



Washington University in St. Louis



Office of the Executive Vice
Chancellor and General Counsel

**POLICES AND EXPECTATIONS FOR
OUTSIDE COUNSEL REPRESENTATION**

April 2014

**PREPARED BY:
OFFICE OF EXECUTIVE VICE CHANCELLOR AND
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POLICIES AND EXPECTATIONS FOR OUTSIDE COUNSEL REPRESENTATION

These Policies and Expectations for Outside Counsel Representation (“Policies”) are intended to assist the Office of Executive Vice Chancellor and General Counsel (“OGC”) and outside counsel in providing timely, wise and cost-effective legal services to our mutual client, Washington University (“WU” or “University”). Please review these Policies thoroughly at the onset of your representation. Any questions or concerns should be addressed to the Executive Vice Chancellor and General Counsel.

I. GENERAL PROVISIONS

- A. Retention of Outside Counsel. OGC is responsible for management of all of WU’s legal affairs. WU retains and instructs outside counsel only through the Executive Vice Chancellor and General Counsel and his/her delegates in OGC and the Office of Risk Management. If faculty, staff or students contact you regarding WU’s legal interests, please refer that person to OGC.

- B. Communication with OGC. Typically, each matter is assigned to a single OGC attorney (“Responsible OGC Attorney”). Unless advised otherwise, all communications should be directed to the Responsible OGC Attorney, who will ensure that information is appropriately disseminated within OGC.

- C. Collaboration with OGC. WU is best served by a close and collaborative relationship between OGC and outside counsel. WU looks to outside counsel for their expertise, as well as their judgment, skills and creativity. OGC attorneys have special expertise in the problems that regularly face universities, and a unique understanding of WU. To facilitate collaboration, outside counsel will keep the Responsible OGC Attorney fully and timely apprised of all significant developments. The Responsible OGC Attorney

will, with input from outside counsel, make all significant decisions concerning legal tactics and strategy.

- D. Internal Deadlines. With the exception of routine matters (e.g., documents concerning stipulated extensions of time), the Responsible OGC Attorney will review drafts of all substantive communications, transactional documents, pleadings, discovery requests and responses, motions and memoranda. The extent of input offered by OGC will vary depending upon the circumstances, but in some cases may be extremely detailed. To ensure that OGC has adequate time for meaningful review, we expect outside counsel to conform fully with all deadlines for receipt of draft documents established by the Responsible OGC Attorney.
- E. Communications with University Personnel. All communication with WU should be directed to the Responsible OGC Attorney. Unless expressly authorized by the Responsible OGC Attorney, you should not communicate directly with University employees, representatives, and trustees. Nor should you send copies or drafts of documents or firm bills to such individuals, unless specifically requested to do so by the Responsible OGC Attorney.
- F. Conflicts of Interest. WU expects outside counsel to be vigilant in identifying conflicts of interest and the appearance of such conflicts. Outside counsel must discuss any existing or potential conflict with the Responsible OGC Attorney at the onset of the representation or as soon as the conflict becomes apparent. All existing and potential conflicts must be resolved to the satisfaction of OGC before the representation may begin or continue. OGC will evaluate waiver requests on a case-by-case basis. If WU elects to waive a conflict, it will do so in writing, in the form of the Standard Conflict of Interest Waiver located at <http://ogc.wustl.edu/counsel-retention.html>. In no case will WU agree in advance to a blanket waiver of unknown future

conflicts involving the possible assertion of a claim or charge against WU.

- G. Confidentiality and Privilege. WU expects outside counsel to assure that the attorney-client privilege, the work product doctrine, and other applicable privileges are fully maintained for the benefit of WU. If you believe special guidance concerning privilege issues is required, you should promptly provide such guidance to the Responsible OGC Attorney. If you foresee that it may be in WU's interests to waive the privilege (e.g., to assert an advice of counsel defense), the Responsible OGC Attorney should be advised immediately so WU can maintain its privileged communications with a view towards this exigency.
- H. HIPAA and Business Associate Agreement ("BAA"). HIPAA applies to organizations that meet the definition of a "covered entity." Washington University is considered a hybrid entity, as some components of WU, particularly (but not only) the WU School of Medicine, meet the definition of a covered entity under HIPAA and many others do not. To the extent that outside counsel will receive any Protected Health Information ("PHI") from a HIPAA component of WU, outside counsel must execute and comply with WU's form HIPAA BAA. OGC will only allow outside counsel to access or use PHI after the BAA has been fully executed by outside counsel, as outside counsel's assurance that they will appropriately safeguard and protect the PHI. The Responsible OGC Attorney will help facilitate the execution of the BAA between outside counsel and the WU HIPAA Privacy Office. WU HIPAA policies and forms, including the BAA, can be found at <https://secpriv.wusm.wustl.edu/privacy/default.aspx>.

