



## **Guidelines for Outside Counsel New York University, NYU Langone Health and Affiliates**

### Purpose and Goals

New York University's Senior Vice President and General Counsel, assisted by attorneys in the University's Office of the General Counsel (OGC), is responsible for all legal matters arising from or pertaining to the operations of the University, NYU Langone Health and its other affiliated entities. The purpose of these Guidelines is to set forth general principles governing the retention of outside counsel by the University. Expressed most broadly, the 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. References to New York University or the University in these Guidelines include the University, NYU Langone Health and its other affiliated entities. References to Outside Counsel in these Guidelines include outside counsel, their firms, any affiliates of their firms, and the employees and agents of any of them.

### Guidelines

These guidelines provide principles to be followed by Outside Counsel. Where Outside Counsel consider it necessary to depart from these principles, they must first obtain permission from the OGC attorney assigned to the matter. At the beginning of an engagement, the OGC attorney who is to be consulted on all substantive aspects of the representation will be identified.

1. Only the OGC may retain Outside Counsel on behalf of the University. There are a number of reasons for this, including the importance of assuring consistent application of laws and policies throughout the University, avoiding redundant research, facilitating the communication of facts important to the legal inquiry and assuring a comprehensive approach to situations where legal advice might otherwise consider only a part of a larger picture. Unless otherwise approved by the OGC (which approval is limited to the context of a specific matter), all communications from Outside Counsel with University employees must be through or jointly with the OGC. Where an outside lawyer is given permission to communicate directly with a University employee in a specific matter, an OGC lawyer must be copied on all emails and correspondence.

2. The OGC determines the scope of Outside Counsel's role and seeks Outside Counsel who work collaboratively with the OGC. We expect Outside Counsel to consult with the OGC on all aspects of the representation, such as strategy, tactics and staffing.
3. Where a firm is engaged by the OGC on a regular basis, we expect that the firm will provide a mutually-agreeable relationship partner who, without charge to the University, will be knowledgeable about and coordinate the representation of the University by the firm. This includes assuring that each lawyer involved in University assignments is aware of other assignments (past and current) handled by the firm that might bear on the lawyer's work, reviewing bills for accuracy and fairness before they are sent to the University and serving as a person to whom the OGC can go if there are any concerns about the representation.
4. Outside Counsel should acknowledge all OGC assignments in a written letter. Such acknowledgment should include a cost estimate to accomplish the assignment. We realize that with some matters, particularly litigation, it can be difficult to provide estimates. In significant matters, estimates may be given for various stages of a matter. Unless otherwise agreed by the OGC and Outside Counsel, the estimates are not binding – they are estimates – but we expect counsel to have given thoughtful consideration in providing the estimates.
5. Copies of all briefs, pleadings, motion papers, correspondence, work product and internal memoranda of law relating to University matters must be provided to the OGC. Copies of correspondence and all documents received from opposing counsel or counsel for other parties also should be provided to the OGC. The OGC attorney in charge reviews draft legal papers prior to filing or otherwise sending out unless he/she explicitly agrees otherwise.
6. In litigated matters, the use of alternative dispute resolution such as mediation and arbitration should be actively considered and reviewed with the OGC. No settlement offers in litigated or non-litigated matters may be made without prior authorization of the OGC.
7. Outside Counsel may not make public statements or comments to the media concerning University legal matters unless specifically authorized by the OGC.
8. Outside Counsel may not consult with government officials or lawyers about University matters, even on an anonymous no-name basis, unless specifically authorized by the OGC.

