Litigation Review Committee

October 2020

October 8, 2020

8:00 a.m.

Videoconference
LIT - OCT 2020

1. Annual 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 18
   Resolution - Page 19
Litigation Review

AGENDA ITEM: Annual 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

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 2020.

Board of Regents Policy: Attorneys and Related Services requires the Office of the General Counsel (OGC) to report annually on its activities.
Duluth: Champ the Bulldog | Twin Cities: Goldy Gopher | Crookston: Regal the Golden Eagle | Rochester: Rockie the Raptor | Morris: Pounce the Cougar
**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
Dear Colleagues,

Universities remain at the center of change. Since March, the COVID-19 virus has taken hold to dictate new ways to advance our mission. The more long-standing disease of racism took George Floyd's life in May, calling upon us all to stand up and take action for social justice.

The Office of the General Counsel (OGC) has the privilege of working closely with you as the University advances justice and protects our community from harm. For us, that means helping to ensure safety in the broadest sense of the term. The pandemic impacts most of our work every day. The University's mission and values are ever-present as we advise on human resource matters, FDA and health care delivery concerns, First Amendment policies supportive of free speech, and the implications of all the ways the University adapts to changing public health circumstances. Of special note is the work spearheaded by Deputy General Counsel Brian Slovut and EOAA Director Tina Marisam to revamp the University's Title IX policies addressing sexual misconduct in light of the new federal regulations which took effect in August.

Consistent with the University’s commitment to transparency and open government, OGC has also embarked on a number of changes in the way we handle requests for public information pursuant to the Data Practices Act (DPA). Most visible is our hiring of Laurie Beyer-Kropuenske to lead the renamed Data Access and Privacy (DAP) office. The challenge for the experienced DAP team is that DPA requests are increasing in quantity and complexity.

As always, thank you for the opportunity to serve you and the University we all hold dear.

On behalf of my 44 colleagues, we wish you good health as we begin the new academic year.

Sincerely,

Doug Peterson
**Practice Areas in the Office of the General Counsel**

OGC attorneys represent and counsel the University in many areas, including the following:

- Litigation and other contested matters
- Student affairs
- Labor and employment
- Data privacy and public disclosure law
- Health care
- Real estate and construction
- Technology transfer and intellectual property transactions
- International programs
- Corporate and commercial transactions
- Securities and finance
- Gifts and tax
- Research regulation

**Select Highlights**

**OGC Response to COVID**

Since January 2020, when the University suspended student programs in China, the OGC has provided advice and counsel related to many of the various ways the University has responded to the COVID-19 pandemic. These efforts have included interpreting contracts and advising about the suspension of international programs in February; reviewing and negotiating a contract for support services related to remote learning after in-person instruction was suspended in March; interpreting and providing advice related to the University’s housing contracts with students after the decision was made to encourage students not to return to campus after Spring Break; advising and counseling University leadership about transitioning to a work-from-home expectation for employees; supporting legal and compliance needs of the Office of Academic Clinical Affairs and the various research and other arms of the University in their efforts to control the virus; providing advice related to new or existing contracts impacted by the virus (including contracts related to events both on- and off-campus); negotiating a new contract related to the virtual commencement ceremonies the University held in May; advising University leadership about the Sunrise Plan that allowed certain employees to begin returning to campus in May; consulting with the Office of Human Resources and Senior Leadership about mechanisms (like furloughs and early retirement incentives) to mitigate against the financial disruption the virus has caused; providing advice and counsel related to the University’s plans for the return of students and faculty to campus for the new academic term; and working with the Athletics Department to interpret and implement NCAA health and safety protocols for returning student-athletes, and address the challenges arising from the cancellation and postponement of NCAA competitions.
Title IX

On May 6, 2020, the U.S. Department of Education issued final Title IX regulations that specify how higher education institutions must address reports of sexual misconduct that are covered by Title IX. These regulations required changes to a number of University policies, including the Board and administrative policies related to sexual misconduct, the Tenure Code, and others, with all changes needing to be completed prior to the August 14, 2020, effective date. Tina Marisam, the Director of the Office of Equal Opportunity and Affirmative Action, has led the University’s efforts toward compliance, with OGC assisting throughout the process.

East Gateway Redevelopment Project

The University of Minnesota Foundation (UMF) plans to redevelop the land adjacent to the eastern border of the Minneapolis campus, near the TCF Bank Stadium. Over the next ten to twenty years, the East Gateway Redevelopment Project provides an avenue to spur research and innovation in

“These new regulations have required great collaboration and cooperation from the University community, and the Office of the General Counsel has been an invaluable partner throughout the process.”