I. Files and Records.

1. Outside counsel should provide final copies of all research, strategy, and other analytical memos (including those prepared by the firm for its own assessment of the case), substantive correspondence, transactional documents, written discovery and court filings to the Responsible OGC Attorney. We do not expect to receive copies of voluminous document productions. However, copies of particularly significant documents identified during discovery should be transmitted to the Responsible OGC Attorney.
2. All files and records maintained by outside counsel in connection with a WU matter belong to WU. Outside counsel shall transfer those files to WU, or otherwise as WU may direct, promptly upon its request.

J. Email. We expect outside counsel to use discretion in all email communications. In some cases, this may include refraining from email in favor of a telephone call, facsimile, or traditional mail. All privileged email communications should be prominently labeled as confidential, with reference to the applicable privilege(s) and/or protection(s).

K. Media. From time to time, outside counsel are contacted by the media in connection with their representation of WU. Outside counsel is not authorized to speak to the media unless specifically so advised by the Responsible OGC Attorney. In the absence of such authorization, any media inquiries should be reported to the Responsible OGC Attorney and, if so advised by the Responsible OGC Attorney, referred to WU's designated Public Affairs representative.

L. Firm Publicity. Outside counsel is not authorized to identify Washington University as a client in firm marketing materials, including websites, without prior permission from the Executive Vice Chancellor and General Counsel.

M. Deviations from Policies. OGC recognizes that it may be important to deviate from these Policies in certain circumstances. Any deviation must be pre-approved by the Responsible OGC Attorney, except in emergency situations where such approval is not feasible. In the event of emergency situations, outside counsel should advise OGC of his or her departure from the Policies as soon as possible. WU will not be responsible for payment of legal fees and expenses not incurred in accordance with these Policies unless this procedure has been followed and the fees or expenses incurred are reasonable.

II. STAFFING

A. Principal Firm Attorney. Typically, WU, through OGC, will engage a law firm through an individual attorney who will serve as the Principal Firm Attorney. In some cases, we will ask the firm to identify a Principal Firm Attorney. The Principal Firm Attorney will:

- Assume primary responsibility for the firm's work on the matter;
- Be actively involved in the matter;
- Be responsible for keeping the Responsible OGC Attorney up-to-date on all substantive developments;
- Be responsible for ensuring that all work is assigned in accordance with these Policies;
- Personally review all bills;
- Have full authority within the firm to adjust firm invoices, either on his or her own initiative or at the request of OGC.

B. Delegation. At the onset of a matter, the Principal Firm Attorney shall discuss staffing with the Responsible OGC Attorney. In appropriate cases, OGC will authorize two or more attorneys to work on a matter. In such cases, the Principal Firm Attorney is responsible for delegating work and should do so in a manner that ensures the most efficient and productive combination of expertise and economy. The following principles apply:

- We expect that the Principal Firm Attorney will be sensitive to the cost implications of work assignments. However, it is OGC's experience that more seasoned attorneys often perform legal work in the most efficient and cost-effective manner, notwithstanding their higher hourly rates. Work assignments should be made with this in mind.
- When work is assigned to less experienced attorneys, the assignment should be well defined and relatively discrete. The work must be supervised by the Principal Firm Attorney or other experienced counsel specifically selected by the Principal Firm Attorney and approved by the Responsible OGC Attorney.
- If the Principal Firm Attorney believes that a summer associate can make a valuable contribution to a case by, for example, performing a discrete research assignment, the Principal Firm Attorney should discuss that option with the Responsible OGC Attorney in advance. In most cases, WU will not pay for work performed by summer associates unless the assignment to a summer associate has been specifically approved in advance.

C. Additional Attorney and Paralegal Staffing.

- The University expects that the matter will be handled by the attorney(s) initially assigned. If the Principal Firm Attorney believes that additional attorney or

paralegal staffing is required, he or she should discuss the additional staffing needs in advance with the Responsible OGC Attorney.

