



NMSU Outside Counsel Guidelines

New Mexico State University (NMSU), through its University General Counsel (UGC) has developed the following guidelines to outline its expectations with regard to its relationship with all outside attorneys and firms (Outside Counsel).

A. Engagement

Outside Counsel will not undertake work on any legal matter without express authority from NMSU's general counsel. An award of a contract in response to a proposal from Outside Counsel does not constitute authority to perform legal work for NMSU. UGC will have authority and responsibility to define the scope of services to be provided and the terms of engagement for each legal matter assigned to Outside Counsel. Outside Counsel will not be compensated for any work performed, or expenses incurred outside the agreed upon scope of services. Any proposed assignment may be contingent upon Outside Counsel providing an acceptable case/matter budget for the matter.

B. Management of Legal Services:

An in-house attorney in UGC, typically the General Counsel, will be designated as the contact person for each legal matter assigned to Outside Counsel. Similarly, Outside Counsel is required to designate a single attorney in its firm as the primary contact for each legal matter. Outside counsel is required to keep the UGC designated attorney informed of all developments and significant events regarding the assigned legal matter(s). Updates may come in a variety of forms: by delivery of documents or pleadings, by telephone, or by email. In complex matters with a high dollar value, UGC may occasionally require a formal status report and may on rare occasion ask Outside Counsel to provide an in person briefing for the NMSU senior executive team and/or Regents. The Outside Counsel designated attorney for a matter is expected to personally handle all critical and substantive activities and will be accountable for the overall management of the assignment, the law firm team, and the costs of the engagement. Outside Counsel may not subcontract any NMSU legal matter without the written approved of UGC.

C. Litigation:

RMD Covered Litigation. A majority of the litigation claims in which NMSU or its employees are named as defendants are covered under the Public Liability Fund managed by the State Risk Management Division (RMD). In those cases, RMD typically selects counsel from their roster of contracted attorneys based on a variety of factors, and the RMD guidelines take precedent over this document in those cases. Even so, NMSU expects the assigned attorneys to treat NMSU as the client and to fulfill their professional obligations accordingly, including keeping NMSU informed of case developments as described in Part B above. Settlements should be made only with NMSU consent, and due care should be given for NMSU's interest in protecting its reputation.

NMSU Funded Litigation. NMSU occasionally requires legal counsel to file lawsuits on its behalf or, more commonly, to defend lawsuits for which there is no RMD coverage. In these cases, UGC will necessarily take a more active role in managing and directing the course of the litigation. As part of the assignment of a litigation matter UGC will conference with Outside Counsel to establish the initial strategy for the litigation. The following topics should typically be addressed at the conference:

1. **Information Assessment:** Information already developed on the matter and further information needed for Outside Counsel to develop a litigation strategy and conduct liability and risk assessments.
2. **Members of the Team and Other Resources:** Outside Counsel will identify the attorneys and other professional staff members from its firm to service the litigation matter. The UGC may request resumes and other information regarding their specific areas of responsibility and qualifications. UGC will provide a list of internal NMSU contacts who are expected to be witnesses and those who are custodians of key information key.
3. **Role of UGC:** Outside Counsel and UGC will define the role of UGC in assisting with the litigation and serving as a liaison to other NMSU staff. The UGC must be involved in and approve all key decisions in litigation matters. Outside Counsel will provide UGC with copies of all court documents and correspondence with opposing counsel on a timely basis. As a general rule, UGC expects to have the opportunity to review substantive motions and pleadings prepared by Outside Counsel before filing. UGC may, with adequate advance notice, request a formal litigation risk analysis to be prepared. In the event of a settlement or adverse outcome, UGC may require a “root cause analysis” providing Outside Counsel’s recommendations for preventing similar losses.
4. **Budget:** UGC and Outside Counsel will develop a budget based on the litigation stages (e.g., initial development of case, pleadings, discovery, motions, pre-trial motions, trial preparation, trial, appeal). For each stage, a “target budget” should be developed. Budget targets are flexible and will be revised to reflect unanticipated events; however, Outside Counsel must identify its baseline assumptions and these must be agreed to by UGC in advance. In addition to legal fees, the budget must include all expected litigation costs including experts, document management services, other external services, and anticipated travel. Outside Counsel may not exceed the target budget estimate without written approval from UGC.

D. Staffing

All matters must be staffed with the minimum number of lawyers consistent with high quality legal services and at the most efficient level (partner, associate, paralegal, clerk, or secretary) consistent with high quality legal services. Unless approved in advance by UGC, duplicate staffing is not permitted. We normally pay for only one attorney to accomplish a task. The preparation for and attendance at a deposition, hearing, trial or meeting by more than one attorney, paralegal, etc. will not be paid unless prior approval is obtained from UGC. We will not pay for any attorney redoing the work of another attorney or duplicative entries for reviewing and analyzing documentation and legal research. Conferencing among attorneys in the office is generally not compensable, unless the conference necessitated by a significant legal event and is held at the request of UGC. When conferencing is necessary, only the senior attorney’s time will be compensable unless prior approval is obtained. If for any reason the firm replaces a team member, the cost associated with the education of a new team member will be the responsibility of the law firm. Once Outside Counsel identifies the attorneys assigned to represent NMSU in a specific matter, the attorneys should not be added to or removed from the assignment without prior notice to and approval from UGC.

