

**OFFICE OF GENERAL COUNSEL
NORTH CAROLINA STATE UNIVERSITY**

GUIDELINES FOR OUTSIDE COUNSEL

I. INTRODUCTION

These guidelines apply to the retention of outside counsel by the Office of General Counsel (“OGC”) on behalf of North Carolina State University (“NC State”). As a public non-profit educational institution, NC State is responsible for ensuring that legal fees and hours billed are both reasonable and necessary to achieve the best practical result. To that end, OGC will assist your firm in any way appropriate for University counsel while relying on your firm’s expertise with regard to the matter.

Law firms retained by NC State must acknowledge receipt of and agree to follow these Guidelines unless specific modifications have been agreed to by the firm and OGC prior to performing services. NC State retains outside counsel only through OGC pursuant to a retainer letter which OGC will provide to your firm. A sample of the standard retainer letter is attached as Exhibit A. Any questions or concerns should be addressed to the General Counsel prior to entering into a retainer agreement.

II. GENERAL PROVISIONS

Communication. OGC is responsible for all NC State legal affairs. Typically, each matter is assigned to a specific attorney (“in-house counsel”) with subject matter expertise within OGC. Unless otherwise advised, all communications between outside counsel and NC State should be routed through in-house counsel. OGC expects timely updates in order to participate in significant decisions regarding legal strategy. Where appropriate, such as routine matters related to patent prosecution and maintenance handled by the Office of Technology Transfer, OGC may approve direct communication with NC State personnel, representatives, or trustees.

Deadlines. In-house counsel must be provided sufficient time to review drafts of all significant documents, including contracts, pleadings, briefs, correspondence, and other documents that will be provided to third parties on NC State’s behalf.

Confidentiality. NC State expects outside counsel to protect the attorney-client privilege and the work product doctrine. Where applicable, outside counsel must comply with the Family Educational Rights and Privacy Act (FERPA), the North Carolina Personnel Records Act, and Health Insurance Portability and Accountability Act (HIPAA).

Conflicts of Interest. Outside counsel will conduct conflicts checks both prior to and periodically during representation, and will promptly notify OGC of identified conflicts. OGC must resolve any potential or actual conflict to its satisfaction before representation may commence or continue. Waivers may be granted by letter agreement on a case by case basis.

Files and Records. All files and records of any kind created or maintained by outside counsel in its representation of NC State are the property of NC State and, upon request, shall be promptly transferred to NC State or its designee. Copies of all correspondence and pleadings must be sent to in-house counsel at the time of sending or filing.

III. STAFFING

NC State will expect the firm to name lead counsel primarily responsible for handling NC State's matter. Generally, lead counsel should be a partner in the firm. Lead counsel should review all invoices submitted to NC State, communicate on a timely basis with in-house counsel, and be personally and directly involved in the representation. Should lead counsel require assistance, he should assign work in a manner that ensures the most efficient and productive use of legal expertise. The retainer letter should list the attorneys expected to be involved and, if necessary, lead counsel will contact this office in advance for approval to incur legal fees for more than five hours time if non-listed attorneys are to be used on the matter.

NC State acknowledges that circumstances occasionally require consulting among firm principals, but lead counsel should do so in a manner that minimizes legal expenses charged to NC State. NC State expects the firm to use paralegals when a task does not require a law degree. Associates should not be used routinely for services, such as legal research, that can be performed by law clerks, and paralegals or legal assistants should not be used for work that can be performed by secretaries or messengers.

Retention of experts and other consultants requires advance approval from OGC. Unless agreed otherwise, experts and consultants shall be retained, supervised, and paid by the firm. Fees should be included on the firm's invoice to NC State. This procedure is designed to protect privileges and to ensure that a full accounting is available if costs are reimbursable.

NC State expects outside counsel to actively promote diversity in the workplace by recruiting, retaining and promoting accomplished women and minority lawyers. In selecting outside counsel, we will consider the firm's commitment and progress to equal employment opportunity.

IV. BILLING

Budgeting. NC State must submit a budget to the state Attorney General in order to obtain approval to hire outside counsel. Consequently, outside counsel will prepare an initial budget estimate prior to OGC's budget submittal. Litigation budgets should use standard American Bar Association and American Corporate Counsel Association task codes, as modified from time to time, with a breakdown of the projected hours and costs assigned to each task. Budgets for matters other than litigation should contain the scope of work, broken out by task where possible, with the projected total allocated to each task. When budgets must be revised, revision approval must be requested prior to exceeding the budget.

