



# Litigation Review Committee

September 2018

September 13, 2018

11:00 a.m. - 12:30 p.m.

Peterson Room, McNamara Alumni Center

## LIT - SEP 2018

### 1. Report on Legal Matters

Docket Item Summary - Page 3

Report on Legal Matters - Page 4

### 2. Resolution to Conduct Non-Public Meeting of the Litigation Review Committee to Discuss Attorney-Client Privileged Matters - Review/Action

Docket Item Summary - Page 15

Resolution - Page 16



# BOARD OF REGENTS DOCKET ITEM SUMMARY

---

**Litigation Review**

**September 13, 2018**

**AGENDA ITEM:** Report on Legal Matters

**Review**

**Review + Action**

**Action**

**Discussion**

*This is a report required by Board policy.*

**PRESENTERS:** Douglas Peterson, General Counsel

## **PURPOSE & KEY POINTS**

Board of Regents Policy: *Attorneys and Related Services* requires the Office of the General Counsel (OGC) to report annually on its activities.

This report provides the Litigation Review Committee an opportunity to discuss legal developments and trends affecting the University, and OGC's performance in providing legal services to the University during FY 2018.



UNIVERSITY OF MINNESOTA



# Office of the General Counsel

ANNUAL REPORT 2018



## Mission of the Office of the General Counsel

**TO SAFEGUARD** the constitutional authority of the Board of Regents and those who act on its behalf to govern the University

**TO REPRESENT** the University in adversarial forums zealously and in accordance with the highest standards of integrity and ethics

**TO PROTECT** the University's legal interest in all transactions, thereby protecting the investment of the citizens of Minnesota in the University

**TO PROVIDE** legal services and counsel to University officials so that all the institution's activities comply with applicable laws and University policies

**TO PROTECT** the principles of due process in the University's treatment of faculty, staff and students and all other members of the University community

# UNIVERSITY OF MINNESOTA

Crookston • Duluth • Morris • Rochester • Twin Cities

Office of the General Counsel

McNamara Alumni Center  
200 Oak Street S.E.  
Suite 360  
Minneapolis, MN 55455

Office: 612-624-4100  
Fax: 612-626-9624  
E-mail: [ogcweb@umn.edu](mailto:ogcweb@umn.edu)



Doug Peterson

Dear Colleagues,

Universities excel with pioneering research, robust dialogue, and challenges to convention. Diversity, in all of its dimensions, makes us strong. Service is at the core of land grant institutions in particular. How the privileges and responsibilities of what it means to be the University of Minnesota intersect with the law is the work of the Office of the General Counsel. We thank you for the opportunity to join you in the University's mission of teaching, research, and service.

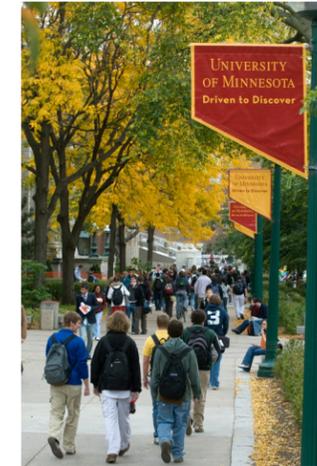
We traditionally highlight one campus on the cover of the OGC Annual Report. This year it is fitting that we celebrate the five-campus system. The ongoing system-wide strategic planning process underscores the importance of what binds us together. Further evidence of our ties can be found in the advice and services provided by OGC. From employment law counseling to First Amendment issues to Title IX matters, there are common threads to the legal questions we face across the University of Minnesota. The proof is found in this report.

I am reminded again this year that our University is truly of Minnesota. Our legal responsibilities find us assisting the Academic Health Center to chart the University's care for Minnesota's health, advising an institution employing 4,000 faculty and 14,000 staff employees serving 62,000 students, and serving a dynamic R1 university dedicated to promoting public-private partnerships and commercializing its intellectual property.

The ability of the Office of the General Counsel to provide high caliber legal representation across a five-campus system moving at a cutting edge pace hinges upon the quality of OGC's lawyers, paralegals, and administrative and professional staff. I trust that Goldy has an especially proud, buck-toothed smile this year for six of our veterans who have worked at the University of Minnesota for more than twenty years: Barbara Shiels (35), Greg Brown (27), Nancy Larson (25), Elizabeth Anderson (24), Susan McKinney (23), and Don Amundson (22). Not only do they set an example of excellence, they also mirror the esprit de corps that makes the OGC a good place to come to for advice and counsel.



