



Litigation Review Committee

October 2022

October 13, 2022

Hail! Minnesota Conference Room

8:00 a.m.

LIT - Oct 2022

1. Annual Report on Legal Matters

Docket Item Summary - 3

OGC Annual Report 2022 - 4

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

Docket Item Summary - 15

Revised Resolution - 16

Resolution - 17



BOARD OF REGENTS DOCKET ITEM SUMMARY

Litigation Review

October 13, 2022

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

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 2022.

University of Minnesota Office of the General Counsel

ANNUAL REPORT 2022



UNIVERSITY OF MINNESOTA

Driven to Discover[®]

Crookston Duluth Morris Rochester Twin Cities



Front Row. Duluth: Champ the Bulldog | Twin Cities: Goldy Gopher
Back Row. Morris: Pounce the Cougar | Rochester: Rockie the Raptor |
Crookston: Regal the Golden Eagle

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



FALL 2021 STUDENTS AND FACULTY AND STAFF

42,212
undergraduate students

12,536
graduate students

4,243
professional students

7,504
non-degree seeking
students

5,358
international students

26,218
employees

4,702
faculty

Dear Colleagues,

As we emerge from a pandemic that has disturbed our way of life, I take solace in the resilience of the University of Minnesota. We continue to advance our land grant mission with creativity and drive. Needless to say, I hope this message also finds you thriving in the face of what seems daunting at times.

In a departure from my usual focus on the larger University community, this is a good moment to recognize what I have benefitted from since I joined the University six years ago: a collegial group of OGC professionals doing sophisticated, custom legal work, always centered on mission and service. That is a tradition with a momentum that keeps growing. Since the pandemic hit in 2020, OGC has added: Laurie Beyer-Kropuenske and Dan Volkosh, who have joined our Data Access and Privacy office and contributed to the quality and efficiency of its responsiveness notwithstanding information requests increasing in number and complexity; Laurel Luxenberg, who manages an array of Academic Health Center issues; experienced business lawyer Elizabeth Lim who joins us from Virginia Commonwealth University; Neil Goldsmith who brings partner-level expertise in labor and employment matters; and Katharine Cresser, who exercises oversight over a number of sports as part of our highly-regarded NCAA Compliance staff. The combination of their talent and judgment with that of the rest of the office makes for a public law firm that reflects the values and high ideals of this great university.

Central to the attorney-client relationship is mutual respect and trust. As we hope you know, our strength as an office comes from your dedication to the University's tripartite land grant foundation. Your research, your teaching, and your service, inspires us. Thank you for entrusting us with your endeavors. We will do our best to reciprocate with high quality legal advice that is conveyed with a respect for all you do for the University and for the State of Minnesota.

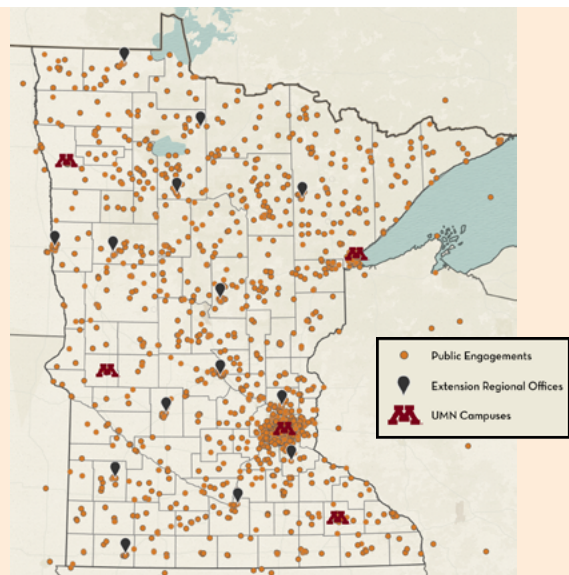
Sincerely,

Douglas R. Peterson
General Counsel

U OF M IMPACT ACROSS THE STATE

The U of M Public Engagement Footprint map and database showcases engagement activities throughout the system taking place in communities across the state and around the globe.

