



Emory University Outside Counsel Policy

Effective October 1, 2016

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Emory University Atlanta, Georgia 30322 www.ogc.emory.edu 404-727-6011

These policies and procedures (hereafter "Outside Counsel Policy") govern the relationship between Emory University, Emory Healthcare, and associated entities (the "University" or "Emory") with outside counsel. This Outside Counsel Policy will take effect on September 1, 2016 for all existing and future legal matters.

Law firms representing Emory must acknowledge receipt of this Policy before performing services and submitting invoices, and unless modifications are agreed upon by outside counsel and the Emory Office of General Counsel or Office of Technology Transfer, outside counsel will be expected to follow this Outside Counsel Policy in its entirety.

I. General Provisions

Emory University's goal in retaining outside counsel, simply stated, is to obtain the highest quality legal services, efficiently and ethically rendered at a reasonable cost. The following general provisions are intended to help Emory, in coordination with outside counsel, achieve that goal.

Communication: For each matter, an Emory attorney or other designated representative will be responsible for ensuring that appropriate Emory personnel are informed about and make the necessary substantive decisions about the matter and that outside counsel is kept appropriately informed both about Emory's objectives in the matter and about pertinent business issues and developments. For purposes of these guidelines, Emory's inside representative, whether or not an attorney, will be referred to as "inside counsel." With respect to patent and licensing matters involving Emory technology, the role of "inside counsel" is typically performed by an "Emory Licensing Associate" in the Office of Technology Transfer (OTT) (*see* II.B. below).

Unless advised otherwise, all communications should be directed to the responsible inside counsel. The inside counsel should be consulted before any direct communication with Emory employees, representatives or trustees. Unless authorized, copies and drafts of documents should be sent only to the responsible inside counsel.

Collaboration and Deadlines: Inside counsel must be provided sufficient time to review drafts of all significant documents, including contracts, substantive pleadings, briefs, correspondence, and any other documents that will be provided to third parties on Emory's behalf. The responsible inside counsel may choose to prepare drafts of pleadings or other papers and documents.

Conflicts of Interest: Outside counsel must conduct thorough checks for conflicts. Conflicts must be identified and resolved prior to representation. If a conflict is waived, it will be done so in writing. Outside counsel should conduct periodic checks for conflicts and promptly notify inside counsel should any arise.

Confidentiality: Emory expects outside counsel to exercise the utmost diligence in protecting attorney-client privilege and attorney work product. Additionally, outside counsel must observe the confidentiality protections provided by FERPA (the Family Educational Rights and Privacy Act) and HIPAA (Health Insurance Portability and Accountability Act).

Diversity: Emory seeks to partner with those outside counsel who believe diversity in representation in all forms results in better outcomes. Creating an environment that emphasizes the professional and personal development of diverse attorneys and non-attorneys fosters a culture of inclusion, collaboration and stability.

Files and Records and Work Product: All files and records maintained by outside counsel in connection with an Emory matter belong to Emory and upon request from inside counsel, shall promptly be transferred to Emory or elsewhere as directed. Research findings must be provided to inside counsel.

II. Outside Counsel Engagement

A. Retention Decisions

Emory inside counsel are responsible for the selection and supervision of outside counsel. Other than as set forth below, outside counsel may not accept an engagement on Emory matters directly from other Emory personnel unless Emory inside counsel has authorized the use of their services for that engagement. For patent prosecution and licensing matters involving Emory technology, outside counsel may only accept engagements from the Director of the Office of Technology Transfer or any designee of the Director. For cases insured by Clifton Casualty, outside counsel may be retained directly by representatives of Clifton Casualty.

B. Engagement Letter

Every engagement (or series of engagements) of outside counsel in which the fees for the entire matter are likely to exceed \$5,000 should be memorialized by a letter setting forth the terms and conditions of the engagement. The letter should be signed by both inside counsel and lead outside counsel and should indicate outside counsel's familiarity with and agreement to adhere to this Outside Counsel Policy, subject to any modifications agreed upon with inside counsel. Emory typically will not pay bills submitted by outside counsel who have not signed such an engagement letter.

C. Business Associate Agreement

For each engagement (or series of engagements) of outside counsel for matters involving Emory Healthcare or for any Emory matter likely to involve HIPPA-protected materials, outside counsel is required to execute Emory's Business Associate Agreement before work commences.

