



## **Office of General Counsel Policy**

*Approved by the Board of Governors on November 6, 2010*

**Section 1. General Counsel.** General Counsel and other attorneys employed in the Office of General Counsel represent the University as it acts through its duly authorized Constituents. General Counsel is the senior attorney of the University and reports directly to its chief executive officer, (the “Chancellor”), and its statutory board of directors, (the “Board of Governors”). The primary objective of the Office of General Counsel is to ensure the University is operating within the law at all times. To do this, it is appropriate that the Office of General Counsel be aware of all transactions and activities of the University including those that may be in only the preliminary stages. Early involvement will ensure limited risk exposure to the University’s finances, personnel and public image.

**Section 2. University as Client.** General Counsel and all attorneys employed in the Office of General Counsel are bound to act in accordance with the ethical and professional standards and canons of conduct applicable to the legal profession, including, but not limited to, the Standards of Professional Conduct adopted by the Ohio Supreme Court or those of other states in which the University operates. In accordance with those standards, attorneys employed in the Office of General Counsel shall act in the best interest of Antioch University. The client is the University, a corporation not for profit organized under the laws of the state of Ohio. An organizational client is a legal entity but cannot act except through its duly authorized constituents, including its board of directors (Board of Governors), trustees, officers and employees (herein “Constituents”). Nonetheless, a lawyer employed or retained by an organization owes allegiance to the organization and not to any Constituent or other person connected with the organization. Constituents of the corporation, including directors, trustees, officer and employees, may not be represented by the Office of General Counsel in their individual capacity except where the University has specifically consented to dual representation.

**Section 3. Conflicts of Interest.** There may be times when the interests of the University conflict with the interests of one or more Constituents. In those circumstances, the Office of General Counsel will advise Constituents they may wish to obtain independent representation. Where the interests of the Board of Governors conflicts with the interests of the Chancellor, the Office of General Counsel may advise one or both parties that they need to obtain independent representation.

**Section 4. Confidentiality.** Communications with the Office of General Counsel are privileged and the attorneys within the Office of General Counsel have an ethical obligation to keep such communications confidential as to persons other than the organizational client and its Constituents. Except as provided in Section 5 below, communications between the Office of General Counsel and members of the Board of Governors will not be disclosed to other Constituents of the University, including the Chancellor, without the Board of Governor's consent. Similarly, except as provided in Section 5 below, communications between the Office of General Counsel and the Chancellor will not be disclosed to other Constituents of the University, including the Board of Governors, without the Chancellor's consent.

**Section 5. Reporting Unlawful Conduct.** If the Office of General Counsel becomes aware that the act of a Constituent, or refusal to act, is unlawful or violates a legal obligation to the University which is likely to result in substantial injury to the University, then attorneys within the Office of General Counsel have an ethical obligation to proceed in the best interest of the corporation. When it's necessary to enable the University to address the matter in a timely and effective manner, attorneys within the Office of General Counsel are ethically bound to refer the matter to a higher authority within the University and it is the policy of the University that such reporting occur.

**Section 6. Communications with the Office of General Counsel.** All Constituents, including the board of Governors, campus Boards of Trustees, officers and employees should have the benefit of open communication with the Office of General Counsel to insure that the University is indeed operating within the law at all times. To effectively manage communications between the Office of General Counsel and the Constituents of the University and to prioritize needs and thereby insure the optimal use of the resources of the Office of General Counsel, it is the policy of the University that the following guidelines shall apply:

- A. Board of Governors.** Members of the Board of Governors shall normally communicate with the Office of General Counsel through the Board Chair. Communications with the Office of General Counsel regarding specific work or projects of the Board may be delegated by the Board Chair to other members of the board. It is generally understood, for example, that communications regarding the work of any standing or *ad hoc* committee of the Board, shall normally be through the committee chair. The Board Chair and Chancellor shall normally be apprised of all such communications.
- B. Boards of Trustees.** The campus Boards of Trustees operate with delegated authority from the Board of Governors which continues to have ultimate fiduciary responsibility for the University. The Office of General Counsel does not represent the interest of any particular Board of Trustees or its individual board members except as duly authorized Constituents of the University. Individual members of the various Boards of Trustees shall ordinarily communicate with others in the organization through their respective board chair. The board chair should in turn communicate with the Office of General Counsel through the campus President or the Chair of the Board of Governors.

