



EMORY

Office of the General Counsel

*Representing Emory University
and Emory Healthcare*

Emory University Outside Counsel Policy

Effective January 20, 2010

Office of the General Counsel
Emory University
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Emory University
Atlanta, Georgia 30322
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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 January 1, 2010 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 normally 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 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).

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 an “Emory Licensing Associate” approved by OTT. 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 will ordinarily not pay bills submitted by outside counsel who have not signed such an engagement letter. An example of an appropriate form of engagement letter is attached to this Outside Counsel Policy as Appendix A.

C. Retaining Local Counsel, Consultants, and Expert Witnesses

Outside counsel are not authorized to retain any local counsel, consultant, expert, or vendor 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 local counsel, consultants, and expert witnesses.

D. 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 authorized “Emory Licensing Associates” or “Intellectual Property Associates” within the Office of Technology transfer. As of January 1, 2010, the only authorized Emory Licensing Associates are:

- Todd Sherer
- Kevin C. Lei
- Cale Lennon
- Cory Acuff
- Chris Paschall
- Panya Taysavang
- Susanne Hollinger

As of January 1, 2010, the authorized Intellectual Property Associates are Cliff Michaels and Doreen Nebane-Ambe.

As this list may change, if outside counsel has any question whether an Emory representative is an authorized Emory Licensing or Intellectual Property Associate, 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 a Licensing Associate, the Intellectual Property Associate, or the Director of OTT. 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 or Intellectual Property 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.

E. 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 charged 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 members of the team 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. Emory will not

agree to the assignment of first-year associates to work on Emory matters unless special permission is obtained.

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, bate 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 (or class of 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. In no event shall billing rates be increased more than once in any twelve 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 be submitted in six-minute increments and 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. As guidance, Emory will not pay for:

- Client development activities,
- Conflict review
- Preparing or reviewing invoices or responding to billing inquiries
- Calendar or schedule maintenance
- Basic research on topics considered to be within the firm’s scope of expertise

- Summer associate time
- Secretarial or clerical work
- Filing
- “Learning time” or “ramp-up time” required by the substitution of attorneys or paralegals working on the engagement
- “Learning time” to educate any staff on standard procedural matters or basic substantive law.
- Duplicative document review

Absent advance permission, Emory will not pay for:

- Attendance by more than one attorney at external meetings, depositions,
- Legal research projects that exceed 2 hours.

Where two or more timekeepers consult to obtain specific advice or counsel or substantive or procedural aspects of the case that result in a more effective defense, said reasonable and necessary conference time will be reimbursed provided that sufficient detail of the subject of the communications is set forth to demonstrate its relevance and value.

Unless otherwise directed, the time for each activity should be separately stated. Grouping multiple activities under a single time charge greater than one-tenth of an hour (“block billing”) is not acceptable, absent authorization from Emory.

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 court reporters, expert witnesses, outside contractors and others must identify the recipient by name.

Emory expects outside counsel to use its best efforts to minimize reimbursable out-of-pocket costs both by avoiding unnecessary expenditures and by selecting competitively-priced vendors and service providers.

Emory will not pay for unbundled charges considered to be firm overhead, such as:

- Online research charges (Lexis, Westlaw)
- Support staff salaries
- Local telephone calls
- Internal library charges
- Air conditioning, lighting, conference rooms

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.

Advances in technology, specifically transmission of information and documentation by e-mail, scanning, imaging, sharing of documents on secure web sites, etc., have made routine copying, faxing and delivery of hard copy documents less critical and, in many cases, unnecessary. Consistent with security concerns, Emory expects outside counsel to maximize the use of state of the art technology to minimize photocopying, facsimile, and messenger expense. Photocopies will be reimbursed at actual cost incurred by the firm, and in no event at more than \$.10 per image.

C. 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 and that outside counsel will render its bills in a form corresponding to that budget. Prior to incurring unbudgeted fees for a particular task, outside counsel must obtain the advance approval of inside counsel. In the absence of prior approval by inside counsel, Emory will not pay bills for legal fees and expenses for a particular task that exceed the budget approved for that task. Budgets may be mutually updated as needed.

Emory encourages 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.

