



PERMANENT MEMORANDUM 72

ATTACHMENT: GUIDELINES FOR LAWYERS REPRESENTING LSU

Effective for billings commencing May 1, 2008.
PM-72 is effective immediately.

These Guidelines are issued by the LSU System Office of General Counsel (“Office of General Counsel”) pursuant to the authority of PM (Permanent Memorandum) -72. They set forth the general billing, invoicing, and other policies and procedures to be followed by attorneys handling legal work on behalf of LSU and any of its campuses and institutions. While these Guidelines set forth LSU’s general expectations, they are not a substitute for and are not intended to affect the attorney’s responsibility to exercise sound professional judgment and follow the highest professional standards.

I. CONTRACTS FOR LEGAL SERVICES AND REQUESTS

- 1.1 All legal services performed for LSU must be pursuant to a contract for legal services as set forth in PM-72, which is incorporated in and made part of these Guidelines.
- 1.2 All legal services performed for LSU shall be connected with a particular Request (as defined in PM-72) made by an authorized employee (whose name shall be included in the Request) or at the direction of the Office of General Counsel.
- 1.3 Each Request shall include a Request Identifier generated by the campus, which should be used to track all activity generated pursuant to the Request.
- 1.4 Each Request shall identify a Contact Employee, who will be the primary point of contact with LSU for the lawyer or law firm regarding the matter which is the subject of the Request.
- 1.5 All legal services performed for LSU may be subject to the general administrative supervision and legal participation of the Office of General Counsel, as appropriate under the circumstances.

II. INITIAL EVALUATION

Upon receipt of a Request, the lawyer who will be responsible for the matter shall conduct an initial evaluation. This should include, at least, the following.

- 2.1 Task-based budget. The budget should contain sufficient information to allow LSU officials to make reasonable cost-benefit decisions for the matter which is the subject of the Request. Collaborative efforts will be undertaken to develop a simplified system to be uniformly employed by all lawyers working on behalf of LSU. No budget is required if the lead attorney reasonably anticipates that the matter, and reasonably related matters, will take fewer than 10

hours of billable attorney time. When it becomes reasonably likely that this threshold will be exceeded, a budget must be submitted, including a brief explanation of the reason for the change.

- 2.1.1 Where appropriate, the budget should be divided into phases, identifying each phase and the conditions under which the next phase may be required. For example, a matter involving potential litigation should reflect a pre-litigation phase, a discovery and pre-trial phase which would be necessary if litigation is filed, and a trial phase which would be necessary if no pre-trial resolution is made.
 - 2.1.2 The budget should be submitted to both the Contact Employee and the Office of General Counsel within 10 business days of receipt of the Request, by e-mail.
 - 2.1.3 The budget should be reviewed at appropriate stages. If facts are learned during the handling of a Request that indicate that the matter will require more time and resources than originally apparent, adjustments should be made to the budget. Any such adjustments, and a brief written justification for the adjustment, should be submitted to both the Contact Employee and the Office of General Counsel promptly.
 - 2.1.4 Use of the Uniform Task-Based Management System (available at <http://www.abanet.org/litigation/utbms/utbms.pdf>) is acceptable as applicable, but not required.
- 2.2 For Requests which do not require a budget, an initial action plan and estimated timeline. The level of detail required depends on the scope and complexity of the Request. For example, an action plan might consist simply of "Review documents submitted by campus, research relevant provisions of public records law, give written opinion to campus by Tuesday." The initial action plan and estimated timeline should be submitted by e-mail to the Contact Employee, with a copy to the Office of General Counsel, promptly and, except in exigent circumstances, prior to work being done the Request.
- 2.3 Conflict review. All actual or potential conflicts of interest must be immediately disclosed, in writing, to the Office of General Counsel. Waivers of conflicts must be requested in writing and can only be authorized, in writing, by the System general counsel. Particular sensitivity should be used in consideration with representation of entities which are affiliated with LSU, such as foundations.
- 2.4 Standardization review. PM-72 limits Requests for legal services for the development of contracts which have been or should be standardized. LSU business processes and contracts should be standardized to the fullest extent practicable and consistent with sound business practices. It is the responsibility of lawyers and law firms working on behalf of LSU to minimize LSU's legal expenses by identifying opportunities for standardization and assisting with the creation of standardized contracts and contract provisions, so that new contracts (including leases) need not be created from scratch every time. Lawyers must comply with the standardization requirements of PM-72 and should use standard contracts and contract provisions provided by the Louisiana Division of Administration wherever appropriate.
- 2.5 ORM Insurance review. Where a potential claim against LSU is involved in the Request, an initial

review should be conducted to determine whether the potential liability is covered by the Office of Risk Management (ORM) or insurance. This determination should be transmitted with the task-based budget or the initial action plan to the Office of General Counsel. If coverage is uncertain, the transmittal shall include the basis for the uncertainty and the steps to be promptly undertaken by counsel to resolve the uncertainty.

