

Legal Services Policy

Policy 102.1

1 Purpose

1.1 The Office of General Counsel (“OGC”) is responsible for all legal matters arising from or pertaining to the operations of Appalachian State University. To ensure quality and proper representation of the University, as well as to control costs and ensure appropriate coordination of resources, this policy shall provide the framework for all University-required legal services.

2 Scope

2.1 This policy applies to all University employees including faculty, staff, and student workers.

3 Definitions

3.1 Litigation Hold

A process by which relevant documents or data may be produced, preserved, maintained, and protected from destruction, modification, or alteration in the course of preparing for litigation.

3.2 Service of Process

Receipt of a lawsuit, subpoena, court order, deposition notice, search warrant or similar legal documents, whether delivered by hand, U.S. Mail, or other method of delivery.

3.3 University Legal Services

Attorney or paralegal services required by the University including, but not limited to, the use of any outside counsel or external investigative compliance consultants.

4 Policy Statements

4.1 Legal Services and OGC

4.1.1 OGC is the only authorized provider of University Legal Services for any and all official business of the University. Consistent with both the N.C. State Bar Rules of Professional Conduct and the American Bar Association Rules of Professional Conduct, the attorneys in OGC represent the University acting through its duly authorized officials and employees who are performing official business of the University.

4.1.2 In providing University Legal Services, OGC attorneys exercise their professional judgment to proactively manage legal affairs and solve legal problems to help the University achieve its overall educational mission. To this end, emphasis is placed on early involvement of OGC in emerging issues.

4.1.3 Only attorneys employed in or through OGC may represent the University on legal matters. University employees with legal degrees who work outside of OGC (e.g., teaching faculty, compliance administrators, etc.) are not authorized to provide legal advice to or on behalf of the University. Notwithstanding anything herein to the contrary, OGC does authorize the provision of legal services to eligible students by the attorney(s) employed by the Appalachian Student Legal Clinic so long as such services do not include i) advising students on matters that are directly averse to the University (e.g., legal claims or complaints against the University, University employees or agents, or University-affiliated entities, etc.); or ii) advising students on University disciplinary matters.

4.1.4 OGC’s services are available to all University units and departments for matters of official University business. All requests for legal services related to any official business of the University shall be made to the OGC and a member of OGC will promptly respond to such requests.

4.1.5 OGC’s services are not available to: employees or officials acting outside of their official capacity and not engaging in University business; to students.; or to student organizations. OGC cannot provide legal advice to University employees on personal matters or provide advice to students or student organizations.

4.1.6 Any official inquiry or correspondence from an attorney representing a party other than the University in any matter that involves the University or its employees in their official capacities must be referred to OGC immediately. For clarification, this does not include public record requests, general information requests, or general questions regarding University operations.

4.1.7 When considering revisions to University policies, all University units are encouraged to seek early participation and guidance from OGC to ensure that any revisions comport with applicable state or federal law or regulation or UNC System policy or regulation. However, general requests to consider revisions to a policy should be directed to the appropriate University unit responsible for enforcement of the policy.

4.1.8 When it is determined by the OGC to be necessary to engage with private outside counsel, only the OGC is authorized to retain such outside counsel on behalf of the University. Any engagement with private counsel for the University must be authorized in advance by the General Counsel and the Vice Chancellor for Finance and Operations, in accordance with the requirements of applicable UNC System policy.

4.1.9 The General Counsel is responsible for supervising and exercising appropriate managerial oversight over the work of outside counsel in the provision of such legal services, including approving all invoices for the payment of outside counsel for legal services provided to the University or its employees.

4.1.9.1 Once appointed, outside counsel must submit invoices, on a monthly basis, for services and expenses directly to the General Counsel for approval. Invoices must contain detailed information about the services provided verifying the hours worked and work performed.

4.1.9.2 Invoices will be monitored by the OGC to confirm that budgets are not exceeded, tasks are appropriate and hourly rates are accurate in accordance with the outside counsel agreement in place with the firm.

