At United Educators (UE), our Resolutions department helps educate members on how to prevent claims and resolves claims that occur. We strive to demonstrate an understanding of educational institutions’ needs, strengthen relationships, and preserve the economic well-being of our member-owned company.

Guided by the understanding that diverse perspectives help us deliver superior service to members, we make intentional decisions as to which defense counsel will best represent our members and UE.
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Our Philosophy on Defense Counsel

UE believes successful insurance defense requires a three-way approach; we work closely with member institutions (insureds) and outside defense counsel (meaning individual attorneys and the firm itself) to reach the best possible conclusion for each matter reported to us. In some cases that may involve seeing a claim through a summary judgment motion or trial (and even appeal), but in many others it means a negotiated resolution.

We expect defense counsel to align with UE’s overall mission of supporting K-12 schools, colleges, and universities and their interests and to refrain from representing clients or interests adverse to education. It is important for UE, defense counsel, and our members to work together to guarantee fair, equitable, efficient, and effective claims resolution. Consistent with UE’s mission, our goal is to ensure that the defense counsel we retain or approve to represent our members act as valued partners.

To evaluate the merits of each matter for which we provide coverage, UE must receive sufficient information. To that end, for each matter we require that defense counsel:

- Complete an early assessment and budget by the given deadline.
- Opine quarterly about whether mediation or another form of alternative dispute resolution (ADR) may be appropriate.
- Respond promptly to all UE requests (whether by email, phone, or letter) for information about the claim.
- Routinely provide copies of all pleadings and key documents.
- Promptly report any significant events that may cause a change in exposure for the member or UE.
- Consult with UE and the member about strategy decisions and before preparing or filing dispositive motions.
- Provide monthly appropriately detailed invoices for professional services to UE and the member.
- Immediately notify UE and members about settlement demands.
- Obtain UE approval before engaging in settlement discussions (including offers, counteroffers, or acceptance).

These guidelines govern all claims for which UE provides insurance coverage. Failure to comply with the guidelines can have serious consequences. We will disallow inappropriate or unauthorized legal fees and costs. In some cases our member may lose valuable insurance coverage. Egregious or repeated instances of failure to comply with the guidelines will result in our revoking defense counsel’s appointment.

UE occasionally may approve departures from the guidelines. Although it should be the exception rather than the rule, if the primary attorney believes deviating from the guidelines is necessary, the attorney must bring the situation to UE’s attention before incurring expenses that are inconsistent with these guidelines. Counsel must request exceptions from UE in writing and get the assigned claims handler’s written approval in advance. Otherwise, UE won’t allow unauthorized costs.
Defense Counsel: Evaluation Criteria

UE has a robust evaluation process for defense counsel we select or approve. We assess three variables — performance; cost/efficiency; and commitment to diversity, equity, and inclusion (DEI).

**Performance**
We will consider performance elements such as:

- Success in claims resolution
- Subject matter expertise
- Strategic thought and diverse perspectives
- Collaboration/partnership with UE and our members
- Overall quality of research and oral and written advocacy
- Responsiveness to inquiries
- Timeliness and ability to meet deadlines set by the court, members, or UE
- Ability to comply with UE’s Defense Counsel Guidelines
- Engagement with member representatives
- Commitment to keep members and UE informed of major developments and involved in strategy formulation

**Cost/Efficiency**
In this age of uncertainty, UE constantly strives to develop strategies to effectively deal with and prevent social inflation and claims-related losses. Examining defense counsel rates and efficiency, including metrics provided in CounselLink, is part of that process. We also evaluate the reasonableness and accuracy of defense budgets submitted. In addition, we value defense counsel who efficiently deliver the high-quality work UE and our members demand.

**Commitment to DEI**
As part of UE's evaluation of outside counsel’s commitment to DEI, UE examines more than just a diversity statement on the law firm's website. We consider metrics to identify defense counsel that foster a culture consistent with UE’s mission, including:

- Diversity in relationship partners and origination partners to UE
- Staffing of diverse counsel in handling matters for UE and our members
- Law firm efforts to attract, develop, and retain a diverse workforce
- Diversity of leadership within the firm
Assignment and Staffing of Cases

UE typically appoints a particular attorney, not the attorney’s firm, to represent a member as defense counsel. We consider the attorney we appoint (or approve) as the attorney with ultimate responsibility for all legal work in the matter. Claims handlers will directly contact the primary attorney for appointment.