Rochester



Twin Cities



Morris



Crookston



Duluth

*This year it is fitting that we celebrate the five-campus system. The ongoing system-wide strategic planning process underscores the importance of what binds us together.*

The spirit of service finds OGC serving others outside of the University community as well. It is humbling for me to be associated with colleagues who take time to raise funds and work on service projects for community organizations such as Support-A-Family, Feed My Starving Children, UnderDog Rescue, Neighborhood House, YMCA of Minneapolis, and the Volunteer Lawyers Network.

The University of Minnesota makes a difference. The Office of the General Counsel pledges to do our part to advance its core values by offering you the quality legal representation your contributions to the University's mission deserve.

With warmest regards,

Douglas R. Peterson

## Legal Trends Affecting Higher Education

### European Union Adopts New Data Privacy Regulation.

The European Union's General Data Protection Regulation (the "GDPR") went into effect on May 25, 2018. This new rule directly affects the University and changes, in small and in significant ways, how the University protects the privacy of University current and prospective faculty, staff and students who are EU residents.

The University operates in the EU. Its Global Programs and Strategy Alliance has formal exchange programs with academic institutions there. The Carlson School of Management offers executive degree programs in the EU, in Austria. The University recruits and enrolls EU residents. Since 2004, the University also has operated a French non-profit association in an office in Montpellier, France. The University's activities in the EU subject it to the GDPR.

"GDPR is going to introduce very fundamental changes to the way the internet works for everyone," according to Doug Kramer, a prominent Bay-area technology lawyer. This rule profoundly changes how the University gathers, stores, uses and makes available data from a resident of the EU. Violations of the rule may result in steep fines.

The GDPR grants EU residents broad privacy rights and access and security obligations. Within 72 hours of first learning of a breach that may result in risk to EU residents' rights or freedoms, the University must notify each affected person. Under the "right to access," the University must confirm, if asked, whether it has gathered and is holding personal information on an EU resident. Under another GDPR right, the "right to be forgotten," in certain circumstances the University must delete personal data when requested by the subject of that data.

The GDPR changes how consents to gather and use personal data are written and obtained. They must be "intelligible and easily accessible." Clear and plain language must be used. A process to allow someone to withdraw consent must be available. Individuals under 16 cannot consent; their parents or guardians must consent to provide personal information to access certain digital platforms.

In the meantime, the University is acting to improve system-wide data privacy. Earlier this year, President Kaler empaneled an ad hoc committee to recommend and oversee University compliance with the law. According to an Information Statement related to that work, "The GDPR Committee is taking a risk-based compliance approach to the regulation—implementation priorities will be set based on risk and available resources. Long-term planning for compliance will take into consideration guidance and interpretation of the regulation from the EU Data Protection Boards." OGC is also working with departments and others in administration to update online privacy policies and to establish model contractual data security provisions and due diligence requirements.

For more information on the GDPR and what steps the University is taking to comply, please visit the University's Online Privacy website at <https://privacy.umn.edu/general-data-protection-regulation-gdpr>.



### The University is Minnesota's Economic Engine



**\$8.6**  
BILLION

University's economic impact in the state.

**77,664**

Jobs supported by University in the state.

**\$470.2**  
MILLION

State and local revenue tied to the University's presence

## A Few Highlights

**Employment claim.** In early December 2017, the University prevailed in a jury trial in Hennepin County District Court involving claims brought by a former employee who had been an instructor in the School of Kinesiology. The employee argued that she was constructively discharged (meaning that she was forced out without a formal termination) and was the victim of discrimination, a hostile work environment, and retaliation, all on the basis of her sex. She also argued that the Director of the School of Kinesiology intentionally inflicted emotional distress on her.

The trial lasted eight days, with extensive testimony from University faculty, staff, and former students. The jury found in favor of the University and the Director on each of the employee's four claims, and the employee was awarded no damages.