9. We require all information Outside Counsel learns about the University in the course of representing the University to be treated as strictly confidential. This includes, for example, not responding to inquiries, including from other lawyers in the firm who are not representing the University, about what the approaches or philosophies of the University or its personnel are with respect to matters or settlements.
10. We understand that laws internationally regarding attorney-client and work product privileges may vary with respect to in-house counsel. Outside Counsel agrees that in-house counsel in the OGC, and those working under their direction, enjoy the privileges (including attorney-client and work product privilege) and immunities of counsel as governed by U.S. and New York law without regard to choice of law provisions. Outside Counsel further agrees that actions and positions it takes will support, to the greatest extent legally appropriate, the privileges and immunities of in-house counsel in the OGC and these working under their direction, unless the OGC consents otherwise.
11. The OGC never provides prospective waivers of conflicts or potential conflicts of interest. Requests for waivers of any conflicts of interest will be considered by the OGC only on a case by case basis. All such waivers must be in writing (email is acceptable). In no case will a waiver be granted for a firm to be in an adversarial position to the University in any litigated or contested matter before any court, administrative agency or ADR body. We expect, and in representing the University Outside Counsel agrees, that a conflict of interest exists if Outside Counsel is adverse to the University, NYU Langone Health or its other affiliated affiliates. Where a waiver is given, we expect that the firm will, unless we expressly agree to the contrary in writing, maintain an ethical wall so that lawyers involved with University matters are not involved in the representation constituting a conflict or potential conflict of interest and the lawyers involved with the University maintain the confidence of the University as set forth in “9” above vis a vis the lawyers in the firm that are or may be adverse to the University.
12. Billing:
  - (a) Bills should clearly identify the attorney performing the task and identify the specific task performed. For traditional hourly billing, as a not-for-profit organization, the University expects a discount from the firm’s customary rates in an amount not less than the highest discount the firm provides to other not-for-profit organizations that are not pro bono clients. Billing should be by one-tenth hours. The University looks favorably on alternatives to traditional hourly billing such as task-based and fixed fee arrangements, and law firms that employ such arrangements. Outside Counsel should be open to

accepting or proposing such alternative arrangements. If hourly rates are used, the rates are fixed for the duration of the assignment and may never exceed the hours worked on University matters times the applicable hourly rates.

- (b) Lawyers assigned to a matter must be identified at the start of the engagement. Unless otherwise approved by the OGC, no more than two lawyers should be assigned to a matter. If, during the course of a matter, a lawyer must be substituted or added, the University should not be billed for the time spent by the new lawyer “getting up to speed.”
- (c) No more than one lawyer should bill for an in-office conference. Unless otherwise approved by the OGC, only one lawyer should bill for attendance at depositions, court appearances, negotiation sessions, meetings or settlement conferences.
- (d) There should be no billing for summer associates, legal interns or time spent by paralegals or assistants on “file maintenance” or “file organization” or the like except in actual preparation for a scheduled hearing or trial. Billing by first or second year associates will rarely be approved.
- (e) Invoices should be sent on a monthly basis, within the first ten (10) days of the following month and should be transmitted via e-mail to [nyuogcadmin@nyu.edu](mailto:nyuogcadmin@nyu.edu) in adobe.pdf format addressed to: New York University, Office of General Counsel, 70 Washington Square South, New York, NY, 10012 to the attention of Norma Minguela. For matters related to NYU Langone Health, invoices should be transmitted via e-mail in adobe.pdf format to: Office of the General Counsel, NYU Langone Health, 550 First Avenue HHC15, New York, NY, 10016, to the attention of [annette.johnson@nyumc.org](mailto:annette.johnson@nyumc.org) and [jennifer.kitsonidis@nyumc.org](mailto:jennifer.kitsonidis@nyumc.org). Even where bills are paid directly by another office at the University, a copy of all bills must be sent to, and approved by, the OGC.
- (f) Invoices received by the OGC must be submitted for payment through the Accounts Payable i-Buy Portal. When a firm or individual is engaged by the OGC, NYU Procurement will transmit an email invitation to register in the i-Buy Portal. Registration is required to process invoices for payment. When registration is complete, the following link will provide access to the portal: <https://solutions.sciquest.com/apps/Router/SupplierLogin?CustOrg=NYUFullSuite>

13. Expenses:

- (a) The University will reimburse the firm for actual ordinary and necessary expenses. We do not reimburse for extravagant expenses and air travel must be coach class. We expect that good judgment will be exercised, particularly with respect to meals, hotels and other expenses. Any out of town or overnight travel must be approved in advance by the OGC.
- (b) Photocopying will be reimbursed at actual costs, expected to be no more than ten cents per page and faxes at no more than twenty-five cents per page. Any extensive computerized legal research (in excess of \$500.00 per month) must be approved in advance by the OGC.
- (c) The retention of outside consultants, vendors or experts, and their rates of compensation, must be approved in advance by the OGC. Because NYU is sales tax exempt, it is preferable for NYU to pay vendors directly.
- (d) Overnight delivery services (e.g., UPS, FedEx) and hand delivery should be used only when necessary for time-sensitive matters or imminent deadlines.