- If it is necessary to assign a new attorney or paralegal to a matter for reasons other than unforeseen developments in the scope or content of the matter (such as competing client demands, or turnover in firm personnel): (1) the Principal Firm Attorney will discuss the staffing options in advance with the Responsible OGC Attorney; (2) the University will not pay for time spent by the newly assigned attorney or paralegal in becoming familiar with the matter; and (3) OGC and the Principal Firm Attorney will negotiate the appropriate hourly rate of any new firm personnel assigned to the matter (assuming that an applicable rate was not previously set).
 - While there may be circumstances that require the participation of more than one firm attorney (e.g., document intensive depositions), unless specifically approved in advance by the Responsible OGC Attorney, only one firm attorney may charge WU for attending meetings, depositions, negotiations, court appearances, etc.
 - The University recognizes that there may be sporadic need for short-term assistance from other attorneys or paralegals in circumstances that do not permit prior consultation with the Responsible OGC Attorney. The Principal Firm Attorney is expected to notify the Responsible OGC Attorney of that additional assistance before incurring fees in excess of \$1000 in a single billing period.
- D. Equal Employment Opportunity. We expect the firms that work for WU to actively develop an inclusive workplace by recruiting, retaining and promoting accomplished women and minority lawyers, paralegals and staff. In selecting and

continuing our relationship with outside counsel, we will consider a firm's demonstrated commitment to this goal and whether the firm is providing equal opportunity for all attorneys, paralegals and staff to perform services in all practice areas and at all levels of responsibility. To assist us in assessing the firm's commitment to an inclusive workplace, you agree to provide on an annual basis information addressing the following topics:

- The firm's diversity commitment, including diversity policies and information regarding the representation of women and minorities at all levels of the firm;
- The firm's efforts to identify, recruit and hire qualified women and ethnic minorities;
- The firm's efforts to retain diverse staff, including attorney development efforts, and
- The firm's diversity programs and results of those specific programs,

III. BILLING

A. General Billing Provisions.

1. Responsibility of Principal Firm Attorney. WU expects the Principal Firm Attorney to review all invoices and make any appropriate adjustments before submitting invoices for payment.
2. Format. All invoices must include the firm's federal tax ID number. In addition, the billing statement must include both detailed and summary portions.

The detailed portion must include:

- An itemized, dated and detailed description of each legal service performed;
- The name and billing rate of the person performing the service;
- The amount of actual and reasonable time spent performing the service (OGC expects each attorney to bill no more than the actual time (rounded to the nearest fraction of an hour) spent in a given day and to indicate, within each daily entry, the closest approximation of time spent on each discrete task performed during that day).
- An itemized statement of expenses, including the number of photocopies billed. If the statement of expenses includes payment to a third-party vendor, copies of the third-party invoice should be available to WU upon request.

The summary portion must include:

- Total hours worked during the billing period by each attorney and paralegal, with hourly fees shown for each timekeeper;
- Discounts from fees as agreed between OGC and firm;
- Any sums outstanding from prior invoices;
- A summary of all fees and expenses incurred from the inception of the matter through the end of the billing period.

If outside counsel is working on multiple matters for WU, the invoices may be submitted collectively. However, each

page of the invoice must include the firm name and the name of the specific matter addressed on that page.

3. OGC Contact. All invoices should be emailed in PDF format to Linda Ritter, Business Manager at ritter@wustl.edu.
4. Frequency of Billing. All matters must be billed on a monthly basis, unless the monthly fees and expenses associated with an ongoing matter are less than \$1000, in which case outside counsel may elect to defer billing until the next month. OGC cannot discharge its obligation to WU to provide meaningful review of such invoices where billing statements relate to services provided two months or more before the bill arrives. **Therefore, with the exception noted above, bills must be received no more than 21 days after the close of the month in which the fees were incurred, and must only include fees for services performed in the immediately preceding month.** Outside counsel should know that WU will not pay for “old” time and expenses; that is, fees and expenses incurred by the firms but not billed in accordance with the foregoing.

B. Attorney and Paralegal Fees.

1. Hourly Rates. Most matters will be handled for WU on an hourly basis at a carefully negotiated hourly rate. OGC recognizes that hourly rate increases are appropriate and necessary from time to time. However, WU does not experience routine annual rate increases from most law firms with which it does business. WU requires outside counsel to discuss any proposed increases with OGC well in advance of their effective date. **WU will not honor any rate increase that has not been agreed to in advance by the Executive Vice Chancellor and General Counsel.**

