

**THE PENNSYLVANIA STATE UNIVERSITY
OFFICE OF GENERAL COUNSEL**

OUTSIDE COUNSEL GUIDELINES

Purpose and Goals

The Vice President and General Counsel of The Pennsylvania State University (University or Penn State), assisted by attorneys in the Office of General Counsel (OGC) is responsible for all legal matters pertaining to the University and its affiliates and subsidiaries. In the case of complex, specialized or large legal matters, OGC often engages outside legal counsel to assist in protecting the interests of the University. The purpose of these Outside Counsel Guidelines (Guidelines) is to set forth the general principles governing the retention of outside counsel by the University. Expressed most broadly, OGC expects a cooperative and collaborative relationship with outside counsel with the goal of serving the University's mission with ethical and excellent legal services in the most effective and cost-efficient manner possible. These Guidelines do not apply to Penn State Health and its affiliates and subsidiaries, which have separate guidelines for engaging with outside counsel. OGC works in partnership with Penn State's Office of Risk Management on matters, in particular when insurance coverage may be available.

Retention of Outside Counsel

Only OGC may retain outside counsel on behalf of the University. Outside counsel shall not accept retention or assignments from other University employees or representatives without written approval from OGC. OGC must approve retention of outside counsel in each such instance for a variety of reasons, including but not limited to the importance of assuring consistent application of laws and policies throughout the University, avoiding redundant research, facilitating the communication of facts and information important to the legal matter, and assuring a comprehensive approach to situations where legal advice may only be part of a larger picture for the University.

Outside counsel shall submit an engagement letter (or a scope/statement of work if a master engagement letter is in place) with the University each time the law firm is engaged to provide legal services to the University. Any engagement letter or master engagement letter must identify a relationship partner for all University matters and any follow-up engagement letter or scope/statement of work, if applicable must sufficiently describe (i) the matter/scope of work, (ii) the primary attorney for the matter, (iii) any other attorneys and (iv) any other law firm employees and/or contractors who will be working on the matter and their rates, and, if applicable, cost estimates for the matter or each phase of the matter. The engagement letter also shall confirm that the law firm has no actual or potential conflicts of interest in representing the University.

The University is a not-for-profit entity and a steward of tuition dollars and expects consideration for the same in the form of at least a 10% discount and careful attention to fees and costs billed to the University.

Matters Covered by University Insurance

Where outside counsel is notified by OGC that a matter is or may potentially be covered by insurance, outside counsel must comply with the insurer's applicable litigation guidelines. Where there is a conflict between these Guidelines and the applicable litigation guidelines, outside counsel shall comply with whichever provides the greatest benefit to the University or requires the higher standard (and which does not directly conflict with any binding contractual obligations between outside counsel and the insurer to ensure that the University's insurance coverage for the matter in question is not put in jeopardy). Penn State's Office of Risk Management should be consulted at the onset of any matter potentially covered by insurance.

Alternative Fee Arrangements

OGC looks favorably on alternatives to traditional hourly billing, such as fixed-fee and per-task arrangements, reduced hourly rates with incentive bonuses, value billing and negotiated or blended rates and encourages outside counsel to propose such alternative arrangements. In matters (potentially) covered by insurance, Penn State's Office of Risk Management should be consulted to ensure that any proposed alternative fee arrangement is consistent with insurer requirements.

Conflicts

Outside counsel shall perform a conflict check at the outset of a matter and promptly notify the University of any representation adverse to the University or any entity related to or affiliated with the University, such related or affiliated entities being set forth on Exhibit A hereto, or other actual potential conflict. As the representation continues, the University expects to be promptly and fully advised of any actual or potential conflict of interest. The University will not agree to any blanket, blind or prospective waiver of future conflicts. Rather, all requests for a waiver of a conflict must be specific, in writing and directed to OGC, or the responsible OGC attorney, as soon as possible. In no case will a waiver be granted for outside counsel to be in an adversarial position to the University in any litigated or contested matter before any court, administrative agency or alternative dispute resolution body.

Staffing

Outside counsel staffing decisions regarding the attorneys who will work on a University matter, including both the overall staffing structure and the specific individuals involved, should be discussed in advance with, and approved by, OGC. OGC expects the lead attorney retained to be directly responsible for the entire assignment and be able to answer any questions about the case without the need for less experienced attorneys. The day-to-day involvement of that lead attorney,

however, should be appropriate to the magnitude of the matter and the efficiency required for a timely, cost-effective, quality work product. Any additional attorneys on a matter must be approved by OGC. In general, the University's preference is for the minimum number of attorneys necessary attend calls and/or meetings and/or routine mediations. If attorneys attend for purposes of training, the University expects that their time will not be billed.