D. Retaining Outside Services

Outside counsel are not authorized to retain any local Counsel, consultants, expert witnesses, jury consultants or vendors such as copy services, technology companies, E-discovery companies or document review services ("Outside Vendors") without the advance approval of the Emory inside counsel. Unless inside counsel approves or requires different arrangements, lead outside counsel will be responsible, in consultation with inside counsel, for the budgeting and billing arrangements governing the work to be performed by such Outside Vendors. Outside Vendors retained for matters involving Emory Healthcare or for any Emory matter likely to involve HIPPA-protected materials, are required to execute Emory's Business Associate Agreement before work commences.

E. Patent Prosecution and Licensing of Emory Technology

Outside counsel representing Emory with respect to patent prosecutions and licensing of Emory technology may only be retained by the Director of the Office of Technology Transfer or any designee of the Director.

If outside counsel has any question whether an Emory representative is an authorized designee, outside counsel should contact the Office of Technology Transfer for confirmation.

Prior written authorization before beginning work must be obtained by outside counsel from an Emory Licensing Associate managing the invention disclosure. Emory will not pay any charges incurred without a retention agreement signed by the Director of the Office of Technology Transfer or any designee of the Director. Emory faculty and other inventors are not authorized by the University to request any legal services on Emory's behalf.

The Emory invention disclosure file number must be included and clearly shown on all communications from outside counsel, including invoices. Invoices without the Emory invention disclosure file number may be returned to outside counsel, thus delaying payment.

Outside counsel must consult with the appropriate Emory Licensing Associate before taking actions with respect to patent prosecution (*e.g.*, preparation or filing of applications, responding to office actions, and contacting Emory inventors).

A preliminary budget proposing anticipated costs for the preparation and filing of domestic and/or foreign applications must be submitted to the appropriate Emory Licensing Associate for approval before any action may be taken by outside counsel on Emory's behalf.

F. Alternative Fee Arrangements

Emory encourages outside counsel to propose, in appropriate cases, alternatives to conventional hourly-rate fee arrangements, including fixed or flat fees, productivity incentives, risk-sharing and contingent fees. Any proposal to use a different basis for billing such as "value based" or transactional billing, or to charge a premium, bonus or success fee based on the outcome of the matter must be raised at the outset of the engagement and approved in writing by the inside counsel. In all cases, the terms on which Emory will be billed for the representation must be set forth in writing both at the outset of the engagement and at any point in the engagement at which those terms are modified.

III. Staffing

At the outset of the engagement, Emory and lead outside counsel will together designate a specific lawyer within the law firm who will be chiefly accountable for the conduct of the engagement. That lawyer should be personally and directly involved in the representation and is responsible for assuring that Emory's objectives are met with respect to the engagement. The lead inside counsel must approve all timekeepers handling the matter, as well as any subsequent changes to the team. Once the team is established, Emory expects continuity of staffing for the duration of the engagement, absent extraordinary circumstances.

Emory strongly encourages lean staffing on its matters. Matters should be staffed with the number and level of personnel that are appropriate in order to render quality service in a cost-effective manner. Emory prefers that its legal matters be staffed with lawyers who have developed knowledge of Emory and have appropriate subject matter expertise. While outside counsel may staff summer associates and first year associates on Emory matters (under proper supervision), we do not expect to be billed for their time.

Emory expects outside counsel to use paralegals instead of lawyers whenever a task does not require a law degree. In general, associates should not be used for services performable by legal assistants; nor should legal assistants be assigned tasks performable by secretaries, clerks and messengers (*e.g.*, photocopying, filing, delivering materials, scheduling meetings, etc.).

Emory requires that outside counsel exercise good judgment with regard to the amount of time billed to Emory matters by each timekeeper. Emory will only pay for reasonable internal conferencing. Clerical work is not billable, irrespective of who performs it, unless specifically approved by inside counsel. Clerical work includes maintenance of internal databases, bates stamping, filing, preparing bills, indexing pleadings, opening and closing files, scheduling meetings or making travel arrangements, participating in review or "feedback" sessions, and billing audits.

IV. Fees, Disbursements, Budgets and Billing

A. Fees

1. Billing Rates

In matters that are to be billed based on the law firm's hourly rates, outside counsel shall, upon engagement of the firm, provide inside counsel with a schedule showing the billing rate for each timekeeper assigned to the engagement. Once agreed upon at the commencement of a matter, the scheduled billing rates shall remain in effect for the duration of the engagement. An exception to this requirement will be made only if the inside counsel approves in writing a proposed rate change sixty (60) days in advance. Hourly rate increases due to promotions shall not be applied to pending matters without prior approval of inside counsel. In no event shall billing rates be increased more than once in any eighteen month period. Emory expects to be billed at rates that are competitive with those of firms providing comparable services to Emory or other similar clients and that are no higher than the lowest rates charged to other clients of the firm. Emory expects that consideration will be made for its non-profit status, and that at least a 10% discount in standard fee rate will be provided.