III. STAFFING

- 3.1 Each law firm shall submit to the Office of General Counsel a proposed list of the lawyers who will be authorized to work for and bill time to LSU, which will be subject to approval by the System general counsel. No lawyer may bill or work on any matter for LSU without having been so approved.
- 3.2 All matters should be staffed with the minimum number of lawyers or other personnel consistent with high quality and proportionate legal services.
- 3.3 All matters should be handled at the most efficient level (partner, associate, paralegal, clerk, or secretary) consistent with high quality legal services. All invoices should contain sufficient detail to make clear that the level of work is appropriate to the level of the person performing it.
- 3.4 Only one lawyer from a firm normally should attend meetings, depositions, mediations, arguments, etc., unless the attendance of more is required to accomplish the purpose of the event. The Office of General Counsel may require prior written approval for attendance by more than one person.

IV. TIME BILLING REQUIREMENTS

- 4.1 All invoices for attorney or paralegal hourly time should contain at least the following information:
 - 4.1.1 The date the task was performed;
 - 4.1.2 The name of the person performing the task;
 - 4.1.3 brief but detailed description of the task performed (e.g. drafted [description of document], or researched [description of precise issue researched] or met with [name of person or people] about [topic(s) of discussion];
 - 4.1.4 The time devoted to the task;
 - 4.1.5 The Request Identifier (see section 1.3);
 - 4.1.6 Where prior approval is required, the name of the person who gave approval and the date and method of communication of the approval (e.g. "approved by John Doe, 11/20/07, by e-mail"); and
 - 4.1.7 Any other information required by R.S. 39:1521.1 or the contract for services;

- 4.1.8 Use of ABA Task Billing Codes (see section 2.1) is acceptable but not required.
- 4.2 Time records should be kept in 0.1 hour increments, except for activities taking less than 0.1 hour that should be grouped with others to accurately reflect the total time spent (for example, responding to 3 e-mails in 12 minutes should be billed as 0.2 hours, not 0.3 hours).
- 4.3 Block-billing (i.e., charges that lump together several unrelated tasks with a single total for time spent on those combined tasks) is not acceptable.
- 4.4 “Minimum billing” or “unit billing” is not acceptable. LSU will pay only for the time it actually takes to perform a task. For example, if a matter is relatively standard, and it takes the attorney only a few minutes to review and make minor changes to a standardized document, only the time spent making those changes may be billed, not the time it would take to prepare a new document from scratch.
- 4.5 Legal research time should be separately itemized, specifically identifying each topic researched and whether that research was performed on-line. Absent exigent circumstances, legal research which results in charges in excess of \$500 for time and on-line database expenses requires the prior approval of the Office of General Counsel. This limitation does not apply to “prior art” searches conducted as part of a patent application process.
- 4.6 LSU will not pay for travel time which is used to perform work for any other client. Travel time during which no work is done for other clients may be billed if done during normal working hours and if it does not cause service charges for the day to exceed eight hours.
- 4.7 LSU will not pay for any of the following:
- 4.7.1 Preparation of budgets, invoices, or responses to billing inquiries;
 - 4.7.2 Attendance at meetings of the LSU Board of Supervisors, unless the lawyer has been specifically authorized in writing to attend by either the Contact Employee or the Office of General Counsel;
 - 4.7.3 Clerical work, whether performed by clerical staff, attorneys, or paralegals;
 - 4.7.4 Training or education of personnel, including time spent to remain current in the law;
 - 4.7.5 Basic research on matters presumed to be within the lawyer or law firm’s expertise;
 - 4.7.6 Routine summarizing of depositions and documents;
 - 4.7.7 File review or organization; and
 - 4.7.8 Inter-office conferencing among attorneys or others, unless the conference is necessary either for a strategy meeting for an upcoming event, or where counsel consults with another person in the firm to obtain specific input on substantive or procedural aspects of the case that result in more effective and efficient handling of the matter. Where appropriate, specific explanation of such must be provided in the billings.

