

CATEGORY: PERSONNEL  
SECTION: Employee Support  
SUBJECT: Faculty and Staff Indemnification  
EFFECTIVE DATE: May 1, 2002 Revised  
PAGE(S): 4

I. PURPOSE

To provide instructions for an employee seeking defense and/or indemnification from the University in the event of actual or threatened legal proceedings.

II. SCOPE

This procedure is applicable to all current and former employees of the University, in connection with legal Actions arising out of their University duties or authority (which are defined to include teaching, research and administration for which an employee is paid by the University), as well as certain other specified activities outside of such duties or authority.

III. DEFINITIONS

Indemnification: Payment of judgments, fines, penalties, settlements and any other expenses actually and reasonably incurred in connection with a legal Action defined below.

Action: Action, suit or proceeding, whether civil, criminal, administrative or investigative.

IV. ADMINISTRATIVE RESPONSIBILITIES

Committee on Indemnification: The Committee is responsible for making the final determination, after disposition of the Action, whether an employee shall be indemnified under Policy 07-06-06, Faculty and Staff Indemnification. The Committee shall be composed of (1) the Provost and Senior Vice Chancellor, the Executive Vice Chancellor, and the President of the Senate when the employee is a faculty member of a non-Health Science School; (2) the Senior Vice Chancellor for Health Sciences, the Executive Vice Chancellor, and the President of the Senate when the employee is a faculty member of a Health Science school; or (3) the Associate Vice Chancellor for Human Resources, the President of the Staff Association Council, and the vice chancellor or senior vice chancellor in charge of the employee's unit when the employee is a staff member. Any member of the Committee shall be disqualified from the Committee if he or she has any adverse relationship in the proceeding against the employee, including but not limited to bringing a charge against the employee, acting as a witness against the employee, or participating in the proceeding's decision. If any member of the Committee is disqualified, he or she shall be replaced by a member of the University community agreed upon by the two remaining members of the Committee.

General Counsel: Determines whether to defend or indemnify the employee pending final disposition of the Action; provides in-house counsel, selects outside counsel, or concurs with employee's selection of outside counsel where a conflict of interest would make it inappropriate for the General Counsel to select outside counsel; and supervises the legal defense provided for the indemnified where appropriate. Unless the employee

otherwise agrees, the University may not use in-house counsel to defend the employee where the University has an interest adverse to the employee. In the case of internal University proceedings, the University and the General Counsel will not provide in-house counsel or participate in the selection of outside counsel.

V. PROCEDURE

A. Proceedings other than Internal University Proceedings

- Employee
1. Shall notify General Counsel in writing as soon as the employee becomes aware of a substantial possibility of an Action for which he or she may seek defense and/or indemnification.
  2. In order to apply for defense and/or indemnification, the employee shall:
    - a. Apply to General Counsel for defense and/or indemnification prior to incurring expenses to be reimbursed or otherwise acting in connection with an Action.

(Application after incurring expenses to be reimbursed or otherwise acting in connection with the Action, may be grounds for denial of the application, if such has prejudiced the employee's case or increased the costs of defense in any way.)

- b. Provide to General Counsel all pertinent information, including detailed information about the act or failure to act that is the subject of the Action.

- University
3. May decide to defend or indemnify an employee, in whole or in part, in advance of this final disposition of the Action, upon receipt of an agreement by or on behalf of such employee to repay any indemnification if it shall ultimately be determined that such employee should not have received indemnification under law, agreement or University policy.

- General Counsel
4. Shall decide whether to make the advance defense or payments described in the preceding paragraph. The decision may be appealed, in the case of faculty, to the Provost and Senior Vice Chancellor or Senior Vice Chancellor for the Health Sciences, or, in the case of staff, to the

Executive Vice Chancellor, whose decisions on advance defense and payments shall be final.

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5. Shall make the final determination, after disposition of the Action, whether an employee shall be indemnified.

General Counsel

6. If the University tentatively determines, before the final disposition of the Action, to defend or indemnify the employee, then the General Counsel shall select competent in-house or outside counsel, and shall supervise the cost, quality and strategy of any legal defense provided or indemnified.

Where a conflict of interest would make University selection of the employee's counsel inappropriate, an employee has the right to choose outside counsel with the concurrence of the General Counsel, and the General Counsel has the right to supervise only the cost and quality of the legal defense indemnified.

Employee

7. Shall cooperate fully in the defense of the Action.
  - Any unreasonable failure to provide full information or to cooperate with the General Counsel shall be cause for denial of defense and/or indemnification.
8. In the event an employee may have personal or other insurance coverage available to provide defense and/or indemnification, he or she shall promptly make the General Counsel aware of that fact.
  - The University may require the employee to exhaust any available benefits under such insurance before providing benefits under the Faculty and Staff Indemnification Policy.
9. In the event an entity with which an employee was connected in the course of the actions or omissions that gave rise to an Action may be obligated or able to defend and/or indemnify the employee, the employee shall promptly make General Counsel aware of that fact.
  - The University may require the

employee to exhaust any available benefits from such entity (or its insurers) before providing benefits under the Faculty and Staff Indemnification Policy.

10. If requested by the University, the employee shall produce proof of any such alternative sources of protection described in paragraphs 8 and 9 above, or lack thereof.

B. Internal University Proceedings

Employee

1. Shall notify General Counsel in writing as soon as the applicability of the Indemnification Policy is recognized. For cases in which Section II.F.1 of the Indemnification Policy applies, this notification shall be made prior to incurring expenses or otherwise acting in connection with an Action. For cases in which Section II.F.1 does not apply, but Section II.F.2 may apply, the General Counsel shall be notified in writing at the conclusion of the research integrity proceeding for which he/she seeks indemnification.
2. Provide to General Counsel all pertinent information about the proceeding including, in the case of research integrity proceedings covered in Section II.F.2 of the Policy, the investigative report and the extent of legal expenses for which indemnification is sought.

General Counsel

3. Direct that legal indemnification be paid if an allegation is made by a person outside the University who is represented by legal counsel or at the conclusion of a research integrity proceeding if the employee is found not to have engaged in research misconduct or research impropriety.

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4. Shall make the final determination of indemnification if the employee is found to have engaged in research impropriety but not research misconduct.

VI. REFERENCE

[Policy A0 20, Faculty and Staff Indemnification](#) (formerly 07-06-06)