2. Charges for Services

Unless an alternative fee structure has been agreed upon, bills should reflect actual time expended. Emory expects bills for professional services to be based on the time reasonably devoted to the matter. The number of hours for which Emory is billed should be the subject of "billing judgment" exercised by the lead outside counsel, so that the fees charged reflect only the time appropriately and productively devoted to the matter. Time should be billed in increments of six minutes. Timekeepers must accurately record time spent on each task. Unless otherwise authorized in advance by inside counsel, each entry should reflect a separate task and must state the nature of the work performed and the time spent by each timekeeper. Block billing is not permitted.

3. Non-Reimbursable Fees

The following categories of activities and tasks will not be reimbursed:

- Routine administrative tasks incidental to an engagement including conflict review and work associated with outside counsel's billing system or litigation management system.
- Time spent "getting up to speed" for a legal professional due to staff turnover or vacation
- Routine file creation, organization and maintenance, including data entry of the case, project or matter information in outside counsel's billing system or litigation management system.
- Time spent creating budget estimates, reconciliations and plans.
- Other routine administrative support services such as those performed by the staff of the managing attorney's office (e.g. docketing), library and computer information systems.
- Work performed by an attorney that reasonably should be performed by a paralegal.
- Paralegals performing work more appropriately performed by clerical staff, such as photocopying and faxing.
- Calendar or scheduling activities.
- Time billed by summer associates.
- Professional development time.
- Legal research (time spent or other costs); exceptions require prior approval.
- Document translation that has not been requested or pre-approved.
- Excessive internal conferencing.
- Duplicative document review.
- Attendance by more than one attorney at external meetings, depositions, unless pre-approved by inside counsel.

B. Disbursements

Emory will reimburse outside counsel for actually incurred out-of-pocket expenses with no mark-up, provided those expenses are reasonable. Disbursements and charges, other than fees based on hourly rates, must be itemized. Each should be described in sufficient detail so that there is no question of the nature of the expense involved or the reason for it. Payments to outside vendors must identify the recipient by name. The following categories of expenses will not be reimbursed by Emory, absent prior approval:

- Photocopy expenses, including color copies, exceeding \$.10 per image.
- Communication charges including phone (local, long distance, cellular), video, fax, and teleconferencing.
- Overtime.
- Postage, unless pre-approved
- Publications, subscriptions, librarian services, and online databases, such as Lexis, Westlaw and PACER, whether cost or time
- Document scanning, unless pre-approved
- Any items of overhead expenses (e.g., staff overtime, meals, local transportation, conference rooms, rental fees, air conditioning, heat, etc.)
- Printing documents from a computer.
- Messengers employed by the law firm.
- Unreasonable or excessive use of couriers or messengers.
- Firm IT or e-discovery charges, unless pre-approved.
- Unauthorized third party fees.

C. Travel

Emory expects outside counsel to avoid unnecessary travel through such alternatives as teleconferencing. Only coach air fare and mid-size rental cars will be reimbursed. Luxury transportation, including limousines and hire cars, will not be reimbursed. If outside counsel is traveling on business for more than one client, Emory expects counsel to apportion the expenses appropriately. Emory will not pay for time spent traveling unless outside counsel works on Emory business while traveling. Emory expects its counsel to use good judgment in selecting reasonably-priced hotels and restaurants while traveling on Emory business. Personal incidental expenses incurred while working on Emory matters will not be reimbursed and must be distinguished from those expenses that are appropriately charged to Emory. When outside attorneys or staff members are working at their normal office locations, Emory will not pay for meals or other incidental expenses, including evening taxis or cars.

D. Budgeting

It is Emory policy that in engagements where professional fees are expected to exceed \$25,000 based on hourly rates, outside counsel will prepare a budget within 30 days of engagement and that outside counsel will render its bills in a form corresponding to that budget. Emory requires outside counsel, to the extent practicable, to employ the standard task codes promulgated by the American Bar Association and the American Corporate Counsel Association, as modified from time to time. Emory will not pay for any time associated with preparation of the budget and staffing plan for a particular matter or for consultations regarding matter management required by this Policy.

V. Invoicing and Late Penalties

It is outside counsel's responsibility to submit accurate electronic invoices in Emory's electronic billing system on a monthly basis, to include all required documentation, and to correct invoicing errors for re-submission. All invoices submitted to Emory must contain required pieces of information and be submitted in the proper format. A separate invoice is required for each matter and for each calendar month, unless we expressly direct you otherwise. In addition to the fees and disbursements for the billing period, each invoice should include total fees and disbursements billed from the inception of the matter. Emory expects the lead outside counsel to review all invoices.