University of Minnesota Public Engagement Footprint, Office of Public Engagement and U-Spatial, <https://system.umn.edu/your-community>



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 HIGHLIGHT

FUTURE OF ADVANCED AGRICULTURAL RESEARCH IN MINNESOTA (FAARM) PROJECT

The OGC has served as a key advisor to University leaders in the exploration and development of plans for an advanced agricultural research complex in Mower County. The project is a public private partnership bringing together the University, elected officials, and leaders from the private sector. The project will utilize several hundred acres of land that will serve as a state-of-the-art teaching and research hub looking at an integrated approach to raising livestock and studying the interaction between animals, humans, crops, and climate. OGC attorneys have advised University leaders on the strategic acquisition of property for the FAARM project and assisted in the negotiation of a number of complex agreements that have secured funding for ongoing development and feasibility studies.



\$112 billion
annual economic impact
from Minnesota's food and
agricultural sector

 **30%**
of state's workforce

 **51%**
of state's land

\$17 billion 
annual agricultural sales

Sources:
State of Minnesota, Department of Agriculture, Department
of Labor and Industry, Board of Water and Soil Resources
AgriGrowth, 2020 Economic Contribution Report



"The Office for Student Affairs works regularly with OGC on issues that impact the daily lives of our students across the University system. Our mission is to support UMN students, and our valuable partnership with OGC enables us to do so more effectively and comprehensively. We rely on their thoughtful counsel and practical approach to problem-solving in areas such as student conduct, student services, free speech on campus, and litigation support. I know all of us in the Office for Student Affairs enjoy working with the team at OGC, and they will continue to be trusted partners moving forward."

– Calvin D. Phillips, D. Ed.
Vice President for Student Affairs and Dean of Students



TRANSACTIONAL LAW SERVICES GROUP

The OGC transactional attorneys serve as a key resource to the University, providing legal advice and consultation on all manner of complex business transactions throughout the year. OGC attorneys assisted the University on over seventeen hundred contracts and transactional matters during the fiscal year. These matters included a variety of high value complex contracts and procurements, valuable external sales agreements, sponsorships and industry collaborations, and a number of complex real estate transactions and construction agreements. OGC transactional attorneys work with the University community to protect the University's intellectual property by advising on patent, copyright and trademark issues. The transactional team consults and advises University researchers, negotiates agreements for sponsored research projects, and drafts complex technology commercialization agreements. Beyond business transactions, OGC transactional attorneys and paralegals advise on international programs, affiliation agreements, immigration matters, investments and bond issuance, employee benefits and retirement plans, and offer guidance and interpretation of University policy. The transactional team also continues to offer legal related training to departments as needed.

OGC ADVISED ON:



800+
AGREEMENTS TO
PURCHASE GOODS
AND SERVICES



300+
AGREEMENTS TO
SELL GOODS OR
SERVICES



514
HEALTH SCIENCES
AFFILIATION
AGREEMENTS

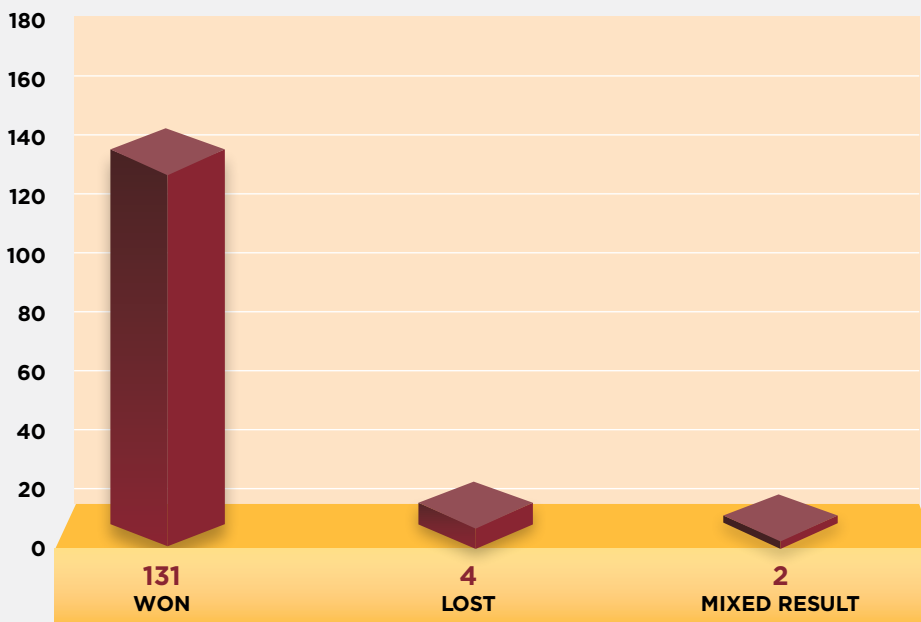


250+
SOFTWARE LICENSE
AGREEMENTS

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 other forums. As one example, before the United States Court of Appeals for the Eighth Circuit, OGC attorneys successfully defended against a First and Fourteenth Amendment challenge to the University's handling of the appearance of a political commentator.

