

# Business Policy Letters

---

TO: All Members of the University Community 99:10

DATE: June 1, 1999

## **Legal Representation and Indemnification**

(Supersedes 89.11)

### I. LEGAL REPRESENTATION

#### A. General Policy

Subject to the limitations, conditions and procedural requirements established elsewhere in this resolution, Ferris State University shall indemnify all of its officers and employees (including student employees and properly appointed volunteers) for the cost of legal representation made necessary or desirable by the existence of all of the following conditions:

1. The officer or employee has been made a party to, or is threatened to be made a party to a civil, criminal or administrative suit, proceeding, action, or investigation.
2. The suit, proceeding, action, or investigation related to conduct or inaction of the officer or employee which was within his/her scope of authority and course of employment, or, which the officer or employee reasonably believed to be within his/her scope of authority and course of employment.
3. The conduct or inaction at issue was the result of the officer or employee acting in good faith.

#### B. Limitations of Indemnification for Legal Representation

1. The University may, in its discretion, designate and engage an attorney on behalf of the officer or employee who is in need of legal representation. If the officer or employee declines such representation, the University shall have no obligation to indemnify the officer or employee for the cost of legal representation.
2. The officer or employee seeking indemnification for legal representation shall have a duty to cooperate fully with the counsel approved by or appointed by the University. If the officer or employee fails to cooperate with the counsel, legal representation may be withdrawn, and the University shall have no obligation to indemnify the officer or employee for the cost of legal representation. In the event that legal representation is withdrawn, the Board of Trustees will be provided with a summary of the reasons for such withdrawal at the next meeting of the Board of Trustees.
3. If at any time during the suit, proceeding, action or investigation, it is determined by the University that a) the officer or employee does not satisfy the requirements for indemnification set forth in A.1, 2 and 3 above, or b) the employee did not comply with number III below, legal representation shall be withdrawn, and the University shall have no obligation to indemnify the officer or employee for the cost of legal representation.
4. The obligation to provide legal counsel or indemnification for legal representation shall not apply if the suit, proceeding, action or investigation is commenced by the Board of Trustees of Ferris State University.
5. The duty to provide legal counsel or indemnification for legal representation shall not apply if the officer or employee fails to seek prior approval of indemnification as specified below.
6. The conduct or inaction involved did not constitute an intentional violation of federal or State law.

#### C. Procedure for Requesting Indemnification and/or Legal Counsel

1. An officer or employee may request that counsel be provided or that indemnification for the cost of legal representation be approved by writing a letter to the University's General Counsel requesting

such representation or provision of counsel. The letter shall outline the reason for the request, and shall have attached all legal documents which are relative to the request. This letter shall be delivered to the General Counsel immediately after an officer or employee becomes aware that he/she is a party to (or subject of) a suit, proceeding, action or investigation, or is threatened with such involvement. In no event shall this letter be delivered more than three (3) working days after the date when the officer or employee first became aware of his/her involvement in the suit, proceeding, action or investigation.

2. The General Counsel, in cooperation with the Risk Manager, may designate legal counsel to represent the officer or employee, pending approval by the Board of Trustees at its next regularly scheduled meeting. Such interim representation shall be approved unless the General Counsel determines that providing such representation would not be consistent with this policy.
3. The Board of Trustees will take formal action on all requests for indemnification, or for the provision of legal representation, at the next regularly scheduled meeting after the request is received. In addition, the Board will be provided with information regarding employees who were denied interim representation by the General Counsel.

## II. INDEMNIFICATION FOR JUDGEMENTS, SETTLEMENTS, AND FINES

- A. If a judgement is entered against an officer or employee of the University; if a settlement is entered into by an officer or employee of the University; or if a fine is assessed against an officer or employee of the University, Ferris State University shall indemnify the officer or employee for the amount of the judgement, settlement, or fine, if, and only if, all of the following conditions are satisfied.
  1. Within ten (10) business days of the date when the officer or employee first became aware of his/her involvement in the suit, proceeding, action or investigation, he/she submitted a letter to the General Counsel summarizing his/her involvement and requesting legal counsel (or indemnification for legal representation).
  2. Within five (5) business days of the date when the officer or employee first became aware that a judgement or fine had been entered against him/her, or, prior to entering into a settlement, the officer or employee sends written notice to the General Counsel, with all relevant legal documents, and requests indemnification for the judgement, fine, or proposed settlement.
  3. The officer or employee has cooperated with his/her University approved or provided counsel at all times during the process.
  4. The Board of Trustees determines that the conduct or inaction resulting in the judgement, fine or settlement occurred within the officers or employees course of employment and scope of authority, (or that the officer or employee reasonably believed his/her actions to be within the course of employment and scope of authority) and that the officer or employee acted in good faith. This determination shall be separate from and in good faith. This determination shall be separate from and in addition to the Board's initial determination for the purpose of providing counsel or approving indemnification for legal representation.
  5. The suit, proceeding action or investigation was not commenced by the Board of Trustees or at the direction of the Board of Trustees.
  6. The officers or employees conduct or inaction did not constitute an intentional violation of federal or State law.

## III. COMMUNICATIONS

A University employee who receives any communication regarding a suit, proceeding, action or investigation involving his/her employment at the University, shall decline to respond to such communication unless authorized to respond by the University's General Counsel. All such communications, including requests for information, shall be immediately reported to the Office of the General Counsel.

Richard Duffett, Vice President  
Administration and Finance  
Contact: Office of the General Counsel