- After conflicts checks are completed, the primary attorney or that person’s authorized designee must accept the appointment in CounselLink. (The Resolutions Financials team can help law firms not registered with CounselLink complete the registration prior to the attorney’s appointment.)
- By accepting the appointment, the primary attorney or authorized designee agrees to adhere to these Defense Counsel Guidelines and affirms having the authority to accept the appointment and agree to the guidelines. Please note that counsel also must follow the steps within CounselLink to affirmatively indicate receipt and acceptance of UE’s guidelines.
- After being assigned a new claim, the primary attorney or designee must use CounselLink to submit for UE's review and approval a “Modified Change Request” of current individual rates for each timekeeper expected to work on the claim. We will reduce to the approved rate any submitted charges exceeding the approved CounselLink “Fee offer” rate for a timekeeper.
- Unless UE approves a different arrangement in advance, a maximum of two attorneys — generally one partner and one associate, assisted by one paralegal — should staff each claim. Generally, we expect the primary attorney to personally handle most of the case’s significant work and appearances.
- Defense counsel shouldn’t bill for more than one attorney to attend or participate in meetings, phone conferences, witness interviews, depositions, court hearings/arguments, or settlement negotiations (including mediations).
- UE serves our members by maintaining relationships with qualified counsel in most jurisdictions. As a consequence, UE won’t ordinarily approve or pay for the appointment of local counsel. Only in exceptional circumstances will we grant approval for more than one counsel on a matter.
- If staffing changes or substitutions are needed during the defense of a claim, the primary attorney must consult UE immediately. Without prior approval, defense counsel shouldn’t bill UE or our member for additional staff and shouldn’t bill for any transition time that a new attorney or paralegal spends becoming familiar with the matter. UE reserves the right to disallow any time a new timekeeper bills prior to approval.

Rate Agreements

All invoices submitted for work performed pursuant to appointment of defense counsel must be billed in accordance with the rate agreement reached in advance with UE. Agreed-upon rates will remain in force and apply to all work performed during the matter. Invoices that don’t comply with rate agreements will be reduced or rejected unless UE gives prior written approval.

These billing rates are to remain constant for the life of the claim unless UE determines extraordinary circumstances developed that justify an increase and the assigned claims handler provides prior written approval for a rate increase. Counsel must submit any request for a rate change in writing at least 90 days prior to the proposed effective date. A written request for a rate change must be submitted to UE even in cases where UE isn’t the “lead” carrier on a particular matter. Other carriers or entities don’t have authority to agree to billing rates on UE’s behalf, unless UE has previously agreed to such an arrangement.

If a rate cap applies to a matter for which counsel is retained, counsel should submit invoices at their standard rate and UE’s process will adjust the invoices to reflect the agreed rate cap for each timekeeper.
Communication

Consistent with our belief that a team approach is essential and to avoid surprises for UE and our members, we place great importance on communication with counsel in addition to requiring counsel to be responsive to our inquiries about the status of claims. UE also expects that we and the member will be involved in litigation strategy.

Defense counsel should keep UE and our member fully informed of developments in the claim. We expect to be advised promptly of all important court dates, including but not limited to:

- Discovery deadlines
- Dispositive motion deadlines
- Trial scheduling conferences
- Settlement conferences
- Trial dates

The member and UE should receive copies of case assessments, status updates, substantive motions, pretrial briefs, and mediation statements.

As a rule, UE will participate in ADR or settlement conferences where we are expected to contribute to the settlement. When coordinating dates and selecting mediators/arbitrators, defense counsel must involve UE in all discussions.

Absent other arrangements, in each matter UE should routinely receive copies (electronic format preferred) of:

- All substantive agency/court pleadings, briefs, and responses
- Legal research memos or factual investigative reports
- Summaries of written discovery responses, including records, that address how the information may affect previous assessments of liability and damages
- Deposition transcripts and/or summaries with analysis of the impact of the testimony, when UE’s claims handler requests it
- Expert reports and/or summaries with analysis of the impact of the expert’s opinion, when UE’s claims handler requests it
- All settlement demands, whether written or oral
- All releases, settlement agreements, dismissals, or final judgments
Assessments and Budgets

We expect counsel to investigate and assess claims at an early stage. Generally, the claims handler will request an early assessment and litigation budget. For claims that aren’t yet in litigation, we typically request only a brief assessment and no budget. UE will specify a due date; if materials aren’t received by that date and no extension has been arranged with the claims handler, UE may disallow fees and costs incurred between the due date and the date the items are received. The initial assessment will be supplemented as information becomes available.

