

CAL POLY POMONA FOUNDATION, INC.

POLICIES AND PROCEDURES

Subject:	Policy for Risk Management of Legal Fees	Policy No.	121
Reference:	303-II-B	Date:	06/19/01
		Revision:	

POLICY

The purpose of this policy is to define the types of legal fees the Foundation may incur and how the respective project(s) will be charged.

BACKGROUND

The Foundation is involved in various matters which require the services of legal counsel. These legal services may benefit a particular project, group of projects, or may benefit the entire Foundation. The Foundation has developed this policy as a means to determine whom benefits from the legal services and to determine a fair allocation of the related expense.

TYPES OF LEGAL ISSUES

Following are examples of the types of issues which may require legal counsel's services:

1. Review and/or composition of Memorandums of Understanding (MOU), Agreements, Contracts, Leases, Forms, etc.;
2. Services related to arbitration, mediation, dispute resolution and litigation activities;
3. Negotiations, responses to demand letters, threats, disputes, problems and conflict resolution;
4. Legal opinions.

DETERMINING LEGAL ACTION TO BE PURSUED

As issues develop, which may require the services of an attorney, the Executive Director of the Foundation (hereinafter referred to as "Executive Director") is responsible for notifying the appropriate Project Director(s), Department Chair(s), Dean(s) and Vice President(s), (hereinafter referred to as "Party(s)"). In reviewing the legal alternatives, the Party(s) and Executive Director will work together with the advice of counsel to determine the best course of legal action to be pursued, see Exhibit 1 (General Guidelines for Use and Authorization of Legal Counsel).

DETERMINING THE ALLOCATION OF LEGAL COSTS

In determining whether to charge the expense of legal fees to the General Fund of the Foundation and/or to the project(s) of the Party(s) the following factors will be considered:

1. What or who prompted the issue;
2. Why the issue requires legal counsel to be involved;

3. Who is or was involved with the issue;
4. What project(s) will benefit from use of legal services;
5. How the resolution of the issue affects the Foundation as a whole or the respective project(s).

The Foundation will allocate legal fees in accordance with the aforementioned factors.

- A. It shall be the responsibility of the Foundation to pay from its General Fund the legal costs not reimbursed by insurance for:
1. Services that benefit the entire Foundation, such as memoranda of understanding, agreements, contracts, leases, and forms which can be used generically;
 2. Legal counsel retained to provide opinions which are requested by the Executive Director and directly benefit primarily the central office and indirectly the project(s) involved;
- B. It shall be the responsibility of the Party(s) to pay any legal costs not reimbursed by insurance for:
1. Review and/or composition of unique or specific memoranda of understanding, agreements, contracts, leases, forms, etc., that benefit or are required by a specific Party(s) only;
 2. Legal costs that are the result of the action or inaction of the Party(s);
 3. Legal counsel retained to provide opinions which are requested by the Executive Director and Party(s) and that are specific to and directly benefit a particular program ;
 4. Where legal counsel is retained without the approval of the Executive Director;
 5. Where the Party(s) sign an agreement on behalf of the Foundation without the knowledge and/or prior approval of the Executive Director.

SUBMISSION OF LAWSUITS TO INSURANCE BROKER

It is the responsibility of the Chief Finance Officer to submit information concerning lawsuits to the Foundation's insurance broker. Each lawsuit will be individually evaluated by the insurance carrier's legal counsel at no cost to the Foundation. If the insurance carrier's legal counsel determines that the lawsuit is insurable under the Foundation's insurance policies, then the insurance company shall pay the legal fees to the extent of the coverage allowed, and the balance, if any, will be allocated according to this policy.

REQUEST FOR LEGAL SERVICES

Only the Executive Director of the Foundation is responsible for authorization of any legal services to be procured. Whenever possible, legal services will be pre-approved by the Party(s) and the Executive Director. In the event that pre-approval of the legal services is not received from the Party(s) in a timely manner, the Executive Director may retain legal counsel for matters which are believed to require immediate action. In this case, it is the responsibility of Executive Director to obtain the Party(s) approval as soon as possible.

Generally, the Executive Director shall choose legal counsel to represent the Party(s) in legal matters. The Party(s) may recommend legal counsel. If their choice of legal counsel is approved by the

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Executive Director, then the cost of these services will be paid according to this policy. In no event shall legal counsel be retained by the Party(s) without the prior consent of the Executive Director. In case of a violation of this policy, the associated cost shall be the sole responsibility of the Party(s).

The Executive Director or designee is responsible for insuring that authorized signatures approving payments for legal services are received by the Party(s).

PAYMENT OF LEGAL SERVICES

In the event the expense is not allowable by the related project(s), the Party(s) shall provide an alternate project(s) to be charged. The order of financial responsibility for the payment of legal fees by the Party(s) shall be as follows: first the Project Director(s), second the Department Chair(s), third the College Dean(s), and lastly the Vice President(s).

DISPUTE RESOLUTION

The Party(s) and Executive Director will make a good faith effort to resolve any disputes concerning the interpretation or performance of this policy. If the Party(s) and Executive Director cannot resolve the dispute, either party may submit the dispute to the University President for resolution, which resolution shall occur within 10 business days of submission and be binding upon the Party(s) and the Executive Director.

Cal Poly Pomona Foundation, Inc.
“Quality Service Supporting Quality Education”

Exhibit 1
General Guidelines
Use and Authorization of Legal Counsel

<u>Type of Matter*</u>	<u>Advice From</u>		<u>Authorization From</u>		<u>Board of Director Approval</u>
	<u>General Counsel</u>	<u>Special Counsel</u>	<u>Executive Director</u>	<u>Board of Director Notification</u>	
1. Litigation <ul style="list-style-type: none"> • Small Claims • Civil/Criminal Action ² 	X	X¹	X X	X	X
2. Planned/Deferred Gift Instruments		X	X		
3. Employee Relations		X	X		
4. Sponsored Project Agreements or Related Legal Documents	X	X	X		
5. External – Sponsored Project Compliance/Disallowance		X	X		
6. Real Property Instruments		X	X		
7. General Corporate Affairs	X		X	X	

¹ On advice of General Counsel

² If insurance claim involved, matter may be under control of insurer

* By Board policy, some of these matters also require Board action before the Foundation can commit to a transaction. For example: acquire real property, accept unitrust, and amend bylaws.