- C. Chancellor.** The Chancellor is the chief executive officer of the corporation responsible for directing and supervising the efforts of all other officers and employees of the University. Therefore, it is the policy of the University that the Chancellor, along with the Chair of the Board of Governors, shall have the highest level of direct communication with the Office of General Counsel. Except as specifically delegated below, all other officers and employees of the University shall communicate with the Office of General Counsel through the Chancellor.
- D. Vice Chancellor of Finance.** The Vice Chancellor of Finance will communicate directly with the Office of General Counsel regarding all aspects of human resources management and risk management of the University, including, but not limited to, the oversight of all pending and threatened litigation and claims that may have a material impact on the University's financial statements. The Vice Chancellor of Finance will also directly communicate with the Office of General Counsel regarding the legal issues and aspects of all significant business transactions affecting the University. The Chancellor shall ordinarily be kept apprised of all such communications.
- E. Other Officers and ULC members.** Presidents of the campuses and other ULC members will ordinarily communicate directly with the Office of General Counsel concerning legal affairs within their respective campuses or programs. The Office of General Counsel will ordinarily keep the Chancellor apprised of all such communications.
- F. Other employees.** All University employees other than those described above will ordinarily communicate with the Office of General Counsel through their respective campus Presidents, Vice Chancellor, or, in the case of Central Administration employees, through the Chancellor or Vice Chancellor of Finance. For reasons of efficiency, the President or other corporate Officer may delegate to a subordinate employee the responsibility to communicate with the Office of General Counsel on specific matters. Once again, the Office of General Counsel will ordinarily keep the Chancellor apprised of all such communications.

## **Section 7. Retention of Local or Special Counsel**

- A.** Attorneys within the office of General Counsel have an ethical obligation to perform competently. From time to time, it may be necessary to engage outside counsel, counsel licensed in other states or counsel with specialized knowledge beyond the capacity of the Office of General Counsel, such as bond or tax counsel. The Office of General Counsel is responsible for reviewing the qualifications of each such outside, local or special counsel prior to engaging that counsel. Statements for legal services will not be paid without the prior consent of the Office of General Counsel and the President of the local campus upon whose behalf legal services are rendered. In the event of an emergency which requires immediate action, if a President cannot reach the Office of General Counsel, s/he may temporarily retain legal counsel subject to the subsequent approval of the Office of General Counsel; (e.g., defense of a temporary restraining order or preliminary injunction proceedings, strikes, etc.)

- B.** In retaining outside, local or special counsel, the Office of General Counsel will consult with the appropriate campus President and/or University Vice Chancellor of the unit needing representation to determine if there are attorneys or firms known to them who are able and willing to undertake such representation. However, the final decision with respect to the employment of any particular firm or individual rests with the Office of General Counsel.
- C.** Before retention by the Office of General Counsel of any outside, local or special counsel, all potential conflicts of interest must be explored and resolved. The Office of General Counsel shall also review the lawyer and/or the law firm's experience, expertise, and hourly rates. If the matter involves litigation for which insurance coverage is not available, the Office of General Counsel shall discuss a litigation budget, if appropriate, at the time of retention. The Office of General Counsel shall establish with each firm the manner and frequency of reporting and billing and shall review and approve any fee statements. Billing statement shall contain the level of detail needed for the Office of General Counsel to monitor legal services being performed.
- D.** The Office of General Counsel shall deal directly with the lawyer(s) within the local or special firm handling any matter referred to it. Generally speaking, an effort will be made to have all work performed by the least expensive member or associate of the firm who has the requisite skills and experience to perform it in a satisfactory and efficient manner.
- E.** The engagement letter for local or special counsel shall ordinarily provide that all documents, including contracts, pleadings, motions, memoranda, etc., must be submitted to the Office of General Counsel prior to filing or transmittal to a third party unless time does not permit such review in which case the Office of General Counsel may authorize the filing or transmittal subject to subsequent review and modification.
- F.** The Office of General Counsel should review all settlement possibilities early and regularly. Authority to settle claims or litigation will be given by the Office of General Counsel after consultation with the Chancellor, Vice Chancellor of Finance and the appropriate President or program director. In cases exceeding \$100,000, approval for settlement shall also be received from the Board of Governors.
- G.** The Office of General Counsel will send a representation letter confirming all relevant matters in Section 7 to all outside, local or special counsel at the time of retention.
- H.** The Office General Counsel will monitor legal expenses of outside, local and/or special counsel, authorize deviation from litigation or project legal budgets, and determine legal strategy consistent with a cost/benefit approach.
- I.** As much work as possible should be performed in the Office of General Counsel in cooperation with outside, local and/or special counsel to help reduce expenses, e.g., document review, witness screening, etc.

- J.** Legal fees and expenses of outside, local and/or special counsel shall be charged to the budget of the unit upon whose behalf such legal services are rendered unless the University's Vice Chancellor of Finance determines that such fees and expenses should be allocated to the University's central administration or in some other manner.