Emory's legal department utilizes Ascent software to streamline the process for receiving legal invoices from all outside legal service providers.

Outside counsel must submit all invoices for work performed in a month by no later than the last day of the month after the month in which the work is performed (the "Due Date"). Invoices will generally be paid within 30 days from receipt of a properly submitted and accepted invoice. Emory will discount every invoice by 5% per month if received after the Due Date (except in the case where the invoice is for less than \$500 in which case you may hold the invoice until aggregate billing exceeds \$500).

Emory has no obligation to pay for any invoices submitted more than four months after the completion date of a matter, or for any late invoices that cross Emory's fiscal year. Invoices must be submitted electronically to the Ascent billing portal using the standard LEDES format or, in the case of patent prosecution and licensing matters, electronically to ott-legal@emory.edu. Please do not send duplicate emails or hard copy to individual attorneys.

VI. Litigation Reporting

Outside counsel should submit regular written reports with respect to the status of all litigation matters handled on behalf of Emory. The first report should be made no more than two months after outside counsel begins work on the matter, and subsequent updates should be made no less frequently than quarterly, and may be incorporated in the monthly billing process.

For cases in which Emory is a defendant, the initial report should include a discussion of the factual bases for, and the strengths and weaknesses of, the allegations against Emory and the defenses available to Emory, as well as a preliminary strategy for the defense of the matter and a preliminary evaluation of the potential exposure faced by Emory. Outside counsel should also discuss the desirability, likelihood, and potential range of settlement.

Each subsequent update should address the current status of the litigation, developments since the last report, and any other facts or developments (such as a change in relevant case law) since the last report that might affect your analysis of the strengths and weaknesses of the litigation and the potential exposure faced by Emory.

VII. Insurance Coverage

When a matter is covered by one of Emory's insurance policies, outside counsel may be bound by the reporting and other requirements of the insurance carrier. If a matter is covered by an Emory insurance policy, and Emory has satisfied its retention, if any, outside counsel shall work directly with the carrier or its representative, and will look only to the insurance carrier or its representative for payment of fees and expenses. Outside counsel and inside counsel should work together to ensure that outside counsel are aware of all such arrangements.

VIII. Public Comment

In the absence of specific authorization, Emory does not authorize outside counsel to offer media or other public comment on Emory or matters being handled for Emory or respond to requests for comment. Any inquiries or proposed public comment about Emory or an Emory matter must be referred to inside counsel or to an Emory public affairs specialist designated by Emory inside counsel. That Emory representative will be responsible for determining what comment is appropriate and who should be designated to comment on Emory's behalf.

Data Security

Outside counsel warrants and represents that it will implement the necessary industry-standard physical, electronic, and managerial safeguards to ensure the confidentiality, integrity, and availability of Emory's confidential information, including but not limited to, the environment in which the Emory's confidential information is stored, processed, and transmitted. Outside counsel further warrants and represents that such safeguards will in no event be less than the level of security Vendor uses to protect its own confidential information. Outside counsel shall require its contractors and subcontractors authorized to access Emory's confidential information pursuant to this Agreement to take similar industry-standard precautions in safeguarding the confidential information.

Outside counsel agrees to comply with all applicable state and federal statutes and regulations governing unauthorized access and disclosure of the Confidential Information including, but not limited to: (1) personally identifiable information from education records as defined in The Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99), and regulations promulgated thereunder; (2) information that is subject to the security provisions of the Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter 1, Sections 6801-6809 (Disclosure of Nonpublic Personal Information); (3) individually identifiable "personal health information" as defined in the Health Information Portability and Accountability Act ("HIPAA") regulations, 45 CFR Parts 160 and 164. Any transmission, storage, or transportation of Emory Confidential Information outside of the U.S.A. is prohibited without prior written authorization from the Emory.

IX. Confidentiality

Emory may provide to outside counsel on a confidential basis copies of confidential and proprietary information, including intellectual property, trade secrets, internal policies, business plans, customer information, organizational charts, standard forms or other materials relevant to the work outside counsel is performing on Emory's behalf. None of these documents or other materials should be used by outside counsel directly or indirectly for any purpose other than in connection with their representation of Emory.

X. Federal Equal Employment Opportunity Law Compliance

The University is a federal contractor and as such we expect your firm 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. You may expect to receive requests from time to time for confirmation of compliance with the foregoing.