When outside counsel is engaged by OGC on a regular basis or on several matters, OGC expects the law firm to provide a mutually agreed upon relationship partner, who, without charge to the University, will be knowledgeable and coordinate the representation of the University by the law firm.

Whenever possible, outside counsel should assign work to the most junior attorney (i.e., the person with the lowest billable rate) with the appropriate level of experience, with as much work pushed down to the non-billable level as possible.

No more than one billing attorney may attend an event (phone call, meeting, conference, hearing, deposition, mediation, etc.) unless approved in advance by OGC or unless the matter is covered by an alternative fee agreement.

Rate Adjustments

OGC must approve all billing rates, new or revised, before outside counsel may apply such rates to invoices. Regardless of the duration of the representation, outside counsel invoices may not reflect any new or increased billing rates until OGC has approved the rates.

Billing

Each University matter assigned to outside counsel must be separately invoiced/billed to the University. Multiple matters (i.e., two or more matters) may not appear on the same invoice and will be returned unpaid to outside counsel. Each matter description for an invoice shall bear the appropriate University matter identifying code provided to outside counsel by OGC. All time entries must sufficiently describe the work or services performed. The University will not pay for administrative time, ramp-up time, orientation, summer associates and other costs that should be absorbed by outside counsel. All invoices, including copies of invoices sent to insurance companies directly for payment, must be in electronic form and sent to psuogcinvoices@psu.edu. No time, disbursements or costs older than 90 days will be billed to, or otherwise paid by, the University.

Expenses and Disbursements

The University will reimburse outside counsel for necessary, reasonable, documented and itemized expenses, out-of-pocket disbursements and costs incurred on behalf of the University. The University will not pay for items which should normally be absorbed by outside counsel, including, without limitation: (i) preparation of budgets, invoices or responses to billing questions; (ii) investigating potential conflicts of interest; (iii) training or education of personnel; (iv) basic research on matters presumed to be within outside counsel's expertise; (v) routine responses to requests from the University's external auditors; (vi) work that is clerical or secretarial in nature, regardless the individual performing the task; and (vii) basic support services generally considered to be part of outside counsel's overhead such as word processing and calendaring systems and databases (i.e., Westlaw or Lexis/Nexis).

Travel

OGC must consent to travel on behalf of the University. Where such consent has been granted, the University will pay reasonable costs for travel and lodging. The University will not reimburse outside counsel for any expenses for alcohol. Travelers should request airline reservations as far in advance as possible to take advantage of the most inexpensive flights. Travelers are expected to use the lowest logical airfares whenever possible. The University will not pay billable hours for time in transit unless travel time is devoted to actual work for the University. Likewise, time spent away from home or the office that is not spent performing legal services for the University will not be billable.

Third Party Services

Outside counsel has no authority to engage third parties without the prior consent of OGC. If outside counsel wishes to engage local counsel, special counsel, consultants, experts, electronic discovery firms, etc., it must consult with and receive permission from OGC. The cost of such third-party services shall not be marked up. Whether the University is billed directly or whether the costs are passed through, the University will pay only the direct costs incurred by outside counsel to procure such services.

Belonging

Please see the University's statement on Belonging at <https://www.psu.edu/about/belonging>.

Communications

In the vast majority of matters, outside counsel shall only communicate with OGC when communicating with the University. Outside counsel may communicate directly with employees, including trustees and officers, only when OGC has specifically granted permission, and, unless otherwise instructed by OGC, should copy the cognizant OGC attorney on all such

communications. Should outside counsel not receive such permission, it shall not contact University employees.

The University does not employ outside counsel to communicate on non-legal matters with third parties on its behalf. The University has its own employees dedicated to communicating with the media or government. Unless explicitly agreed upon with OGC, outside counsel is not authorized to speak on behalf of the University regarding non-legal matters.