**Patent Cases.** As reported in previous years, the University is enforcing its intellectual property rights in several patent cases involving technology integral to wireless communication, hepatitis drugs, and hard disk drives. Currently, the cases are on hold as the U.S. Court of Appeals for the Federal Circuit considers a legal issue of great importance both to the University and to institutions and states throughout the nation. In each of the patent cases, adverse parties sought to have the University patents invalidated through an administrative proceeding called an inter partes review. This proceeding is conducted by the Patent Trial and Appeal Board (PTAB), which is part of the U.S. Patent and Trademark Office. The University asked the PTAB to dismiss all of the inter partes reviews based on the University's sovereign immunity. Generally speaking, sovereign immunity, under the federal Constitution, means that a state or an arm of the state (like the University) cannot be sued in a federal court or tribunal without its consent. The PTAB agreed that the University's sovereign immunity



School of Kinesiology students in the lab



would normally bar the inter partes review proceeding, but found that the University waived its sovereign immunity by commencing patent litigation in federal court. The University has appealed to the Federal Circuit. In support of the University’s appeal, three amicus (or friend of the court) briefs were filed with the Federal Circuit from (1) the Association of Public and Land Grant Universities; (2) a group of 14 states; and (3) a group of three research universities. The issue of whether universities and other state actors enjoy the privilege of sovereign immunity will be closely watched and no matter the outcome, will significantly impact the patent law landscape.



**Law School Protest.** In April, the United States District Court for the District of Minnesota rejected a challenge to the Law School’s “Rules of Decorum” for high profile events. An individual arrested during a protest of a guest lecturer sued University officials claiming, among other things, that his First Amendment rights were violated because of the Law School’s prohibition of recording during guest lectures. He argued that he had a constitutional right to record the interactions between the police and protesters within the lecture hall, despite the blanket prohibition on recording.

The Court rejected this challenge, concluding that “the law school’s rules of decorum—which prohibited unauthorized video-recording, demonstrations, and disruptive activity during . . . [lectures]—are viewpoint neutral and reasonable in light of the purposes served by the limited public forum.” This decision reinforced the University’s right and ability to set reasonable limitations in our lecture halls to help ensure an environment conducive to learning and peaceful discourse. The issue is now before the United States Court of Appeals for the Eighth Circuit.

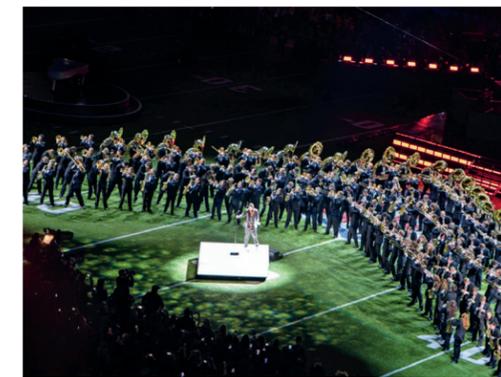


**Student Fees.** In 2017, following a comprehensive review, the University implemented new processes for the allocation of student services fees to administrative units, student groups, and media organizations. Among other things, these new processes streamlined the multi-step process, reducing the (largely student) resources necessary to handle the high volume of annual requests. For the 2017-18 academic year, 73 student groups requested general operational funding and 92 student groups requested funding for specific programming. One group—dissatisfied with its allocation—challenged the University’s allocation decision in an appeal to

the Minnesota Court of Appeals. The Court of Appeals evaluated the University’s new processes to determine whether they provided sufficient due process protections. The Court found that the University’s new process satisfies due process, providing each student group with notice of the funding decision and “an opportunity to be heard at a meaningful time and in a meaningful manner.”

**Super Bowl LII in the Bold North.** The City of Minneapolis hosted the 2018 Super Bowl. Before the Philadelphia Eagles defeated the New England Patriots, the University opened its Twin Cities campus to several receptions, events and team practices. The University of Minnesota marching band played at the halftime show. Historic Northrop Memorial Auditorium was the site of the NFL Honors awards ceremony. Over 10,000 Super Bowl volunteers and employees checked-in at the University’s Fieldhouse. The

Eagles practiced inside the Gibson-Nagurski Complex and the Athlete’s Village Indoor Practice Facility on the Twin Cities campus. The Land O’Lakes Farm Bowl was played in 3M Arena at Mariucci. In comments to the Board of Regents after the game, President Kaler acknowledged all the hard work of staff and said we can “take at least a little bit of credit for [the Eagles’] victory.” OGC played a role in bringing these events to campus by negotiating lease and facility use agreements with the NFL and its corporate partners.



Gopher band plays on a very big stage with Justin Timberlake.