E. Fees, Costs and Billing

Fee Arrangements. Except where otherwise agreed, attorneys' fees will be billed on an hourly basis using tenths of an hour increments. NMSU is receptive to alternative fee arrangements, including consultations retainers, fixed pricing by matter and task, incentive pricing, etc. Outside Counsel is welcome to propose alternative fee arrangement on a matter by matter basis. Billing statements should not reflect increases to rates the UGC has negotiated with your firm, unless the UGC has pre-approved the rate changes. For approved travel on NMSU legal matters, travel time is paid at the base rate established for the firm's employee/attorney, except that the time utilized working on other matters should not be billed to NMSU. A firm may not submit more than one proposed rate increase per year (reflecting new rates for all attorneys expected to represent NMSU). An attorney's hourly fee shall not exceed the lowest fee charged to any of the firm's clients. The signature of the UGC must be included on the first invoice submitted after the approval of the rate change. In the absence of such approval, the UGC will pay billing statements based on negotiated rates.

Costs. Routine costs may be included in all bills. All other costs incurred are reimbursable only when budgeted in advance or with prior written approval of the UGC responsible. All costs must be reasonable under the circumstances and may not exceed the actual cost incurred by the Outside Counsel.

1. **Photocopies (routine cost):** Photocopies not to exceed \$0.15 for color copies and \$.0085 for black and white; with invoices indicating the price per page and the number of copies made.
2. **Long distance telecommunications (routine cost):** phone calls and long distance fax charges; with invoices indicating the date of the call or fax, the telephone number, and the actual costs.
3. **Travel Expenses (preapproved):** automobile mileage is reimbursed at the state mileage reimbursement rate with distances based on Google Maps; air travel is reimbursed at the coach or economy fare (receipt must be provided upon request); meals are reimbursed only at the NMSU per diem rate (call UGC to determine amount); and lodging expenses may be based on actual expense at business class hotel (receipt must be available upon request).

Billing Information. **Bills must be submitted monthly, no later than thirty (30) days following the end of the month in which services were rendered.** NMSU's fiscal year ends on June 30, and it is particularly important that bills for services in May are received as early as possible in June. All bills should be sent to UGC for handling. UGC is committed to the prompt payment of billing statements that conform to our requirements – typically within 30 days of receipt. Given that payments processing occurs in another NMSU unit, Outside Counsel should direct its billing staff to contact UGC directly if bills are not paid within 60 days of dispatch. Bills that are transmitted electronically must be directed to gencounsel@nmsu.edu. Outside Counsel should address any concerns or questions about the UGC billing expectations with us as soon as practicable. All invoices for services performed at an hourly rate are to contain at least the following information.

1. Date of each task performed;
2. Name of the person performing the task;
3. Brief but detailed description of the task performed;
4. Time devoted to the task in increments of one tenth of an hour;
5. Billing rate for each person (at rates previously contracted by NMSU for the person performing the task);
6. Itemized breakdown of billed costs, without markups by the firm.

Non-Billable Time and Items. NMSU will not pay for time or costs of the following:

1. Preparation of budgets, invoices, routine diary reviews (not precipitated by any legal event, phone call, or receipt of correspondence), status reports which reiterate facts already known by the UGC, or responses to billing inquires;
2. Attendance at weekly staff meetings and any internal firm events such as retreats;
3. Clerical or paralegal work performed by attorneys; clerical work performed by paralegals;
4. Secretarial, word processing, proofreading, filing, office machine attendants (photocopy or faxing), librarian or other clerical services (normal, temporary, or overtime);
5. Training or education of personnel;
6. Marketing and relationship-building time;
7. Basic research on matters presumed to be within the firm's expertise or on matters of common knowledge among reasonably experienced counsel in the locale;
8. Computerized legal research such as Westlaw or Lexis;
9. Cellular telephone charges; Local telephone or facsimile charges;
10. Meals (other than meals with a client or witness, or while away from the firm on travel representing the UGC office);
11. Local travel time and expenses unless approved on a case by case basis;
12. Billing of a "miscellaneous" or "other" category of expenses, without specification of each expense;
13. Credit card processing fees incurred for pass-through costs; or
14. Any other expense properly chargeable to overhead or as a capital expense.

F. Miscellaneous

Conflicts of Interest. NMSU expect Outside Counsel to comply with all applicable professional guidelines governing conflicts. Prior to beginning work on any NMSU matter, your firm should identify, disclose, and clear to the satisfaction of the UGC any potential conflict of interest. Any conflicts that arise or may arise after the commencement of work for NMSU are to be disclosed to and resolved with the UGC.

Media Contacts. Outside Counsel are prohibited from making statements to the media on behalf of NMSU without express authorization from the UGC. Outside Counsel should refer all media inquiries to UGC. NMSU has a professional communication office that will issue public statements regarding NMSU legal matters, if any, after clearance by UGC. UGC will consult with Outside Counsel before authorizing such statements.

Reputation Protection. NMSU's reputation is highly valued asset. With respect to legal assignments, we expect Outside Counsel to be vigilant about both identifying the reputational risk and communicating that risk effectively to us. Outside Counsel's conduct in representing NMSU also impacts NMSU's reputation, and Outside Counsel is expected to conduct its representation with due regard for that fact. NMSU is interested in doing what is right in a given situation, and expects to receive Outside Counsel's advice and counsel on how to achieve a fair and just outcome in all legal matters.

Amendments. These Outside Counsel Guidelines, including the billing guidelines, may be revised from time to time by the UGC, and such amendment shall become effective for all matters subsequently assigned and accepted following communication of the revised guidelines to Outside Counsel.

END OF DOCUMENT