96% LITIGATION SUCCESS RATE (FY18-FY22)



COMPLIANCE UNITS IN THE OFFICE OF THE GENERAL COUNSEL

CLERY COMPLIANCE OFFICE

The [Clery Compliance Office](#) in OGC is responsible for ensuring the University's compliance with the Clery Act systemwide. The Clery Compliance Office works cooperatively with each campus to identify and train Campus Security Authorities (CSAs), compiles crime statistics, publishes the [Annual Security and Fire Safety Report](#) and provides technical assistance to support each campus.

THE CLERY COMPLIANCE OFFICE

1,123

Individuals trained

Compliance with the Clery Act is contingent upon the identification and training of CSAs who are responsible for forwarding reports of crime to the campus Clery Officer for inclusion in the annual statistical disclosure. The Clery Compliance Office identified and offered training to over 2,000 CSAs across the system's five campuses. The Clery Compliance Office conducted a system-wide audit of University positions in the spring of 2022 to ensure consistency in the University's CSA identification process.



LABOR AND EMPLOYMENT

31

ARBITRATIONS

27

AGENCY CLAIMS

4

FAVORABLE RULINGS

0

UNFAVORABLE
RULINGS

12

SETTLED CASES



COMPLIANCE UNITS IN THE OFFICE OF THE GENERAL COUNSEL

(CONTINUED)

OFFICE OF ATHLETIC COMPLIANCE

During the 2021-22 academic year, the University of Minnesota Athletics Department teams and student-athletes returned to full practice, competition and recruiting calendars following the significant interruptions in 2019-20 and 2020-21 academic years due to the COVID-19 pandemic. The [Office of Athletic Compliance](#) worked closely with the Athletics Department to ensure that coaches and staff were prepared to re-enter each of these areas while remaining compliant with NCAA, Big Ten and WCHA rules. This past academic year also saw the first full academic year under the NCAA's new Name, Image, and Likeness guidance allowing student-athletes to profit from commercial activities in ways that they have never been permitted to in the past. The Office of Athletic Compliance assisted student-athletes and staff in navigating this new space locally and nationally. Finally, continuing the theme of change for the NCAA, a new NCAA Constitution was adopted in January 2022 which started a sweeping series of changes to NCAA legislation. The Office of Athletic Compliance has assisted the Athletics Department in understanding what these significant changes have meant for coaches and teams. In the upcoming year, the Office of Athletic Compliance will continue to remain at the forefront of the industry, as more change is likely in store at both the regulatory (NCAA) and legislative (State and Federal Governments) levels.

DATA ACCESS AND PRIVACY OFFICE

In addition to an increasing volume of data requests, an ever-changing legal landscape shaped by the Minnesota Government Data Practices Act, as well as numerous federal privacy laws, continue to add to the complexity of honoring the University's obligations to both protect private data and provide public access. As in previous years, the work of [Data Access and Privacy](#) continues to grow in volume and complexity. Between FY2017-FY2019, the University received 2,003 data requests, an average of 668 data requests per year. In FY2020 and FY2021, we received 1,095 and 1,249, respectively, for an average of 1,172 requests per year. In FY22, we received an all-time high number of 1,288 requests. While the number of requests increased from the past year, the speed of our response also increased which we attribute, in part, to the policy and procedural changes

The Twin Cities
Campus **ATHLETIC
COMPLIANCE
OFFICE**

hosted over
73
EDUCATIONAL
SESSIONS

conducted
13
AUDITS

In-person monitoring in
practice/competitions:

102
EVENTS

24
INVESTIGATIONS

17
SELF-REPORTS
to the NCAA/Big Ten

104
NCAA/BIG TEN
WAIVERS

MGDPA FORMAL REQUESTS RECEIVED BY UNIVERSITY (FY)



that were implemented in December 2020. The DAP office also includes a records management program which completed a significant revision to the University-wide records retention schedule in January 2022.