**University and Fairview Health Services Sign Letter of Intent.** After months of negotiating, University of Minnesota and Fairview Health Services representatives reached agreement on the terms of a Letter of Intent for an eight-year strategic partnership. In considering the deal, Regent Richard Beeson said “From my standpoint, this may be the most important vote that we [the Regents] take . . . [T]his is really up there in terms of our ability and willingness to effect change.” In June of 2018, the University Board of Regents and the governing boards of Fairview and University of Minnesota Physicians unanimously approved the Letter of Intent. In his statement, President Eric Kaler celebrated the renewed partnership and said that “Together, we will provide better and more comprehensive care to Minnesotans.”

The Letter of Intent established a framework for continued negotiations over definitive integration agreements. Under the new collaboration, Fairview will commit to provide millions of dollars of additional funding to the University of Minnesota Medical School and incorporate academic physicians into important leadership roles.

**120+**  
Over 120 start-up companies based on University research have been launched since 2006

**Lindsay Whalen Returns as Gophers’ Head Women’s Basketball Coach.**

Whalen’s back in Williams Arena. This time as the head coach. “Becoming the head coach here at the U and being a Gopher again is a dream come true,” Whalen, a Hutchinson, Minnesota native, said. In a novel arrangement negotiated by Athletic Director Mark Coyle, Whalen will continue to play pro basketball until she retires at the end of the Minnesota Lynx season while coaching the Gophers. Whalen signed a multi-year contract. OGC advised Coyle in the negotiations.



Lindsay Whalen returns as Head Coach

**Gophers Hire Bob Motzko as Head Men’s Hockey Coach.** Former St. Cloud State Men’s Hockey Coach Bob Motzko was named head coach of the Gophers’ men’s hockey team on March 29, 2018. “One thing I talk all the time to our student-athletes and to our staff is, we want to be about low-ego and high-output,” Gophers’ Athletic Director Mark Coyle said. “I call that humility and Bob Motzko represents that in everything he does.”



Bell Museum opens in new space on the St. Paul campus

**The New Bell Museum.** The University’s Bell Museum reopened, on July 13, 2018, in its new home on the St. Paul campus. According to the museum’s science director, George Weiblen, the new space permits staff to “reinterpret exhibits from the ground up.”

The building and grounds cost \$79.2 million. OGC advised Capital Project Management on several land and utility use issues in the construction of the new building and the museum as well as on exhibit loans, food service and other operations and purchasing goods and services.

**Update: OGC continues improvements to the Legal Review of Contracts processes.** In 2018, OGC continued its program of working with University departments and units to review systematically our process and form agreements.

As part of its improvements to the legal review of purchasing agreements, OGC instituted a standardized process for seeking OGC review and a central, online portal to receive requests. OGC conducted a series of purchasing and contract law and negotiation training sessions on the system campuses in Fiscal Year 2018.



OGC volunteers

OGC and University of Minnesota Extension collaborated on a major process improvement project. All the form agreements for Extension’s program and services were reviewed and revised to simplify both their language and terms. OGC also “pre-approved” certain changes to those form agreements, authorizing Extension to agree to changes without seeking OGC’s review and approval. Extension Finance Director Madonna Monette praised the work and said “The new Extension Program streamlined form has been a welcome change with both our educators and customers. The process is much more efficient and much less intimidating. Extension is grateful for the efforts in making this happen.”

OGC partnered with the Office of Risk Management and Insurance (“RIM”) to streamline Volunteer Services Agreements and Waivers and Releases of Liability. Volunteers play a vital role in the success of the University. Volunteers are not employees of the University, but they are entitled to certain University benefits and are obligated to act in certain ways. To better describe the legal implications of that relationship and to reduce any impediments to people willing to volunteer, OGC revamped the volunteer agreement form. (A copy is posted at <https://policy.umn.edu/contracts/categories/OT/240/254>.) The new form is written in understandable, plain language (always our goal).

Under a new process for limiting the University’s exposure to financial loss by requiring waivers and releases, RIM takes the leading role in deciding whether a waiver and release is necessary or appropriate for a University programmatic activity. RIM will then require each program participant to sign an OGC-provided document, a form of document that has been re-written and substantially simplified.

OGC will continue in 2019 to review its process and form agreements to simplify terms and streamline its procedures.

## OGC Practice Areas

### Litigation

The University’s success remained high in contested matters in federal and state courts, in arbitrations and grievances, and before administrative agencies. In completed matters that were not settled, the University won 36 and lost 3. Over the past five years, in the 193 cases that were not settled, the University won 181, lost 11, and achieved mixed results in 1, for a 94% success rate.