- Tina Marisam
Director of the Office of Equal Opportunity and Affirmative Action
collaboration with commercial partners, and creates a welcoming place that builds in residential
condos and apartments, conference facilities, and retail and other commercial users.

UMF and the University entered into a Memorandum of Agreement (MOA) and a Real Estate
Exchange Agreement (REEA) to guide the UMF-led development process. Those agreements
call for the Foundation Board of Trustees to form a joint University–UMF East Gateway Project
Committee to oversee project development and advise the Board of Trustees. The REEA also
provides the terms under which the University and UMF will swap parcels of land important to
future East Gateway development. The University expects the land it will acquire to become an
integral part of the University’s future clinical campus.

**Litigation and Contested Matters**

OGC attorneys represent the University in a variety of litigation and contested matters. They
defend labor and employment, personal injury, statutory and constitutional, and student-related
claims brought against the University. These matters found OGC attorneys in state and federal
trial and appellate courts, in arbitrations, and in University internal proceedings. In one case, after
a ten-day trial, a Hennepin County district court jury rejected a multi-million dollar claim asserted
by a company that had been retained to—but failed to—negotiate agreements with the University
and the major telecommunications carriers to enhance cellular phone coverage on the Twin Cities
campus.

**94% Litigation Success Rate (FY16-FY20)**

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<th>WON</th>
<th>LOST</th>
<th>MIXED RESULT</th>
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**Labor and Employment**

17

**INTERNAL GRIEVANCES**

37

**ARBITRATIONS**

36

**AGENCY CLAIMS**

11

**FAVORABLE RULINGS**

0

**UNFAVORABLE RULINGS**

11

**SETTLED CASES**
Compliance Units in the Office of the General Counsel

Athletic Compliance Office
The COVID-19 pandemic has had significant implications in the world of intercollegiate athletics. Beginning with the NCAA’s announcement in March that the remainder of the winter and spring NCAA championship seasons would be cancelled, the Athletic Compliance Office has worked closely with the Athletics Department as it adapts to all of the changes brought about by COVID-19. The issues include student-athlete academic and athletic eligibility, benefits, and rescheduled seasons of competition.

Clery Compliance Office
The Clery Compliance Office has system-wide responsibility to gather and publish statistics on crimes reported on or near University campuses, as required by the federal Clery Act. The office identifies and trains campus security authorities. Those individuals play a crucial role in ensuring the University complies with the federal law and also function as reporting resources on the University’s five campuses. The Clery Compliance Office also publishes an Annual Security and Fire Safety Report.

Data Access and Privacy Office
This year saw significant changes to the University’s efforts to enhance its compliance with the Minnesota Government Data Practices Act. Established in 1996, the Records and Information Management Office was recently renamed the Data Access and Privacy Office (DAP) to better reflect the broad scope of the office to respond to data requests, improve data practices compliance, as well as promote improved records management throughout the University system. DAP also saw the addition of Laurie Beyer-Kropuenske as the University’s Chief Data Practices Compliance Officer. Laurie brings over 25 years of state legal and data practices experience to this newly created role. These changes were guided by the recommendations from the comprehensive review conducted last year at the direction of University President Joan Gabel.

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<th>The Clery Compliance Office</th>
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<td>1,245</td>
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<td>Individuals trained</td>
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<th>The Twin Cities Campus Athletic Compliance Office</th>
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<td>Hosted over 93 educational sessions</td>
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<td>Conducted 12 audits</td>
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<td>In-person monitoring in practice/competitions:</td>
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<td>160 events</td>
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<td>27 investigations</td>
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<td>21 self-reports to the NCAA/Big Ten</td>
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<td>43 NCAA/Big Ten waivers</td>
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<th>MGDPA Formal Requests Received by University (FY)</th>
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<td>Requests Received</td>
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<td>Fiscal Year: 10 to 20</td>
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<th>Requests Received</th>
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<td>Fiscal Year</td>
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<th>275 300 283 323 410 662 580 662 830 1095</th>
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The work for DAP continues to grow both in volume and complexity. Between FY17-FY19, DAP received 2,003 data requests, an average of 668 data requests per year. In FY20, DAP received an all-time high of 1,095 data requests which represented an increase of 32% over FY19. In addition to an increasing volume of data requests, an ever-changing legal landscape shaped by the Minnesota Government Data Practices Act and numerous federal privacy laws continues to add to the complexity of honoring the University’s obligations to both protect private data and provide public access. In the coming year, DAP will perform a comprehensive review of the University’s Public Access to University Information policy and procedures which will improve our efforts to efficiently and appropriately respond to data requests and enhance transparency.

