

University of Louisiana System

Title: LITIGATION

Effective Date: December 12, 2014

Cancellation: September 1, 2001

Bylaws

Policy and Procedures Memorandum

Procedures - State Employees and Officers Involved in Lawsuits

State law specifies that the State will indemnify and defend a covered individual against any claim, demand, suit, complaint or petition provided the cause of action occurred while the individual was engaged in the performance of his/her duties as a State employee or official and the individual was free of criminal conduct. Further, the Act changes the process by which the State's Attorney General is to be notified.

The employee or official must, within ten (10) days of being served with any summons, complaint, process, notice, demand or pleading, deliver a copy of the original document to the Office of the Attorney General, Risk Litigation, Post Office Box 94095, Baton Rouge, LA 70804-9095 and request that the State provide him/her with a defense and indemnification. A referral letter (see attached draft) must be filled out and signed by the employee and sent to the Attorney General's office. A copy must also be forwarded to the System office.

Timely delivery of the summons or claim is a prerequisite for defense and indemnification. The notice or documents delivered to the Attorney General's office should also indicate the date and type of service (served by mail or the Sheriff) and the date received. Failure to follow this procedure may result in the State's refusal to accept responsibility for the defense or consequences of the lawsuit. This process must be followed separately for each employee who is served with a claim or lawsuit.

LITIGATION

Anytime a lawsuit, legal document, or other official notice is served on a University of Louisiana System department or employee, the document must be *immediately* forwarded to the attention of the System employee designated to act as the agent for service of process at the System office, officially domiciled at 1201 North Third Street, Suite 7-300, Baton Rouge, Louisiana 70802. This designee will be responsible for the appropriate routing of the document.

Procedures - The University is Served With Official Legal Documents

Anytime a lawsuit, legal document, or other official notice is served on a University of Louisiana System institution, the document must be *immediately* forwarded to the attention of the System employee designated to act as the agent for service of process at the System Office, officially domiciled at 1201 North Third Street, Suite 7-300, Baton Rouge, Louisiana 70802. This designee will be responsible for the appropriate routing of the document.

University administrators are urged to plan monthly meetings with those persons employed by Risk Management, the System, and/or the university to defend those claims. Such action will alert the Board as to the type and kinds of claims that are pending as well as the quality and efficiency by which they are being handled. This will also place the System in a position of interjecting policy considerations in the resolve of any claims that may affect management.

Information Regarding Claims

Types of Claims

The Board and its universities are generally confronted with the following three types of claims.

- A. Claims involving education issues
These claims may involve the awarding of degrees, grades and grade appeals, course offerings, promotions, graduation, appeal of university decisions, and contract issues between the university and its students as well as student discipline.

- B. Claims involving labor, management, and/or employment issues
These claims generally involve the right of the System, its officials, or the officials of particular universities to manage or take action with regard to the university. These actions often involve employment, promotion, salary, breach of contract, job assignment and other labor or employment related issues. They are not in the nature of tort claims.
1. All *classified* employees normally must go through the Civil Service process with appeals of disciplinary actions wherein the Civil Service Commission generally resolves these issues. Classified employees may file certain claims in State or Federal Court.
 2. All *faculty and unclassified employees* normally proceed through a campus-based grievance procedure and then may file certain claims in State or Federal Court if the issues are unresolved.
- C. General liability claims
This group of claims arises generally from “doing business.” The claims include accidents on campus, contract breaches, and discrimination or improper treatment. All are classified as tort claims. Students, employees, or third parties may file these claims.

Management of Claims by Type

- A. Claims involving education issues
The System’s in-house attorney, the Office of the Attorney General’s Civil Division, or an attorney specifically employed by the university will handle these claims. Risk Management, or any other insurance, generally does not cover these claims. However, if the claim is in the nature of a tort claim, then the Office of Risk Management may provide coverage and a Risk Management attorney will be assigned through the Office of the Attorney General. In the event of any judgment rendered against the System or the university on any insured claim, the Office of Risk Management assumes responsibility for and payment of the judgment. In all other cases, the university or System may pay the judgment or direct the successful party to submit the judgment to the Legislature for appropriation.