OGC attorneys represented the University in a variety of litigation matters this year, involving labor and employment, personal injury, statutory and constitutional issues, and student-related issues. OGC also oversaw outside counsel in litigated matters where special expertise or additional resources were needed. For example, OGC oversees outside counsel in patent enforcement matters.

While most University litigation involves defending against claims, OGC also brings claims on behalf of the University to protect its rights and interests. Since 1997, OGC has obtained litigation recoveries for the University totalling over \$600 million. Most of this sum has been derived from recoveries for patent infringement suits, from federal tax recoveries, recoveries on securities, and contracts, environmental, and trust and estate claims.

### Settlements

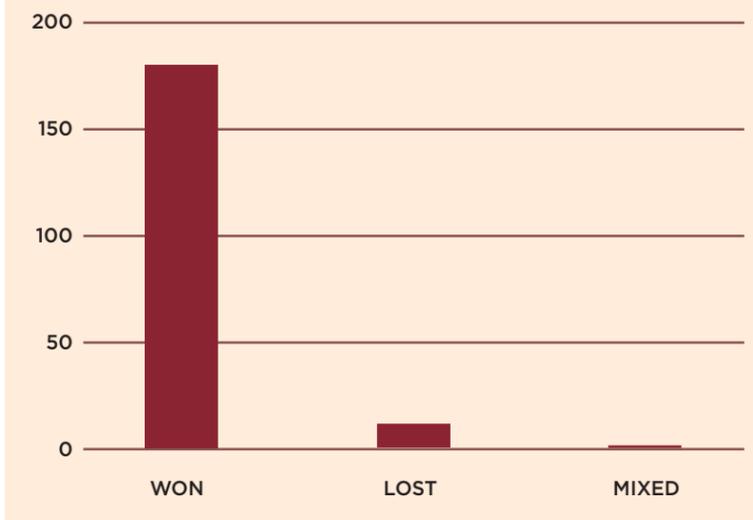
OGC recommends the University settle claims brought by or against it if settlement is in the best interests of the institution. Settlement may be the preferred resolution of a claim if the facts or law suggest the University will be exposed to a significant risk of loss.

OGC settled 16 legal claims in fiscal year 2018, involving payments by the University of \$2,000 or more. The University paid \$802,298 in settlements in the year, of which insurers paid \$646,404. The settlements resolved employment, discrimination, medical malpractice and personal injury claims, with individual payments ranging from \$2,256 to \$200,000. University units paid the remainder.

## OGC Retreat

OGC discussed racism and anti-semitism at its 2017 Fall Retreat. Provost Karen Hanson and University of Minnesota Professor Emerita of American Studies Riv-Ellen Prell presented “A Campus Divided: Progressives, Anticommunists, Racism & Antisemitism at the University of Minnesota 1930-1942.”

## 94% LITIGATION SUCCESS RATE (FY14-FY18)\*





OGC prepares food for the needy

Minnesota Department of Human Rights, or the federal Office for Civil Rights. The University obtained a favorable ruling in seven of these cases, an unfavorable ruling in one case, and five cases were settled.

### Health Care

OGC provides advice on a vast array of health care transactions. OGC negotiates affiliation agreements that allow University health care students opportunities, in clinical settings, to learn and provide patient care. It represents the Academic Health Center in its dealings with University of Minnesota Physicians and Fairview Health Services and other health care providers.

### Real Estate and Construction

OGC's real estate practice group counsels the central Planning, Space and Real Estate Office ("PSRE") on purchases and sales of land and buildings, the taking and granting of easement rights to use real property, and lease agreements. OGC works with University departments and units in leasing space. OGC also advises Central Project Management ("CPM") on construction law and project agreements.

In 2018, OGC advised on a series of agreements to lease 9,383 square feet of collaborative lab and classroom space for at least 15 years, in the Destination Medical Center, a newly-constructed building in Rochester, Minnesota. OGC represented the institution in the \$13.1 million sale of 436 acres in UMore Park in Rosemount, Minnesota and in the \$2.15 million sale of a building on University Avenue in the Midway area of St. Paul, Minnesota.



Solar Panels generating clean energy

### Student Affairs

OGC advises on a broad spectrum of issues affecting student life and education—from admission, to student finance, to housing, to student conduct, to student privacy, to graduation and departure from the University.