**Use of Outside Counsel**

OGC handles most of the University’s legal needs with internal resources. Besides the substantial economy that comes with an in-house legal department, the quality of legal services the University receives is enhanced by OGC’s comprehensive knowledge of the University’s unique structure, operations, strategic priorities, and mission. OGC does retain outside counsel, however, when needed for specialized expertise or additional resources on a particular matter are necessary. For example, the University regularly retains outside counsel for patent prosecution services. We value the advice the University receives from outside counsel and appreciate their professionalism as they honor our expectation that they carry the University’s mission and value as they go about their work on the University’s behalf.

**OGC Staff Professional and Community Service**

OGC staff hold many leadership roles in professional organizations as well as volunteering their time to various non-profit, community and public service institutions:

- **Don Amundson** NACUA Board of Directors; NACUA Finance and Audit Committee, Vice Chair
- **Laurie Beyer-Kropuenske** Minnesota Department of Health’s Privacy and Security Work Group of the eHealth Advisory Committee, Co-chair
- **Jeremiah Carter** NCAA Legislative Committee
- **Shelley Carthen Watson** Athletics W.I.L.L. Program; MN Black Women Lawyers Board; Of Interest for Others Board; YWCA of St. Paul Board; Jack and Jill of America Associates Chair; Minneapolis-St. Paul Chapter of The Links, Incorporated
- **Whitney Geiger** Warrior 196 Volunteer Coordinator
- **Meredith Gingold** UMN Aurora Center, Direct Service Advocate; Minnesota Women Lawyers’ Pay Equity Subcommittee Member
- **Dan Herber** Volunteer Lawyers Network Board of Directors; Minnesota Law Review Alumni Advisory Board
- **Susan Kratz** American Lung Association Minnesota Board; Editorial Board Member for American Health Lawyers Association Journal of Health & Life Sciences Law
- **Diane Krawczynski** Waite Park Community Council Board; Hennepin County Master Gardener; Special Olympics Volunteer
- **Ruilin Li** UMN China Center Advisory Council; China Center’s External Review Committee
- **Doug Peterson** Minnesota Board of Law Examiners, President
- **Tim Pramas** Taught Law School classes “Civil Rights and Civil Liberties Moot Court” and “Law in Practice;” Neighborhood House Volunteer, food shelf collection and organization
- **Carrie Ryan Gallia** Girl Scout Troop Leader and Cookie Mom; Teaches legal writing and judicial opinion writing at the University of Minnesota Law School
- **Paul Savereide** Pipe Major, Minnesota Police Pipe Band; Church Council Vice President, Immanuel Lutheran Church, Eden Prairie
- **Karen Wagner** Interim President of the Higher Education Legal Managers; Vice Chair of the City of New Brighton Public Safety Commission
- **Amanda Weddle** Walker Art Center Volunteer

**Outside Counsel Distribution**

- **Litigation**
  - Patent 62.62%
  - Contract 22.34%
  - Environment 12.04%
  - Employment 2.41%
  - Other/General 0.39%
  - Student 0.20%

- **Non-Litigation**
  - Immigration 26.97%
  - Research 22.82%
  - Employment/Labor/Compliance 21.12%
  - Health Care 12.54%
  - Intellectual Properties 9.28%
  - Real Estate/Tax 5.49%
  - Other 1.77%
Serving under the Maroon and Gold Sunrise Plan
The Office of the General Counsel

Attorneys

Don Amundson  Brent Benrud  Greg Brown  Shelley Carthen Watson  Angela Downin  Arnie Frishman

Dan Herber  Kaley Klanica  Susan Kratz  Ruilin Li  Douglas Peterson

Dan Piper  Tim Pramas  Carrie Ryan Gallia  Paul Savereide  Brian Slovut  Beth Zamzow

Paralegals

Robert Amos  Kathy Bitterly  Whitney Geiger  Diane Krawczynski  Kimberly Lennartson

Diana Lutz-Clark  Amanda Weddle

Administrative Staff

Nola Breen  Terry Hindt  Marcy Hoyles  Lynnette Johnson  Nancy Larson  Scottie Povolny  Jean Schatz  Sarah Shaftman  Karen Wagner

Law Clerks

Casey Epstein  Meredith Gingold  Mimi Solomon

Athletic Compliance

Jeremiah Carter  Jenaye Coleman  Kevin Gomer  James Praska  John Wallace

Clery Act Compliance

Daniel Alberts

Data Access and Privacy

Laurie Beyer-Kropuenske  Kristine Haugsland  Susan McKinney
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, October 8, 2020 at 8:00 a.m. via videoconference, for the purpose of discussing attorney-client privileged matters including the following:

I. Potential claim by former student