V. EXPENSE BILLING REQUIREMENTS

5.1 All invoices for expenses should include at least the following information:

- 5.1.1 The date the expense was incurred;
- 5.1.2 The name of the person incurring the expense;
- 5.1.3 The name of the vendor, service provider, expert witness, or other person to whom the expense was paid;
- 5.1.4 brief description of the expense and why it was incurred;
- 5.1.5 The actual cost of the expense (not including overhead or other mark-ups);
- 5.1.6 The Request Identifier (see section 1.3); and
- 5.1.7 Where prior approval is required, the name of the person who gave approval and the date and method of communication of the approval (e.g. "approved by John Doe, 11/20/07, by e-mail").

5.2 LSU will pay no more than the actual cost to the lawyer or law firm of any expenses incurred. In other words, LSU will pay no mark-up on those expenses and expects to receive the benefit of any discounts or rebates obtained by the lawyer or law firm.

5.3 Travel expenses will be reimbursed at the rates and subject to the conditions set forth in LSU PM-13, University Travel Regulations and in the General Travel Regulations established by the Commissioner of Administration pursuant to PPM-49. All overnight travel, and any exceptions to the University Travel Regulations, require the prior written approval of the Contact Employee or the Office of General Counsel.

5.4 Hiring any expert witness requires prior written approval from the Office of General Counsel. The lawyer primarily responsible for handling the Request should consult with the Office of General Counsel in the selection of any expert witnesses. Expert witness fees should be paid by the lawyer or law firm and billed to LSU as an expense, unless prior written arrangement is made for LSU to contract directly with the expert witness.

For any individual expense greater than \$500, a receipt or other documentation must be included with the invoice. Otherwise, all invoices, receipts, and other documentation of expenses shall be maintained by the lawyer or law firm for a period of three (3) years after the expense is invoiced to LSU. These records are subject to review pursuant to section 11.2 of these Guidelines and R.S. 39:1516. Some examples of the receipts or documentation that must be obtained and maintained are given below:

- 5.4.1 Telephone expenses – a daily itemization of all long distance calls indicating the number called, who placed the call, and the charge;
- 5.4.2 Express mail – a copy of the invoice from the vendor;

- 5.4.3 Travel expenses – airline ticket receipts, mileage logs, parking receipts, taxi receipts, hotel receipts, and any other receipts or documentation required by LSU PM--13 (see section 5.3; credit card receipts will not be accepted);
 - 5.4.4 Photocopying – an itemization of in--house photocopying charges indicating total number of copies and total amount per entry, or the receipt for any copying performed by an outside vendor.
- 5.5 LSU will not pay for any of the following expenses:
- 5.5.1 Secretarial, word processing, proofreading, filing, office machine attendants (photocopy or fax “tending”), librarian or other clerical services (normal, temporary, or overtime);
 - 5.5.2 On-line research fees for the use of common Louisiana databases in on-line research services (Westlaw, Lexis, Fastcase, etc.), such as Louisiana cases, Louisiana statutes, Louisiana Attorney General Opinions, etc., access to which should be considered overhead (LSU will pay actual costs for the reasonably necessary use of specialized research tools, subject to the provisions of section 4.5);
 - 5.5.3 Overhead, rent, office administration, or other expenses properly chargeable to overhead, capital expense costs, or the routine maintenance of offices, including air conditioning, lighting, conference rooms, office supplies, and file storage or maintenance, whether pro-rated or otherwise;
 - 5.5.4 Telephone and fax expenses which do not result in additional charges by the vendor (e.g., local phone calls, cellular phone calls, and incoming faxes); and
 - 5.5.5 Regular first class postage (LSU will pay for appropriate usage of certified mail, overnight delivery, and similar services, which should be used only when justified).