### Labor and Employment

OGC also advises on many aspects of employment law. OGC handled 42 labor grievances in 2018. It also represented the University in 32 claims filed with the federal Equal Employment Opportunity Office, the

### Research, Technology Commercialization and Intellectual Property

OGC's intellectual property group advises Sponsored Projects Administration ("SPA") and the Office for Technology Commercialization ("OTC") on sponsored research and technology commercialization agreements and answers patent prosecution questions. OGC counsels OTC's Venture Center on licensing to and investing in start-up companies based on University research. In 2018, OGC advised on six start-up deals and three investments under the Discovery Capital program. OGC files trademark applications and defends the University rights in Goldy™ and other valuable University-held marks. OGC also answers questions from faculty and students on compliance with federal laws and regulations concerning academic research.

2018 saw the culmination of complex negotiations among the Office of the Vice President for Research, the Office for Technology Commercialization, University faculty, and Recombinetics, a St. Paul based gene-editing company. The University and the company have entered into a framework, among other things, to facilitate the company's sponsorship of research at the University and licensing patent rights.

### International Programs

Every semester, University students travel the world to study, conduct research and learn about other cultures. OGC regularly counsels the Global Programs and Strategy Alliance ("GPSA"), the University's central international studies office, on the legal risks and implications of programs conducted outside of the United States. OGC advises GPSA on affiliation agreements with foreign institutions.



University Students receiving information about program options at the Learning Abroad Fair

### Corporate and Commercial Transactions

OGC regularly advises central units and academic departments on corporate and commercial law questions. OGC works with the Office of Internal/External Sales on transactions in which the University offers its services, for a fee, to government, businesses and individuals.

OGC represented the Center for Global Health and Social Responsibility ("CGHSR") in the Academic Health Center in negotiations with the International Organization for Migration ("IOM"), a United Nations' migration agency. CGHSR will be paid \$500,000 to provide training and consulting services to IOM.

OGC advised the College of Food, Agriculture and Nutritional Science on the Twin Cities campus on the organization of Oat Global, a public-private partnership between the Stakman-Borlaug Center in the college and representatives from the federal government and several multinational food companies. Among its many projects, Oat Global seeks to maintain and promote a global database for millers and growers of genotypic, metabolic and phenotypic data on oats.



OGC advised on the renegotiation of food services agreements for the Crookston and Morris campuses.

OGC and the Office for Information Technology are working together to respond to Microsoft Corporation's compliance audit of the University's enterprise and local software license agreement terms.

## Securities and Finance

OGC works closely with the Chief Financial Officer (CFO), the Director of Debt Management, and the Office of Investments and Banking (“OIB”) to enter into agreements to retain investment managers, issue debt and to invest in securities.

## Gifts and Tax

OGC works with the Tax Management Office to advise central administration on federal and state income tax matters. OGC also coordinates with the University of Minnesota Foundation on estate and gift tax questions.



One of Minnesota 4-H's 11,000 adult volunteers mentoring Minnesota youth

OGC counselled the University of Minnesota Extension on the liquidation and dissolution, in 2017, of the Minnesota 4-H Foundation and on the transfer of its assets to the University of Minnesota Foundation.

## Legal Advice and Preventive Law Activities

Whether advising on agreements, reviewing policies, defending the University's interests in court or before agencies in its day-to-day work, OGC counsels University departments and units on best practices to comply with applicable law and policy and to best meet their programmatic objectives. OGC also presents more formal training. For example, OGC trained faculty and administrators in the School of Nursing on the copyright rules governing online courses. It trained finance managers and other administrators on purchasing agreements. OGC's advice across a broad spectrum of activities helps the University run better and reduces the opportunity for grievances, administrative charges and lawsuits.



Salute to Service at the Gopher vs. Purdue game at TCF Bank Stadium

## Athletic Compliance Office

The Athletic Compliance Office in OGC works with coaches, student-athletes, University administrators and department supporters throughout the system to “maintain institutional control of Intercollegiate Athletics and protect the integrity of the University by fostering a strong culture of compliance.” Athletic Compliance Office Policy Statement posted at <https://gopher-sports.com/sports/2018/5/21/sports/2018/5/21/sports-compliance-spec-rel-index-html.aspx>.

In 2018, the office hosted 2,041 attendees at 104 educational sessions, conducted ten audits and 44 investigations, and submitted 21 investigative reports and 35 waiver requests to the NCAA and Big Ten Conference. For more information on the Athletic Compliance Office, please visit its website at the URL noted above.