Assessments

UE generally requires completion of an initial case assessment within 60 days of assignment of a claim. Each assessment should include:

- Results of defense counsel's factual investigation of the claim, including any problems with witnesses or any documents damaging to the defense
- Legal and factual defenses to the claim, including applicable immunities or caps on damages
- Whether counsel considers the claim a case of liability or exposure
- Monetary damages and any other relief that may be recoverable by the claimant
- Strengths and weaknesses of each party's position
- Counsel's recommended defense strategy (including anticipated discovery, motion practice, expert witnesses, ADR recommendations, and settlement strategies)
- The probable range of verdicts if the case is tried

For general liability claims, the assessment also should consider and address:

- Causation issues
- Joint and several liability
- Negligence
- Medical specials (past, present, and future)
- The possible range of non-economic damages

We expect timely, updated assessments in the event of significant developments that change the prior analysis or upon request. For more information, see the Initial Assessment Format in Appendix A.

Pretrial Assessments

UE requires a pretrial assessment for claims that will be tried. We generally require completion of the assessment at least 60 days before trial. Please see Appendix B for UE's preferred format for the assessment.
Budgets

UE asks outside counsel to provide the most realistic budget possible through trial, including fees projected for any likely dispositive motion work, as soon as possible but in all circumstances within 60 days of assignment of a claim. Budgets may specify any reasonable assumptions, such as the number of depositions anticipated or the anticipated course of action by adversary counsel. Consistent with UE's preferred format, budgets submitted within CounselLink will be allocated by the stages of litigation (discovery, pretrial pleadings and motions, trial preparation, and trial) and show approximate hours of work anticipated in each stage by the assigned partner, associate, and paralegal. Counsel may bill up to one hour for time spent creating the litigation budget.

In keeping with counsel's assessment and recommended strategic plan for the claim, counsel also must include in the budget estimates for all anticipated expenses including, but not limited to, experts, depositions, and other legal vendors. Expenses submitted as part of counsel's invoice must note preapproval by UE.

We will review and approve a budget for the litigation. The budget is approved for UE's internal purposes only. We expect counsel to continue seeking approval at various stages of litigation as required by these guidelines. We understand developments in litigation may require increases and expect to be advised promptly when that occurs. If counsel exceeds the original budget without having first notified UE or timely submitting a supplemental budget, subsequent invoices may be rejected within CounselLink. In addition, UE may disallow fees and costs incurred that exceed the original budget.

Mediations and Settlements

In general, UE encourages mediation. Defense counsel should consult with the UE matter contact in advance of scheduling any mediation. No later than 30 days prior to the mediation, we require counsel to complete a written pre-mediation analysis of the claim. This analysis should include:

- A brief summary of facts
- An overview of applicable law
- A discussion of liability that applies the governing law to the facts
- The likelihood of prevailing on any dispositive motions or at trial
- The history of any negotiations between the parties
- Claimed damages
- Medical specials
- Wage loss (past, present, and future)
- Likely range of jury awards
- Settlement ranges for comparable claims

All settlements and settlement offers require UE's prior approval. Counsel should promptly report settlement demands it receives to UE's claims handler and the UE member. We require written justification authorizing the settlement. Defense counsel shouldn't initiate settlement discussions or make settlement offers without consulting UE in advance. Failure to do so could result in the loss of the member's insurance coverage.
Billing and Invoice Submission

Invoice Requirements

Unless agreed otherwise with UE in advance, counsel should use CounselLink to submit monthly detailed invoices for professional services and disbursements (expenses). UE only will pay for the actual, reasonable, and necessary time spent completing a task or a series of related tasks.

If an activity warrants a minimum billing entry, it should be one-tenth (.10) of an hour. UE doesn’t accept standard minimum charges for tasks or pattern, time billing. Pattern billing includes repeatedly billing a set amount of time for tasks which are similar, such as billing one-tenth (.10) of an hour 10 times to review a group of identical court orders, resulting in billing an hour when the actual work performed didn’t take that long to complete.

We expect the primary attorney to use “billing judgment” and make appropriate adjustments to invoices before submitting them for review and payment.

Invoices must include:

- A description of the specific task an attorney or paralegal performed (if multiple tasks are aggregated in a single time entry, UE will disallow that time)
- All legal services, itemized by Uniform Task-Based Management System (UTBMS) codes
- A unique invoice number and invoice date
- Time billed for a specific task in increments no greater than one-tenth of an hour
- Each timekeeper’s name, their role, and the hourly timekeeper rate. Please note: Submitted charges exceeding the approved CounselLink “Fee Offer” rate for a timekeeper will be reduced to the approved rate.
- A summary of hours billed and the billing rate for each timekeeper on that invoice, accompanied by a summary of fees to date
- An itemized statement of expenses

Invoices should be submitted through CounselLink for the full amount without application of any credit or reduction for payment by UE or the member.