- B. Claims involving labor, management, and/or employment
These claims are handled through the Office of the Attorney General or the counsel for the System or university. Risk Management may become involved if attorney's fees are demanded or there is a possibility that there will be a general damage award. If claims are considered insured, the Office of Risk Management will make any judgment and provide for the payment of the defense. If the claim is considered uninsured, the defense and payment of any judgment is the responsibility of the System or university.

- C. General liability claims
These claims are almost always covered through the Office of Risk Management. The Office of Risk Management assumes responsibility and assigns an attorney, either in-house or by contract. The Office of Risk Management takes full responsibility for the cost of defense as well as the payment of any judgment that may be rendered.

Policy References:

Louisiana Revised Statute 13:5108.1
UL System Records Retention and Litigation Hold Policy M-17
Louisiana Administrative Code 36:VII.705
Office of State Procurement PPM 50

Review Process:

Legal Counsel

Distribution:

University Presidents

Associated Guidelines:

Guidelines for General Access to Legal Counsel, October 1, 2014
Guidelines for Handling Litigation, January 26, 2012, Revised December 12, 2014

Guidelines for General Access to Legal Counsel

1. Litigation Matters

Guidelines for Handling Litigation were disseminated on January 26, 2012. These Guidelines for General Access to Legal Counsel supplement the UL System Guidelines for Handling Litigation which are in the process of being revised in accordance with PPM 50 issued by the Office of State Procurement in September 2014. In accordance with PPM 50, all new legal services contracts entered into from September 20, 2014 forward, must comply with PPM 50 as minimum billing guidelines. Contact Robbie Robinson for more information.

2. General Legal Questions

System campuses should develop their own internal procedures for legal guidance and/or review. This may involve a variety of sources at the discretion of the Campus President who may elect to: use an in-house counsel on campus; outsource general legal work to a local firm or firms that will bill campuses directly for legal services provided; use UL System counsel Decuir, Clark, & Adams; use UL System counsel Escamilla & Poneck; any combination thereof.

Legal work that is sent directly to either Decuir, Clark & Adams or Escamilla & Poneck will be billed to the UL System, but will be coded to identify the individual campus requesting the legal advice. These charges will be subsequently forwarded by the UL System to the individual campus requesting the legal advice. This process is the same manner that such work has been billed in the past. Access to legal counsel from these firms should be monitored at the campus level to ensure that you are not outsourcing work that you prefer would be handled internally or by local legal counsel. Nevertheless, these legal resources will be available to you and the addition of Escamilla & Poneck in such a capacity should merely add to what is already available.

3. Representation of UL System Board of Supervisors

Decuir, Clark, and Adams will continue to provide legal representation to the UL System Board of Supervisors during board meetings and as otherwise required/requested.



4. In-House Counsel / UL System

Escamilla & Poneck will serve as in-house counsel to the UL System working in collaboration with Decuir, Clark & Adams handling general in-house legal representation for the UL System. Escamilla & Poneck will also coordinate the provision of legal services by other outside legal counsel who litigate and perform general counsel services directly for member institutions. Escamilla & Poneck will also handle coordination of legal compliance for all nine universities including coordination of legal trainings, legal policies, Consent Decrees, and other system-wide legal compliance concerns. These services will not be billed to individual universities, but all legal work on these matters will be initiated by the UL system office, possibly after consultation with the university representatives and billing will be processed appropriately. Therefore, any general legal matters that are believed to fall under the purview of in-house legal compliance for UL System should be routed to Escamilla & Poneck through an appropriate UL System staff member: Karla Hughes, Robbie Robinson; Lisa Shemwell; Bruce Janet (EEOC).



University of Louisiana System
GUIDELINES FOR HANDLING LITIGATION
January 26, 2012, revised December 12, 2014

1. Requests for Legal Representation in Litigation Matters

Each president should designate an individual or office and establish procedures for accepting service of and transmitting summonses and other notices of pending legal actions. It is crucial to disseminate these procedures campus-wide to ensure uniformity and efficiency, and to assist in meeting sensitive response deadlines.