VI. INVOICE SUBMISSION

- 6.1 Invoices shall be submitted monthly and shall include the information specified in sections 4.1 (Time Billing Requirements) and 5.1 (Expense Billing Requirements). As required by R.S. 39:1521.1, each invoice must be submitted in the form of a sworn affidavit. Invoices must be submitted within 3 days following the end of each month.
- 6.2 Separate invoices shall be submitted for each campus or institution. Within each invoice, billed items should be grouped by Request Identifier (see section 1.3) and by date. Where feasible, the Contact Employee should be listed for each Request.
- 6.3 Invoices should be for a single calendar month and should include all time billings for that month.
- 6.4 To the extent feasible, invoices should include all expenses incurred in that month. If any expenses are incurred in a particular month but no bill is received from the vendor by the

lawyer or law firm during that month, every reasonable effort should be undertaken to obtain such bills in a timely manner and include those expenses in the following month.

- 6.5 All invoices shall be sent to the appropriate campus or institution, which shall be responsible for processing and payment. A copy of each invoice should also be sent to the Office of General Counsel, preferably by e-mail in a searchable electronic format (e.g., PDF, Word, or Excel file, not a scanned-in image of the paper copy). Each campus or institution will report the amount actually paid to the System budget & finance office.

VII. MONTHLY REPORTS AND OTHER COMMUNICATION

- 7.1 On a monthly basis, all law firms handling a total of ten or more Requests shall report to the Office of General Counsel the following information for each Request, sorted by campus and by the person or position making the Request. Where practicable, these reports should be provided in searchable electronic format.
 - 7.1.1 The Request Identifier (see section 1.3);
 - 7.1.2 The classification of the matter, using the categories set forth in section 2.4.7 of PM-72;
 - 7.1.3 The amount billed to date and the amount remaining in the estimated budget created for the Request pursuant to section 2.1, if applicable;
 - 7.1.4 brief description of any significant activity which occurred in the previous month; and
 - 7.1.5 description of any institutional policy implications of the matter if not previously reported.
 - 7.1.6 On a monthly basis, all law firms handling fewer than a total of ten Requests shall report to Office of General Counsel the Request Identifier, the campus which made the Request, the name of the Contact Employee, and a brief narrative describing the matter and any significant recent activity. This may be included with or within the monthly invoice, in which case no separate report is required. Additional reports and information may be requested as deemed appropriate by the Office of General Counsel.
- 7.2 Once a Request has been fulfilled or resolved and no further legal work is needed, the lawyer or law firm shall submit a brief final report to the Contact Employee, with copies to the authorized employee who made the Request and the Office of General Counsel, indicating the nature of the resolution.
- 7.3 Copy of all communications by a lawyer representing LSU addressed to the President, any chancellor or equivalent, or other System officers (i.e., officials employed at the LSU System level rather than at any particular campus) shall be sent to the Office of General Counsel.
- 7.4 Unless otherwise specifically agreed in writing, all research memoranda and any other documents produced or obtained pursuant to any contract for legal services shall be made available to LSU upon request.

- 7.5 Copies of any legal research memoranda, major briefs or motions, and other important documents should be sent (in searchable electronic format when practicable) to the Office of General Counsel.
- 7.6 Other than confirming facts that are a matter of public record, no lawyer representing LSU should comment to the media on any other specifics of any case or matter relating to LSU, or on any general matters involving LSU policies, procedures, or decision-making. All media inquiries should be referred to the appropriate campus or System official.
- 7.7 As a general rule, any legal advice requested by a campus or institution should be provided in writing, in a privileged legal format, with a copy provided to the Office of General Counsel by e-mail. For minor, routine matters, informal verbal advice may be given. When the opinion of a lawyer is to be relied upon by a campus or institution for any submission being made to the Board or the President, or when the campus or institution is seeking the opinion at the direction of the System Office, the opinion must be provided in writing, with a copy provided to the Office of General Counsel by e-mail. Any written opinion should identify the relevant facts (or hypothetical facts) on which the opinion relies and the name of the person who provided those facts.

VIII. REQUESTS FOR ATTORNEY GENERAL OPINIONS AND ETHICS ADVISORY OPINIONS

- 8.1 No Attorney General Opinion and no Ethics Advisory Opinion shall be sought without prior written approval by the Office of General Counsel. Any lawyer representing LSU who has knowledge of any LSU employee seeking such an opinion without the approval of the Office of General Counsel shall report that information to the Office of General Counsel.