Counsel also should send the member a copy of all invoices uploaded into CounselLink. UE expects to receive the final bill (which should be marked as such) within 90 days after formal resolution of a claim. UE will accept invoices for up to 90 days after we have advised that a claim has been resolved. Invoices received more than 90 days after a claim is resolved will be rejected and won’t be paid absent extenuating circumstances.

Prohibited Fees

UE will not pay for the below activities:

Excessive Time

UE won't pay for more than 10 hours of time spent by any one timekeeper in a day, unless approved in advance. When trial is scheduled and counsel is preparing for trial, the limitation of billing more than 10 hours per day doesn’t apply. In addition, UE won't pay for work performed exceeding originally agreed-upon parameters of the requested defense representation, such as revising internal member policies or conducting in-service trainings.
Clerical Activities
UE doesn’t cover, and counsel shouldn't bill for, work that is clerical or secretarial in nature — regardless of personnel performing the tasks. We consider charges for the following tasks to constitute administrative overhead costs to be borne by defense counsel, regardless of the status of the timekeeper performing the task:

- Conflicts of interest review
- Scheduling appointments, events, depositions, conferences, deliveries, or travel
- Calendaring/docketing
- Time spent photocopying
- Word processing/typing
- Data entry/processing or similar in-house e-discovery work
- Document scanning or printing
- Dictating or transcribing
- File maintenance including opening, updating, closing, and storing physical or electronic files
- Labeling, collating, Bates numbering, indexing, coding, or binding documents
- Preparation of timesheets or invoices, or responding to billing inquiries or audit inquiries
- Preparation of budgets in excess of an hour

Vague and Untimely Fees and Charges
Entries must include sufficient detail to allow UE to determine the nature of the legal task accomplished and why the activity needed to be performed in connection with the matter. Each time entry must describe the specific work performed and issue(s) addressed. General entries such as “discussed status” don't meet this standard and likely will result in the time being disallowed.

Additional examples include:

- “Block-billed” descriptions (multiple activities grouped under a single time charge)
- Vague descriptions from which the purpose of the task can't be discerned or in which the subject is unclear, such as:
  - Attention to email
  - Work on discovery/motion
  - Conference/meeting/correspondence
  - Preparing documents
  - Preparing for hearing/deposition/trial
  - Draft/Update status or strategy
  - Review file/documents
- Incomplete or vague charge descriptions such as disbursements billed as “miscellaneous”
- Invoices with fees dated in the future
- Charges for time expended or costs incurred more than 90 days prior to the billing cycle
- Invoices that are duplicative of prior bills
**Intraoffice Conferences**
Intra-office conferences or communications that are merely administrative, instructional, educational, or supervisory shouldn't be billed. The primary attorney appointed to the matter is responsible for monitoring the frequency and length of such conferences and communications to ensure they are handled appropriately and cost-efficiently.

**Multiple Timekeeper Billing**
UE won't pay for duplicate work performed by multiple timekeepers. This includes attendance at:

- Witness interviews or prep
- Depositions
- Court hearings
- Settlement conferences
- Mediations

**Billing for Basic Research**
UE appoints or approves defense counsel primarily based on the attorney’s expertise in areas of law germane to the particular claim. Counsel shouldn't bill UE or our members for basic research on areas where we would reasonably expect the attorney’s firm to have adequate experience and existing research — for example, local rules, the plaintiff’s burden of proof in a Title VII discrimination claim, or the notice standard in a premises liability case. Unless the total research will be completed within less than four hours for each subject matter, generally the attorney would discuss all research with the claims handler in advance. In addition, UE won't allow time billed to “research” without counsel specifying the topic being researched.

**Paralegal Work**
Time attorneys spend performing paralegal work will be adjusted to the paralegal rate.

**Billing by Summer Associates/Law Clerks**
As a rule, defense counsel shouldn't bill for summer associate or law clerk time, which we consider part of a firm’s overhead and training costs. However, if counsel believes a summer associate or law clerk can make a valuable contribution in a particular case (such as a discrete research project on a novel issue of law), the claims handler should seek advance approval for that work. If the UE matter contact approves the summer associate or law clerk work, the contact may cap the time that will be covered.
Travel Billing and Expenses

Timekeeper Billing for Travel
In general, UE won’t pay for time spent traveling unless the time is being used for other substantive legal work. In that case, it should be billed as such. This includes local and out-of-town travel time.