It is also crucial to notify the System Office as soon as you become aware of any legal action against the University, or against campus employees acting in their official capacities, so that we can assist you in obtaining proper legal representation. Immediately upon receiving notification of a pending legal action, it should be forwarded to University General Counsel, along with a written request that the State reimburse and indemnify the defendants named in the lawsuit. *Attached* is a transmittal letter outlining the information you should include when you forward your representation request to this office. We will then transmit the request to the Attorney General for further action.

It is important that we know of all pending litigation from the beginning, so that we can assist you in dealing with these actions most effectively. It has come to our attention that there may have been instances in the past in which campuses have incorrectly assumed that the State would not reimburse and indemnify them in particular types of actions, and have not requested representation from the Attorney General. This has at times resulted in an individual campus unnecessarily assuming the entire financial burden for the defense of a case. It is crucial that we involve the Offices of the Attorney General and Risk Management at the outset so that this does not happen in the future.

2. Settlements

No president, other campus administrator or attorney representing the University should settle or agree to settle a case without System approval and involvement. Some settlements may require the approval of the Attorney General, the Office of Risk Management or the Board of Supervisors, and this will ensure that all necessary approvals are obtained prior to finalization. Any attorneys engaged to represent the University should be advised accordingly.

3. Litigation Holds

The University has a legal obligation to preserve evidence and records, including electronic documents that may be relevant to pending or potential legal actions, such as lawsuits, government audits and administrative proceedings. As a result of case law and amendments to federal court rules, upon notification of the possibility of a lawsuit, the University must take action in the form of a "litigation hold" to preserve all electronically stored information that may be relevant to the claim. A "litigation hold" is an order issued by an institution advising its employees to preserve information.

To ensure compliance with this requirement, any University personnel who become aware of any litigation, threat of litigation, or other legal action or investigation by an administrative authority, should immediately notify the institution's designated Litigation Hold Officer to determine whether a litigation hold should be initiated and to identify University personnel who may be subject to the hold. If it is determined that a litigation hold is appropriate, all affected personnel must be notified.

Affected personnel must (1) immediately suspend any destruction of electronic information under their control that may be relevant to the action; (2) preserve any new relevant electronic information that is generated after the litigation hold has been put in place; (3) preserve hard copies of relevant documents under their control; and (4) preserve any relevant data on their home computers if they are used for any University-related business.

It is important to make campus administrators aware of this requirement, since failure to comply can result in serious negative consequences. Under the Federal rules, the failure to immediately put a litigation hold in place can result in an adverse decision by the court against the defendants. This can include instructions to a jury to assume that material that would have been helpful to the plaintiff has been removed and destroyed to benefit the defendants.

4. Update List of Campus Litigation

Regular communication between the system office and each institution regarding campus litigation is essential. Each institution should designate an individual to act as the liaison between defense counsel and the institution. This individual can also provide annual litigation reporting.

5. Litigation PPM

The Office of State Procurement's PPM 50, Published September 2014, are the case handling and billing procedures to be used by all legal counsel contracting with legal institutions in the University of Louisiana System.

DRAFT - FORM LETTER
To be sent by each employee¹

(Date)

The Honorable *(Name)*
Office of the Attorney General
Risk Litigation
Post Office Box 94095
Baton Rouge, LA 70804-9095

RE: *(Suit Title or Caption – include Names, Docket Number, Judicial District, and Parish)*

Dear Attorney General *(Name)*:

I am an employee (official) at *(Name of University)*, a member of the University of Louisiana System. I have been named, made a defendant, or served with the lawsuit or claim referred to above. This claim arises through my employment with the University and I hereby request that the State of Louisiana defend and, if necessary, indemnify me in this matter. The information regarding the claim is as follows:

1. *Name of Official/Employee/Department Sued:*
2. *Name of University within the University of Louisiana System:*
3. *Date of Service:*
4. *Type of Service (Received by Mail/Sheriff/Personal Delivery/Personal Service, at Home/Work):*

The *petition, citation, and attachments*, as served upon me in this matter, are enclosed. If for any reason the State declines to accept the defense or indemnification of this matter, please advise me at the address listed below:

(Your Name)
(Your Address)

Thank you very much for your assistance.

Sincerely,

Name and Title

¹ Copies of this letter must be submitted to the agent for service of process at the UL System Office and to your University President.