## Clery Compliance

The Clery Act is a federal consumer protection law dedicated to improving campus safety by providing accurate and timely campus crime information to the public. The University discloses crime information to the public in a number of ways, including through the issuance of Timely Warning Notifications and the publication of the University of Minnesota Annual Security and Fire Safety Report, which contains three years of crime statistics and important safety and security information and resources. This report is published and made available to the public each year in September. The most recent Annual Security and Fire Safety report is available at [https://publicsafety.umn.edu/sites/publicsafety.umn.edu/files/2017\\_asr.pdf](https://publicsafety.umn.edu/sites/publicsafety.umn.edu/files/2017_asr.pdf).

In the last year, the Clery Compliance Office assisted the Office of Internal Audits in conducting audits of Clery Compliance at each of the campuses across the University of Minnesota system.

The Clery Compliance Office also hosted the annual Big Ten Clery Compliance Conference at the University of Minnesota in June 2018. The conference brought together individuals responsible for Clery Compliance from all of the Big Ten universities. Conference presenters included an attorney who practices in the area of Clery Compliance, a representative of Ethical Leaders in Action, and Clery Compliance officers from Rutgers, Michigan State University and the University of Minnesota.

## Records and Information Management Office

The University, as a public institution, is subject to the Minnesota Government Data Practices Act (the “Data Practices Act”). The Data Practices Act requires the University to provide the public access to and copies of certain public information held by the University. The Records and Information Management Office in OGC reviews and processes requests to inspect University public records. The office received over 649 requests for documents and information under the Data Practices Act and 15 federal Freedom of Information Act requests in academic year 2018. For more information on the Records and Information Management Office, please visit its website at <http://recordsmgmt.umn.edu/>.

## Use of Outside Counsel

The University spent \$7,391,031 on outside counsel in fiscal year 2018 to represent the University in lawsuits and advise it on other legal matters. A significant portion of these fees related to large patent enforcement cases as well as matters related to patent and technology advice, health law, external review, and union organizing. Additional legal expenses were paid by insurance.

Board of Regents policy requires OGC to carefully manage the cost of all outside counsel retained to provide legal services to the University. While professional qualifications are the foremost criteria we use to select outside counsel, OGC also seeks attorneys who provide reasonable rates and demonstrate economical use of attorney and staff resources. We routinely request and receive discounted hourly rates from our outside counsel. OGC typically requires written budgets from outside counsel on matters that may incur substantial fees, and strictly enforces the University's expense limitations and payment policies. This includes the management of counsel performing patent services for the University.

2018 Big Ten Clery Compliance Conference was held at the University Recreation and Wellness Center on the Twin Cities campus



## Our People

### Attorneys (Years at the University)

- Douglas R. Peterson**, General Counsel (Two Years)
- Brian J. Slovut**, Deputy General Counsel: Litigation and Student Affairs (15 Years)
- Gregory C. Brown**, Director, Transactional Law Services Group: Intellectual Property, Copyright and Technology Transfer (27 Years)
- Donald M. Amundson**, Senior Associate General Counsel: International Programs and External Sales (22 Years)
- Brent P. Benrud**, Senior Associate General Counsel: Labor and Employment and Litigation (13 Years)
- Shelley Carthen Watson**, Senior Associate General Counsel: Labor and Employment and Litigation (19 Years)
- Angela K. Downin**, Assistant General Counsel: Purchasing (Two Years)
- Arnie H. Frishman**, Senior Associate General Counsel: Intellectual Property, Research and Technology Transfer (20 Years)
- Daniel Herber**, Senior Associate General Counsel: Litigation and Data Practices (Two Years)
- Susan G. Kratz**, Academic Health Center Counsel: Health Care (One Year)
- Rosalie W. O'Brien**, Senior Associate General Counsel: Trademarks, Gifts, and Securities (14 Years)
- Daniel A. Piper**, Senior Associate General Counsel: Real Estate and Construction (Seven Years)
- Timothy J. Pramas**, Senior Associate General Counsel: Litigation (Four Years)
- Carrie Ryan Gallia**, Associate General Counsel: Litigation (Two Years)
- Paul B. Savereide**, Senior Associate General Counsel: Patent Prosecution, Research and Software License Agreements (Six Years)
- Barbara L. Shiels**, Senior Associate General Counsel: Health Sciences, Research and Student Affairs (35 Years)
- Elizabeth C. Zamzow**, Senior Associate General Counsel: Real Estate and Construction (Eight Years)