2. Not-to-Exceed Authorizations. On smaller matters, OGC may, after consultation with outside counsel, authorize the work up to a certain hourly or monetary limit. These authorizations represent firm caps on the amount WU will pay on such projects and are inclusive of costs and third-party fees unless otherwise noted. If, after the project is underway, the Principal Firm Attorney determines that the work may exceed the authorization, he or she should notify the Responsible OGC Attorney promptly and **before** fees and costs in excess of the authorization have been incurred. WU will not pay for fees and costs incurred in excess of the authorization unless the Responsible OGC Attorney has approved those additional fees and costs in advance and in writing.
3. Alternate Fee Arrangements. WU encourages and makes considerable use of alternative fee arrangements designed to align the firm's financial incentives with WU's objective of securing superior results with modest outlay. The terms of an alternative fee arrangement will vary depending upon the particular matter and should be discussed with the Executive Vice Chancellor and General Counsel.
4. Legal Research. Outside counsel shall obtain prior authorization from the Responsible OGC Attorney before undertaking more than eight hours of legal research on a single issue. Copies of memoranda prepared as a result of any research charged to WU and conducted by anyone in the firm, whether for the purpose of informing more senior firm attorneys or otherwise, must promptly be provided to OGC. Research memoranda should be accurate, organized and readily comprehensible. However, no extra time should be spent "polishing" such memos solely for OGC.

5. Audit Letter Activities.

- General. OGC recognizes that outside counsel's participation in WU's audit letter process is vital and involves professional effort. However, the vast majority of firms do not invoice for time spent on audit letter replies and related activities, and WU will not pay for fees and expenses incurred in such activities except as set forth in the following paragraph. OGC expects outside counsel to discuss any proposed change in the firm's practice in this regard with OGC far in advance of implementation.
- Limitations. WU will pay for time spent on audit letter replies and related activities only under the following circumstances: (1) the firm advises WU in writing that it invoices all of its clients for activities of this nature; and (2) the invoice to WU is for not more than two hours of time, of which not more than one hour is by an attorney. On a case-by-case basis, the Principal Firm Attorney may request the Executive Vice Chancellor and General Counsel to waive application of the foregoing limitation to the extent one or more of the underlying engagements call for a more thoughtful and exacting process on the part of the firm than customary in assessing loss contingencies.

6. Noncompensable Activities. WU will not pay for time spent on the following activities:

- Preparing or reviewing budgets or billing statements;
- Reviewing or analyzing the firm's actual or potential conflicts;
- Engaging in other activities primarily supportive of the firm's business development activities (e.g., preparing unsolicited "new developments" memoranda);

- Clerical work performed by an attorney or paralegal;
- Paralegal work performed by an attorney;
- Interoffice conferences of a supervisory, status, educational or administrative nature;
- Travel time spent performing work for another client.

7. Activities Compensable Only with Prior OGC Approval.
As noted elsewhere in these Policies, the following activities are only compensable if outside counsel has obtained prior OGC approval before the fees are incurred:

- Fees incurred in violation of these Policies, unless there is an emergency situation and the fees incurred are reasonable;
- Fees associated with the presence of more than one attorney at meetings, depositions, negotiations or court appearances;
- Work by summer associates;
- Work performed by attorneys or paralegals who have not been specifically approved in advance to work on the matter, if the fees associated with such work exceed \$1000;
- Time that any attorney or paralegal other than those initially assigned spends familiarizing his or herself with a matter, when the attorney or paralegal is assigned to the matter for reasons other than unforeseen developments in scope or content of the matter;
- Fees and costs in excess of a not-to-exceed authorization.

C. Experts and Other Consultants.

1. Retention. Retention of experts and other consultants must be approved by the Responsible OGC Attorney in advance.
2. Payment. Unless other arrangements are made, experts and consultants should be retained and paid by the firm. Fees of experts and other consultants should be included on the firm's invoice to WU. This procedure is designed to optimize WU's privileges protection and also to ensure that a full accounting is available if, for example, such costs are reimbursable. If a particular expert or consultant requires expedited payment, please discuss this request with the Responsible OGC Attorney.
3. Supervision. Outside counsel must attentively supervise experts and consultants to ensure that: (1) their fees are appropriate and reasonable; (2) all applicable privileges and protections are extended to their work; and (3) the work is conducted in accordance with applicable professional standards.

D. Expenses.

1. General Statement on Expenses. WU retains outside counsel with the understanding that they will sometimes incur charges to WU's account without WU's prior approval. WU expects that outside counsel will exercise restraint and reasonableness in the pricing and charging of such expenses. In evaluating the reasonableness of expenses, WU recognizes that overhead expenses are embedded in professional fees and that increases in overhead will sometimes require increases in professional fees. Accordingly, WU does **not** expect to be invoiced for unbundled portions of the firm's overhead, and will not pay any such charges. WU will reimburse outside counsel only for the actual cost of

reasonable and necessary out-of-pocket expenses incurred as a direct result of representation of WU only. Outside counsel shall provide documentation of its costs upon OGC's request. Illustrative lists of compensable and noncompensable expenses are set forth below. The principles articulated in this paragraph will apply to any expenses not specifically addressed below.