IX. LITIGATION

- 9.1 Once litigation regarding a particular matter appears reasonably likely, a litigation analysis should be performed to determine the best strategy for handling the case. Meritorious cases should be resolved at the earliest possible time. Where liability by LSU appears reasonably likely, informal mediation should be considered in an attempt to resolve the case, if possible, without the expenditure of discovery costs. Formal mediation may be approved by the Office of General Counsel.
- 9.2 When the authorized employee who made the Request or the Contact Employee will be a central fact witness or their conduct is likely to be called into question in litigation, the lawyer shall communicate those facts to the Office of General Counsel, which will take steps to assure that the fact-finding process and attorney-client relationship is not adversely affected.
- 9.3 No civil action shall be filed on behalf of LSU or any of its campuses or institutions without approval by the Office of General Counsel. Absent exigent circumstances, defensive actions are subject to timely notice and approval of the Office of General Counsel.
- 9.4 Court filings determined by the lawyer to be key documents because of their legal or policy significance should be reviewed by the Office of General Counsel prior to filing. What constitutes a key document will vary from case to case. Where this review is required, the document should be provided to the Office of General Counsel at least 5 business days prior to the filing deadline. Responsibility for timely filing remains with the lawyer.

- 9.5 For cases which expose LSU to a liability greater than \$10,000 or which involve significant institutional or policy issues, an initial case evaluation meeting should be conducted within 3 days of the commencement of litigation between the lawyer primarily responsible for handling the litigation, the Contact Employee, and the Office of General Counsel. The purpose of this meeting is to discuss the lawyer's analysis of liability and damage issues, legal and factual defenses, further investigation, anticipated discovery, the goals expected to be achieved, appropriate motions (including summary judgment), case value, settlement value, and, where applicable, alternative dispute resolution.
- 9.6 This section 9 does not apply to matters before the Civil Service Commission, unless they involve significant institutional policy.

X. RESOLUTION AND CORRECTIVE ACTION

- 10.1 All dismissals, settlements, or other final resolutions must be approved by the President or the System general counsel when authorized to do so by the President. Some settlements may also require approval by the Board of Supervisors pursuant to the Board Bylaws, and the delays for such should be considered.
- 10.2 When a lawyer, during the course of representing LSU, learns of circumstances which would suggest the need for institutional remedial action (e.g. an employee who has committed misconduct, an unsafe physical condition on LSU property, inadequate administrative safeguards which contribute to liability, negligent or substandard conduct by an employee or contractor, or possible violations of the Ethics Code or other applicable laws and state or federal regulations), this shall be reported to Office of General Counsel, along with a brief statement of suggested remedial steps. Steps should be taken to preserve the privileged nature of these communications.
- 10.3 When litigation or threatened litigation has resulted in payments by LSU, or in significant legal fees, the lawyer handling the Request should, in close consultation with the Office of General Counsel, identify what steps LSU or the lawyer or law firm could have taken differently or better to avoid the litigation, reduce costs, or secure a better outcome, or what could be done to reduce the risk of liability or costly litigation in the future.

XI. MISCELLANEOUS

- 11.1 Where a report, invoice, or other document is required to be provided to the Office of General Counsel by e-mail, it should be sent to: GeneralCounsel@lsu.edu The mailing address for the office is: Office of General Counsel, Louisiana State University System, 3810 West Lakeshore Dr., Baton Rouge, LA 70808.
- 11.2 All records relating to the contract for legal services are subject to review by LSU internal auditors, the Legislative Auditor of the State of Louisiana, Division of Administration auditors, and others as required by law.
- 11.3 Where a provision of these Guidelines is in conflict with an express provision of a contract between LSU and another person or entity, the provisions of the contract shall control. For

example, if an intellectual property licensing agreement authorizes the licensee, or a co-licensor, to take action to protect the intellectual property, the provisions of these Guidelines would not apply to any legal services obtained by the licensee or co-licensor. Even in these circumstances, however, where LSU is named as a plaintiff or a defendant in any lawsuit, or where further authorization or approval of the proceedings by LSU is required, the Office of General Counsel shall be promptly notified. No contract may be structured for a principal purpose of attempting to take advantage of this paragraph. This paragraph is not applicable to contracts for legal services.

- 11.4 The Office of General Counsel may amend these Guidelines at any time and may waive requirements or impose additional requirements on a case-by-case basis.
- 11.5 The Louisiana Code of Ethics, La. R.S. 42:1101 *et seq.*, shall be complied with.
- 11.6 These Guidelines are not intended to and do not create any rights in third parties.