each litigation matter should be identified and considered early in the representation and at each stage thereafter. Outside counsel is expected to evaluate the potential exposure and likelihood of success with the responsible University Counsel attorney and University risk management and insurance representatives on an ongoing basis. If warranted, cases should be settled as early as practicable under the circumstances. No settlement discussions with the court, a settlement master or opposing counsel should take place without the express prior approval of the Office of University Counsel. Without express prior approval, outside counsel is not authorized to make binding offers of settlement.

6. Publicity

Outside counsel should consult with University Counsel before commenting publicly on any aspect of a matter under representation.

SUMMARY

As outlined above, these Guidelines are intended to provide the basis for a mutually beneficial relationship between outside counsel and the Office of University Counsel. Outside counsel are strongly encouraged to suggest alternative or supplemental practices that will accomplish that objective.