2. Compensable Expenses. Compensable expenses include:

- Photocopying (maximum charge is \$.10/page);
- Courier, FedEx, UPS and other delivery charges;
- Deposition transcripts and court reporter fees;
- Reasonable air fare or other transportation expense for approved travel (air travel shall be coach class and, wherever possible, shall be booked far enough in advance to take advantage of lower fares);
- Reasonable hotel and meals for approved travel.

3. Noncompensable Expenses. WU will not reimburse any personal expense or any expense that may fairly be regarded as part of the firm's overhead. Such expenses include, **but are not limited to:**

- Secretarial or other clerical salaries, including overtime, unless WU authorizes the specific use of overtime in advance;
- Local meals and local transportation;
- Telephone calls and facsimiles;
- Ordinary postage;

- Entertainment expenses;
- Library charges;
- Computer research;
- Fees associated with the acquisition, management or maintenance of computers, software, databases, document management systems, or any similar technology;
- Converting documents from one format to another;
- Scanning documents into a document management system, for email transmission, or otherwise.

IV. LITIGATION MANAGEMENT

- A. Applicability. At the onset of your representation, the Responsible OGC Attorney will discuss specific expectations for management of the case assigned to you. Outside counsel should assume that the Responsible OGC Attorney will be involved and fully informed throughout the litigation. For this reason, after the initial case analysis and litigation plan (see below), additional written reports will be at the specific request of the Responsible OGC Attorney, based on the needs of the particular case. Typically, outside counsel will be asked to prepare pre-mediation and pre-trial reports. Interim reports and the use of decision-tree techniques or software tools may also be necessary, depending upon the complexity of the particular matter.
- B. Initial Case Analysis.
1. Planning Conference. After receiving a new litigation matter, outside counsel must promptly initiate a planning conference with the Responsible OGC Attorney. The purpose of this conference shall be to identify WU's

objectives in the matter and begin development of an initial strategic plan for achieving those objectives, after consideration of the following:

- Venue and jurisdictional issues;
 - Potential for and sources of liability (if WU is the defendant) or claims (if WU is contemplating litigation);
 - Potential for assessment or recovery of damages (depending upon whether WU is the defendant or plaintiff);
 - Likely legal and factual defenses (of WU or, if WU is the plaintiff, of the adversary);
 - Prospects and strategies for achieving summary disposition;
 - Plan for further investigation, anticipated discovery and goals for each;
 - First estimate of likely case value. After the planning conference, the Responsible OGC Attorney will set a deadline for submission of the Case Analysis and Litigation Plan.
2. Case Analysis and Litigation Plan. After the planning conference, and after the opportunity to conduct necessary legal research and factual investigation, outside counsel shall prepare a written analysis of the case and summary of the strategic plan developed with the Responsible OGC Attorney. That document should include the following sections:
- Case Analysis
 - Statement of facts;

- Review of legal theories;
- Evaluation of potential liability or recovery, and damages.
- Litigation Plan
 - Identification of possible dispositive motions and analysis of their likelihood of success;
 - Discovery plan, including the purpose of depositions in light of strategic goals;
 - Plan for additional factual investigation, as necessary.
- Projected Budget

3. Budgeting. As noted above, the case analysis and litigation plan must include a projected budget for fees and expenses. In cases where legal fees are projected to exceed \$50,000, we require a detailed budget, with the specific budget categories to be determined on a case-by-case basis by the Responsible OGC Attorney in consultation with outside counsel. We appreciate that strategy must be occasionally reviewed and revised to reflect developments in the case, and that litigation budgets cannot, therefore, be formulated with mathematical certainty. However, if during the course of the representation, agreed-upon changes are made to the litigation plan that require corresponding increases in the initial budget, either in a specific category or as a whole, you should bring this to the immediate attention of the Responsible OGC Attorney, in writing, and seek approval for the budget modification. The Principal Firm Attorney is responsible for monitoring charges and maintaining the accuracy of the budgeting process. WU

reserves the right not to pay any charges that significantly exceed the mutually agreed budget.