D. Invoices

Unless inside counsel approves different arrangements, bills should be rendered monthly, within 30 days after the end of the month in which the services were rendered and should include only fees for services performed in the immediately preceding month.. Emory reserves the right to request copies of the firm's billing records and supporting documentation with respect to Emory charges and to conduct audits of the bills. Emory expects the lead outside counsel to review all invoices.

Each matter should be invoiced separately, and each invoice must contain the following information:

- Total hours worked by each timekeeper;
- Itemized expenses and disbursements;
- Total fees and disbursements for the billing period;
- Total fees and disbursements billed and paid to date from the inception of the matter.

Invoices must be submitted electronically to ogcbillings@listserv.emory.edu 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.

V. 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.

VI. 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.

VII. 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.

VIII. Technology

The effective use of technology in legal matters is critical to generating superior work product efficiently, at a significantly lower cost and in an environmentally sound manner. Emory expects that unless another format is required or agreed to by Emory, outside firms will utilize software and technology compatible with Emory's technology. Emory will not be

responsible for any costs associated with the purchase or installation of hardware or software by outside counsel for Emory matters.

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.

SAMPLE OUTSIDE COUNSEL ENGAGEMENT LETTER

Date

Lead Outside Counsel Name
Law Firm Name
Address

Re: [Matter Name]

Dear _____:

This letter will confirm that Emory University has asked you to represent us in the above matter. In connection with your representation we have asked you to [describe scope of the engagement].

With this letter I am sending a copy of Emory University's Outside Counsel Policy (Rev. 1/2010). Except as set forth in this letter, or specifically agreed to by me, the Policy will govern your representation of Emory University in this matter and all subsequent matters in which you are retained. We have agreed that you will be the lead outside counsel on this matter, will personally handle this matter, and will be responsible for ensuring adherence to the Policy. I [or name of appropriate inside counsel] serve as inside counsel on this matter. We believe that providing you with a clear statement of the principles which apply to your representation of [] will assist us both in providing effective, high quality legal representation responsive to the needs of Emory. I urge you to raise any questions you may have about the Outside Counsel Policy with me or [other lead inside counsel] at the outset.

We have agreed that you will be compensated for your work on this matter [insert fee arrangement], and that you will submit your bills [monthly, quarterly, or at the completion of this matter]. [This matter is covered by an Emory insurance policy. Once Emory satisfied its retention, if any, you 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.] We have further agreed that the attorneys and staff who

will work on this matter are as follows, that their billing rates will not increase over the life of the engagement, and that no additional timekeepers will be added to this matter without the consent of me or [other lead inside counsel]:

Name Billing rate

Name Billing rate

I look forward to working with you on this matter. Please confirm that you have received and agree to abide by the Policy by returning a signed copy of this letter to me at your earliest convenience.

Very truly yours,

[]

We have received Emory University's Outside Counsel Policy and agree to be governed by that document's terms in our representation of Emory University and its affiliates.

Law Firm Name

By: _____
Lead Outside Counsel

APPENDIX B

SAMPLE CONFLICT WAIVER LETTER

[Date]

[Name of Lawyer Requesting Waiver]
[Outside Law Firm Name]
[Address]

Re: [name of case or transaction for which waiver is requested]

Dear [outside lawyer]:

This letter is in response to your request for a waiver of a [potential or actual] conflict of interest in connection with [law firm]'s representation of [other client's name] in the above referenced matter. We have no objection to such representation subject to the following conditions:

1. [Other client name] agrees not to object to [law firm]'s continued ability to represent Emory or its related entities on existing and future matters; and
2. [Law firm]'s representation of [other client] will not involve the assertion against Emory or any of its related entities of a claim of fraud, misrepresentation, or other dishonest conduct; and
3. [Law firm] is representing [other client] for the sole purpose of [describe limited engagement to which Emory is consenting] and it is understood that Emory reserves the right to claim a potential or actual conflict of interest and take appropriate action regarding any other matters including broader representation of [other client] with reference to this matter; and
4. [Law firm] personnel providing services to (other client) in connection with this matter will not be among those concurrently providing services to Emory or its related entities; and
5. [Other client] has been informed of the conditions set forth in this letter and has agreed to these conditions.

Please sign this letter and have it signed by a representative of [other client] and return it to me if it is acceptable to you.

Very truly yours,

Emory Inside Counsel

Received and agreed to:

[Attorney at law firm]

[Other client representative]