Scheduling and Keeping OGC Apprised

The University is a large, complex and multi-faceted organization with strict guidelines regarding signature authority, documents at various University locations and a potentially large number of document custodians. In light of this, outside counsel shall provide OGC a schedule of all established deadlines (e.g., responses to complaints, briefing schedules, status conferences, etc.) , to the extent known. As litigation progresses, outside counsel shall promptly revise and update the schedule / timeline as the court establishes other deadlines (including, but not limited to, discovery deadlines, mediation/settlement conferences, summary judgment motions, etc.) over the course of the litigation. Outside counsel should forward all discovery requests to the responsible OGC attorney immediately upon receipt, with a clear indication of the response deadline. Additionally, outside counsel should immediately forward any requests for verifications or declarations with sufficient time for OGC to obtain the proper and necessary signatures in light of the University's size and complexity and its strict signature guidelines.

Outside counsel should provide OGC with regular, substantive updates containing meaningful information as soon as practicable and with sufficient time for OGC and the University to have meaningful input. Significant developments, all court orders, and/or bad news should be communicated immediately.

Outside counsel must provide the responsible OGC attorney with drafts of all pleadings, motions, briefs, discovery responses, and substantive correspondence to be filed or served by OGC sufficiently far in advance of their being filed or served to allow the OGC team to comment if they wish.

All of the foregoing also shall apply in those instances in which OGC is not outside counsel's primary contact.

Cybersecurity and Data Privacy

Given that the University will be providing outside counsel with confidential, sensitive, and/or privileged information with respect to the University, its Trustees, students or employees (University Confidential Information) in connection with an engagement, the University expects outside counsel to have robust cybersecurity and data privacy procedures and technical and physical safeguards in place to safeguard such University information, and to have a specifically

designated individual to serve as the law firm's data privacy officer. From time to time, the University may request that outside counsel provide information about its data security controls and practices. If outside counsel's measures do not meet the University's expectations, the University reserves the right to request additional measures be put in place to protect University Confidential Information in outside counsel's custody. In the event that outside counsel becomes aware of or has a reasonable suspicion that a cybersecurity or privacy incident or breach has occurred (a Security Incident), outside counsel shall notify OGC and the University as soon as is reasonably practicable and in any event within 72 hours of the Security Incident if such Security Incident involves University Confidential Information and shall inform OGC of all reasonable steps that outside counsel is taking to investigate the Security Incident and to mitigate its impact. Outside counsel will reasonably cooperate with the University in any University and/or law enforcement investigations or inquiries into a Security Incident and shall be responsible for all reasonable costs or expenses incurred by University in connection therewith. The foregoing cybersecurity and data privacy terms shall apply to all of outside counsel's subcontractors and outside counsel shall be responsible to the University for any such subcontractor's compliance with these terms.

Third-Party Data Hosting

To the extent a matter for which outside counsel has been retained by OGC involves the transfer of University data to outside counsel that may require the retention of a third-party data hosting company, outside counsel must first discuss the retention of a third-party data hosting company with OGC. The University works with a preferred third-party data hosting vendor, and it is the University's preference to use that vendor, unless outside counsel has a compelling reason to deviate from this general rule. Through the use of the University's preferred data hosting company, the University has realized cost savings, can more easily ensure the security of the data at issue, and knows where its data is located at all times for business continuity purposes. Moreover, in particularly large, complex matters that may involve the retention of multiple outside counsel, having the University's data hosted by its preferred vendor allows all outside counsel access to the same set of University data at the same time.

Use of the University Name

Outside counsel shall not hold out the University as a representative client (i.e., for marketing or advertising purposes; in publications or promotional materials, on firm website and attorney biographies; in seminars, speeches or CLE materials; in the media, etc.) without advance written permission from OGC.

Ownership of Attorney Work Product

All work product prepared by outside counsel for which the University is billed shall be the solely owned property of the University. This work product may not be used by outside counsel for any purpose other than the University's specific business and legal needs, nor shall such work product

be disclosed by outside counsel to others without OGC's prior written consent, except in the normal course of outside counsel's representation of the University in the particular matter. Outside counsel agrees that the University owns all rights, including copyrights and any other intellectual property, to materials prepared by the University or by outside counsel on behalf of the University.

Insurance

The University requires that outside counsel maintain professional malpractice insurance for attorneys and support staff handling University matters as required by law, court rule, or professional licensing obligations in the state(s) where outside counsel is licensed.

Exhibit A

Entities Related to, or Affiliated with the University

Corporation for Penn State
Ben Franklin Technology Center of Central and Northern PA
Pennsylvania College of Technology
Penn State Research Foundation
Nittany Insurance Company
Penn State Recycling Markets Center
Research Park Management Corporation
Research Park Hotel Corporation
The Pennsylvania State University Philanthropic Fund
Nittany Lion Fund, LLC