C. Litigation Mechanics

1. Investigation. Outside counsel should promptly identify and interview WU personnel who are likely to be significant witnesses. Unless otherwise agreed, the Responsible OGC Attorney will arrange for, be present at and participate in all interviews with WU personnel. The Responsible OGC Attorney will coordinate your access to all pertinent WU documents.
2. Discovery. The Principal Firm Attorney and the Responsible OGC Attorney should agree on a discovery strategy.
 - Depositions. The Principal Firm Attorney should identify the depositions that he or she feels need to be taken, and the specific goals for each deposition. The Responsible OGC Attorney may require outside counsel to prepare a deposition outline by a specified date, which will be far enough in advance of the deposition date to give OGC adequate time for review and input. Unless the Responsible OGC Attorney has otherwise authorized in writing, the Principal Firm Attorney should be the only firm attorney whose time is charged for any deposition.
 - Document Production. While much of WU's litigation involves only modest document discovery, in some cases document review and production constitute significant tasks. Typically, OGC participates substantially in collecting relevant documents from WU personnel, but it does not have the support staff to prepare or produce large numbers of documents. Where significant document discovery or complex electronic discovery is anticipated, the Principal Firm Attorney

should discuss with the Responsible OGC Attorney the most efficient approach.

- Written Discovery. All proposed discovery requests and responses should be submitted to the Responsible OGC Attorney in time for thorough review and discussion before the deadline for service and/or filing.
3. Motions. Proposed motions should be discussed with the Responsible OGC Attorney before outside counsel begins work on the motion. Discretionary motions will be limited to those situations where there is more than a “long-shot” chance for a successful final disposition of the case or important elements of the case, or where the proposed motion provides some other strategic benefit. OGC’s attorneys bring a great deal of experience, knowledge and practical skill to litigation of the kind of cases most often seen in the WU setting, and they are expected to review and revise, sometimes substantially, the draft motions and supporting memoranda prepared by outside counsel. Accordingly, all draft motions and supporting memoranda **must** be submitted to the Responsible OGC Attorney in time for thorough and meaningful review and revision. The deadline for submission of draft motions will be set on a case-by-case basis, but in most circumstances, motions to dismiss or for summary judgment should be provided to OGC at least six business days before the filing date.

- D. Outcome Projections.¹ Often, OGC will request that analytical status reports of pending litigation include a prediction of WU’s likelihood of success on the merits, either in the context of dispositive motions or trial. It is vital

¹ Our observations on outcome projections are equally applicable to non-litigation matters where the issue under review is the likelihood that private litigants or regulatory agencies will successfully challenge a particular University transaction, practice, or decision.

that WU have the full benefit of outside counsel's expertise and experience in such projections, and we will therefore expect such predictions to be expressed in probabilistic terms (e.g., >75% probability of success in prevailing on our motion for summary judgment as to count 1; 35-45% probability of success at trial on count 1; etc.). In some cases, this effort will involve the use of decision tree software.² Outside counsel are sometimes understandably reluctant to quantify their predictions of the future, preferring phrases such as "reasonably strong," "fairly defensible," "moderate prospect of success." These phrases provide WU with relatively little input to consider in making its key litigation decisions, and leave us without the full benefit of the unique expertise that specialist outside counsel bring to bear. Please rest assured that OGC appreciates the uncertainties involved in attempting to precisely project the outcomes of the litigation process. Losing a case projected as a 75% winner does NOT mean that the projection was erroneous, or that the case was not litigated in the best possible way.

- E. Negotiation and Settlement. Outside counsel is expected to assist OGC as requested to resolve litigated matters as effectively and expeditiously as possible. OGC must be notified of all settlement demands or overtures, settlement offers made by other defendants, and other settlement-related communications as soon as outside counsel knows such information. The Responsible OGC Attorney will consult with the Principal Firm Attorney before determining whether settlement negotiations will be conducted primarily by OGC, outside counsel, or in tandem.

² Contact the Responsible OGC Attorney for information regarding such software.

V. EFFECT OF POLICIES AND EXPECTATIONS FOR OUTSIDE COUNSEL REPRESENTATION

These Policies and Expectations apply to any work undertaken after their implementation on April 30, 2014. We encourage outside counsel to bring any questions or concerns about any aspect of these Policies and Expectations to the attention of the Executive Vice Chancellor and General Counsel promptly after their receipt (for firms already engaged on a WU matter at the time of their implementation) and before beginning work on a WU matter (for firms engaged after the implementation date).

VI. OTHER DISCRETE AREAS OF PRACTICE

OGC may provide you with additional policies applicable to specific areas of practice.