Rates. The budget and all subsequent invoices shall provide a schedule showing the billing rate for each individual assigned to the matter. The scheduled billing rates will remain in effect for

the duration of the engagement unless in-house counsel provides prior written agreement to the contrary. In no event shall billing rates be increased more than once in any twelve month period. NC State expects the firm to consider NC State's non-profit status when establishing rates to be charged.

NC State expects outside counsel to consider and encourages outside counsel to propose, in appropriate cases, alternatives to conventional hourly-rate fees. For example, patent counsel may propose a fixed fee for filing provisional patent applications. Blended rates may be used in other matters. Other hybrid arrangements, risk-sharing and contingent fees may be appropriate and will be considered by NC State either at the inception of the engagement or later.

Services. NC State will not pay for the following services:

- clerical work, including but not limited to filing, preparation of invoices, the maintenance of internal databases, bate stamping, and scheduling of meetings;
- client development activities;
- conflict review;
- summer associate time;
- "learning time" required by the substitution of new attorneys or paralegals working on the matter, or basic research on topics considered to be within the firm's scope of expertise;
- Legal research exceeding three hours without advance approval;
- Travel time, unless counsel also works on NC State business;
- More than one attorney attending external meetings or depositions unless expressly approved in advance by OGC.

Expenses/Disbursements. NC State expects that outside counsel will use best efforts to minimize reimbursable expenses by using competitively-priced service providers and avoiding unnecessary expenditures.. NC State will reimburse for reasonable expenses actually incurred with no mark-up. All charges, other than fees based on hourly rates, must be clearly itemized and described in sufficient detail. Payments to court reporters, expert witnesses, outside contractors and the like must identify the recipient by name.

NC State will not pay the following charges:

- Charges normally associated with firm overhead;
- Lexis, Westlaw, or other online research charges, unless approved in advance;
- Support staff salaries;
- Local telephone calls;
- Internal library charges.

Consistent with security concerns, NC State expects outside counsel to maximize the use of advances in technology, such as emailing, scanning, and sharing documents on secure web sites rather than incurring photocopying, facsimile, and messenger expense.

When travel is required, NC State will only reimburse required travel costs which include coach air fare, mid-size rental cars and State approved per diem allowances. Travel expenses incurred which involves service to more than one client must be apportioned with expenses charged to NC State clearly identified.

Invoices. Invoices shall be provided monthly, within thirty days after the end of the month in which the services were rendered. Lead counsel should review all invoices which must be supported by appropriate documentation maintained by the firm. NC State reserves the right to request copies of the firm's billing records and other documentation for audit purposes.

Each invoice shall contain the following information:

- Total hours worked by each timekeeper
- The hourly rate of each timekeeper
- Detailed description of the specific work
- Itemized expenses and disbursements
- Total fees and disbursements
- Total fees and disbursements billed and paid to date from the date of retention

All invoices shall be submitted electronically to deborah.harvey@ncsu.edu or, in the case of patent prosecution and licensing matters, to the individual/s designated in the Office of Technology Transfers (OTT) specific invoicing instructions unless otherwise directed to another office on campus.

V. LITIGATION REPORTING

Retained counsel shall submit a written litigation status report no later than two months after work begins on the matter, and then quarterly thereafter. In cases where NC State is a defendant, the initial report should include a discussion of the facts, strengths and weaknesses of the allegations against NC State as well as a preliminary defense strategy. The initial report should also include a preliminary evaluation of NC State's potential exposure and, if warranted, the desirability and likelihood of settlement.

In those cases in which NC State is the plaintiff, retained counsel will provide to NC State at the time the initial budget is submitted, an analysis of the facts, strengths and weaknesses of the case and the likelihood of success. Retained counsel will evaluate the potential exposure to the University of proceeding with the lawsuit.

Each subsequent update should address the current status of litigation and any other facts or developments, including change in relevant case law that might affect counsel's previous analysis of the strengths and weaknesses of the case.

VI. CONFIDENTIALITY AND PUBLIC COMMENT

NC State will likely provide outside counsel with copies of confidential and proprietary information, including intellectual property and trade secrets. These documents should be maintained in confidence and used only in connection with representation of NC State.

Absent specific authorization, counsel shall not respond on NC State's behalf to media requests concerning the litigation, and should direct the requestor to in-house counsel or to NC State's Chief Communications Officer.

VII. EQUAL EMPLOYMENT OPPORTUNITY

NC State is a federal contractor. As such, NC State expects outside counsel to comply with all applicable federal equal opportunity laws, orders and regulations, including without limitation, Executive Order 11246, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1972, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991.