### Paralegals

- Robert Amos**, Senior Paralegal: Litigation (Nine Years)
- Elizabeth Anderson**, Senior Paralegal: Transactions (24 Years)
- Kathy Bitterly**, Senior Paralegal: Litigation (Six Years)
- Diane Krawczynski**, Senior Paralegal: Transactions (14 Years)
- Diana Lutz-Clark**, Senior Paralegal: Litigation (Two Years)
- Susannah McCarthy**, Senior Paralegal: Transactions (One Year)

### ADMINISTRATIVE STAFF

- Karen Wagner**, Director of Administration (Six Years)
- Nancy Larson**, Executive Assistant to the General Counsel (11 Years)
- Lynnette Johnson**, Executive Secretary (14 Years)
- Marcy Hoyles**, Executive Secretary (Eight Years)
- Nola Breen**, Legal Administrative Assistant (Five Years)
- Terry Hindt**, Legal Administrative Assistant (Six Years)
- Jean Schatz**, Legal Administrative Assistant (Four Years)
- Sarah Shaftman**, Legal Administrative Assistant (Four Years)
- Jacklyn Verduzco**, Receptionist (Two Years)

### ATHLETIC COMPLIANCE OFFICE STAFF

- Jeremiah Carter**, Director (Five Years)
- James Praska**, Associate Director (17 Years)
- Andrew Nelson**, Associate Director (Six Years)
- Rhett Caviel**, Assistant Director (Two Years)
- Kevin Gomer**, Assistant Director (Two Years)
- John Wallace**, Associate Director (One Year)

### CLERY ACT COMPLIANCE OFFICE STAFF

- Daniel Alberts**, Clery Act Coordinator (Three Years)

### RECORDS AND INFORMATION MANAGEMENT OFFICE STAFF

- Susan McKinney**, Director (23 Years)
- Kristine Haugslund**, Assistant Director (Two Years)



Office of the General Counsel  
360 McNamara Alumni Center  
612-624-4100



UNIVERSITY  
OF MINNESOTA



# BOARD OF REGENTS DOCKET ITEM SUMMARY

---

**Litigation Review**

**September 13, 2018**

**AGENDA ITEM:** Resolution to Conduct Non-Public Meeting of the Litigation Review Committee to Discuss Attorney-Client Privileged Matters

**Review**

**Review + Action**

**Action**

**Discussion**

*This is a report required by Board policy.*

**PRESENTERS:** Douglas Peterson, General Counsel

## **PURPOSE & KEY POINTS**

To consider a resolution to conduct a non-public meeting of the Litigation Review Committee to discuss attorney-client privileged matters.

## **BACKGROUND INFORMATION**

The committee reviews litigation matters and obtains legal advice regarding specific University actions and their legal consequences.



## REGENTS OF THE UNIVERSITY OF MINNESOTA

### RESOLUTION TO

#### **Conduct Non-Public Meeting of the Litigation Review Committee to Discuss Attorney-Client Privileged Matters**

**WHEREAS**, based on advice of the General Counsel, the Board of Regents Litigation Review Committee has balanced the purposes served by the Open Meeting Law and by the attorney-client privilege, and determined that there is a need for absolute confidentiality to discuss litigation strategy in particular matters involving the University of Minnesota.

**NOW, THEREFORE, BE IT RESOLVED**, that in accordance with Minn. Stat. § 13D.01, Subd. 3 and 13D.05 Subd. 3(b), a non-public meeting of Litigation Review Committee be held on Thursday, September 13, 2018 at 11:00 a.m. in the Peterson Room, 600 McNamara Alumni Center, for the purpose of discussing attorney-client privileged matters including the following:

- I. *Shannon Miller, Jen Banford and Annette Wiles v. The Board of Regents of the University of Minnesota*
- II. Potential litigation by former employee
- III. *John Does v. Regents of the University of Minnesota, Eric Kaler, and Tina Marisam*
- IV. *Capacity Wireless v. University of Minnesota*
- V. *Young American's Foundation, et al. v. Eric W. Kaler, et al.*
- VI. Potential litigation by employee
- VII. *CUHCC Arbitration / University of Minnesota v. State of Minnesota*
- VIII. Potential litigation by student