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 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:

Laurie Beyer-Kropuenske Member of the Minnesota State Bar Association Public Law Section Council

Jeremiah Carter NCAA Legislative Committee

Whitney Geiger Ronald McDonald House Twin Cities Volunteer

Neil Goldsmith National Association of College and University Attorneys (NACUA), Annual Conference Planning Committee Member; American Bar Association (ABA) Developing Labor Law Committee, Contributing Editor; Talmud Torah of Minneapolis, Board Member; Camp Fire Minnesota, Board Member

Dan Herber Volunteer Lawyers Network Board of Directors; Minnesota Law Review Alumni Advisory Board

Susan Kratz American Lung Association Minnesota Board

Diane Krawczynski Minnesota Paralegal Association, MnCP; Hennepin County Master Gardener; Special Olympics Volunteer

Ruilin Li UMN China Center Advisory Council; China Center's External Review Committee

Elizabeth Lim Virginia Community Voice Board of Directors; Guest Lecturer on IP Agreements at the University of Minnesota Law School

Susan McKinney Twin Cities Chapter, ARMA International, President

Doug Peterson NCBE, Uniform Bar Exam Drafting Committee; Chief Legal Officers Group, Member

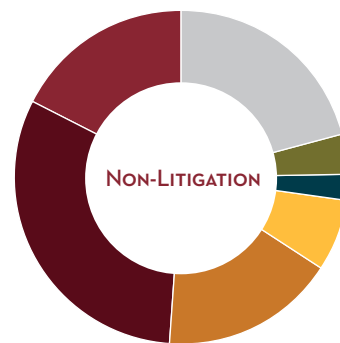
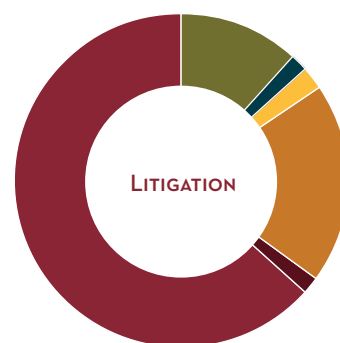
Tim Pramas Taught Law School classes "Civil Rights and Civil Liberties Moot Court" and "Law in Practice;" Neighborhood House Volunteer, food shelf collection and organization

Carrie Ryan Gallia Girl Scout Troop Leader and Cookie Mom; Teaches legal writing and judicial opinion writing at the University of Minnesota Law School

Karen Wagner Higher Education Legal Managers, Interim President; City of New Brighton Public Safety Commission, Vice Chair



OUTSIDE COUNSEL DISTRIBUTION





THE OFFICE OF THE GENERAL COUNSEL

Attorneys

Brent Benrud
Greg Brown
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Arnie Frishman
Neil Goldsmith

Dan Herber
Kaley Klanica
Susan Kratz
Ruilin Li
Elizabeth Lim
Douglas Peterson

Dan Piper
Tim Pramas
Carrie Ryan Gallia
Brian Slovut
Beth Zamzow

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Kathy Bitterly

Whitney Cushing
Diane Krawczynski
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Maria Pfister

Athletic Compliance

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Jeremiah Carter

Katharine Cresser
Kevin Gomer

James Praska
John Wallace

Clery Act Compliance

Daniel Alberts

Data Access and Privacy

Laurie Beyer-Kropuenske

Kristine Haugslund
Susan McKinney

Dan Volkosh



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BOARD OF REGENTS DOCKET ITEM SUMMARY

Litigation Review

October 13, 2022

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 13, 2022 at 8:00 a.m. in the Hail! Minnesota Conference Room, 600 McNamara Alumni Center, for the purpose of discussing attorney-client privileged matters including the following:

- I. In the matter of the Appeal of Rate Calculation for Community-University Health Care Clinic
- II. Potential Claims re: 1721 University Avenue Property

III. *Teamsters Local 320 v. Regents of the University of Minnesota*

III.IV. *Fardosa Omar and Osman Farah, et al. v. Regents of the University of Minnesota and University of Minnesota Physicians*

IV.V. *Potential Claim by Former University Student*



REGENTS OF THE UNIVERSITY OF MINNESOTA

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- I. In the matter of the Appeal of Rate Calculation for Community-University Health Care Clinic
- II. Potential Claims re: 1721 University Avenue Property
- III. *Fardosa Omar and Osman Farah, et al. v. Regents of the University of Minnesota and University of Minnesota Physicians*
- IV. Potential Claim by Former University Student