4.1.10 OGC must approve in advance any arrangements with external investigative or compliance consultants to provide investigative or compliance services or advice to the University or its employees. The General Counsel is responsible for supervising and exercising appropriate managerial oversight over the work of such external consultants in the provision of investigative or compliance services, including approving all invoices for the payment of external consultants for services provided to the University or its employees.

4.2 Service of Process, Subpoenas, Court Orders, Depositions and Search Warrants

4.2.1 Only the Chancellor or the General Counsel is authorized to receive Service of Process on behalf of the University. No other employee of the University is authorized to receive Service of Process. A copy of any Services of Process must be promptly forwarded to OGC.

4.2.2 When any University employee becomes aware of a lawsuit, subpoena, deposition notice or search warrant directed to the University or any of its units, OGC must be notified immediately and provided all available information regarding the underlying matter. No attempt should be made by an employee to respond to the document or to discuss the matter without first informing and seeking guidance from OGC.

4.2.3 If a University employee is approached about testifying at a deposition or in a court proceeding related to any official business of the University, the employee must contact OGC immediately.

4.3 Litigation

4.3.1 OGC must be notified promptly of any reasonably likely or impending legal actions. OGC will coordinate with the North Carolina Attorney General's Office to provide representation on all litigation matters and will manage outside counsel in matters where outside counsel is employed by the University.

4.3.2 No lawsuit or other legal proceeding may be filed on behalf of the University without written approval of OGC and the North Carolina Attorney General's Office.

4.3.3 Whenever a potential employment action appears reasonably likely to result in litigation, OGC should be consulted prior to taking the contemplated employment action. This includes, but is not limited to, matters involving denial of faculty promotion and tenure denial of faculty reappointment; demotion, suspension, or termination; and claims of discrimination, harassment, or retaliation under federal or state law.

4.3.4 All University employees must consult with OGC and University Communications before making any public statement or comment concerning any litigation (potential or actual) involving the University.

4.4 Litigation Holds

4.4.1 When the University receives notice of potential or actual litigation in a matter, the University is required by law to

preserve, and produce, if appropriate, any evidence that may be in its possession, custody, or control that is relevant to the litigation matter. To comply with this obligation, as soon as practicable after receiving such notice, OGC will institute a Litigation Hold by contacting any and all University employees that are the potential custodian of any relevant evidence and requesting that they immediately produce, preserve, maintain, and protect from destruction, modification, or alteration any documents, electronic data, and any other relevant data they have that may be related to the matter.

4.4.2 University employees must comply with all such Litigation Holds and confirm compliance by returning the Litigation Hold form provided to them by OGC.

4.5 Settlements/Payments on behalf of the University

4.5.1 No University employee, agent, representative or outside counsel representing the University is authorized to mediate, settle, agree to settle, or make any unauthorized payment in an attempt to settle any action, matter, claim or dispute without prior approval of the Chancellor, as set forth herein. Outside counsel representing the University may make recommendations to the OGC for settlement in accordance with applicable University and UNC System Office policies and state law.

4.5.2 The University, through the Chancellor, is authorized in accordance with UNC System Office policy and state law to settle potential or pending litigation. All settlements must be approved in advance by the Chancellor in consultation with the OGC. Some settlements may require the additional approval of the North Carolina Attorney General's Office and/or the President of the UNC System.

4.5.3 All settlements approved in accordance with this policy shall be reported to the Board of Governors through the Legal Affairs Division of the UNC System Office.

5 Additional References

UNC Policy Manual, Policy 200.5, Policy on Legal Affairs; Initiating & Settling Potential and Pending Litigation

UNC Policy Manual, Policy 200.5[R], Regulation on Engagement of Private Counsel and Designation of Litigation Counsel

N.C.G.S. § 116-11(13b)

N.C.G.S. § 114-2.4