Prohibited Travel Expenses
In addition, the following travel-related charges won’t be paid:

- Local travel expenses (within 50 miles of timekeeper’s office) including mileage, parking, car rental/car, and tolls; this is considered local travel within the firm’s service area
- Meals (unless related to approved out-of-town travel, trials, meetings, or depositions)
- Personal travel
- Limousine service (preapproved taxi or ride share services such as Lyft or Uber is allowed)
- Personal charges such as entertainment, minibar charges, personal telephone charges, Wi-Fi, dry cleaning, or other similar items

Permissible Travel Expenses for Approved Out-of-Town Travel
UE will pay the following travel expenses for preapproved, out-of-town travel:

- The lowest available coach class airfare
- Reasonably priced hotels/meals
- Reimbursement for a rental car up to midsize class
- Mileage at the current IRS rate for use of a personal vehicle. Firms shouldn’t bill UE for their mileage if it is being written off as a business expense.
Expense Management and Documentation

Documenting Legal Expenses

If your firm anticipates incurring any individual expense greater than $1,000, you must obtain UE’s approval in advance of incurring the expense. A firm may prepay expenses and include those amounts on their legal invoice. Expenses submitted for reimbursement as part of the legal invoice must be submitted as follows:

- Each expense must be separately itemized.
- The date the expense was incurred must be provided.
- Identify the person who incurred the expense.
- Identify the nature of the expense.
- Provide the amount charged. Any expense greater than $25 must be documented by attaching copies of the invoice’s original receipt.

Vendors and Engaging Third Parties

UE must approve in advance the use of any expert, vendor, or third-party service provider including expert witnesses, jury consultants, alternative legal service providers, or other legal vendors. Approval may be obtained by submitting the following information to the claims handler:

- The vendor’s name
- Identity and expertise/background of the individual(s) who will perform the services including a curriculum vitae or summary of their credentials
- Fee schedule including any proposed retainer agreement and W-9
- A detailed budget including rates, performance timelines, and anticipated completion (Note: Don’t submit this budget via CounselLink.)

If the expert/consultant requires a retainer fee, after UE approves retention, counsel may pay the retainer directly to the third-party vendor and submit the expense for payment through CounselLink. UE may elect to retain the vendor directly or direct you to work with a UE-preferred provider.

UE-Preferred Vendors

UE has a national network of legal support vendors including, but not limited to, e-Discovery vendors. Counsel should confer with UE about the need for and selection of any recommended vendors. Counsel must use a UE-preferred vendor when appropriate and available. Please reach out to your claims handler for a list of current preferred vendors.
Approved Legal Expenses

Bill all expenses to UE at actual cost without markup. UE will cover the actual cost of the following expenses as agreed and included in the strategy for resolution of the matter:

- Deposition transcripts
- Medical records acquisition fees
- Court filing fees
- Approved expert witness fees
- Approved witness expenses (per IRS guidelines)
- Other outside vendor costs, with UE prior approval (for example, jury consultants, outside copy vendors)

Prohibited Expenses

Overhead Costs

UE doesn’t cover, and counsel shouldn’t bill for, the following expenses that we consider overhead:

- Computerized legal research services, including but not limited to Westlaw, LexisNexis, or PACER
- Postage
- In-house photocopying, scanning, or translation
- Phone charges
- Shipping and other overnight delivery services (with limited exceptions for necessary court filings with UE prior approval)
- Messenger/courier services
- Overtime expenses including overtime hours/salaries, meals, and transportation
- Training of firm personnel, attendance at seminars, continuing legal education, conferences, or professional association fees
- Library charges, subscriptions, books, periodicals, publications, online databases whether a fixed cost or hourly expense
- Rent/utilities, space usage, storage space, or supplies
- Any cost to acquire, implement, or maintain case management databases or litigation systems including Information Technology personnel (unless UE has given prior approval)
- Software or equipment rental unrelated to specific litigation (unless UE has given prior approval)
- Entertainment or personal expenses, group outings or hospitality, or client entertainment
- Interest on unpaid invoices or in-house accounting fees
- Technology costs including internet service, hardware, software, licenses, database administration/maintenance, storage, imaging, and support
- Communication charges for cellular, conference services, local or long-distance calls, video, dictation/word processing or facsimile
- Travel agent or booking service charges
Invoice Review and Payment Procedures

Invoice Review

UE reserves the right to perform a review of submitted legal invoices to ensure compliance with these guidelines as well as a reasonable, necessary, and efficiency standard. The purpose for the review is to ensure consistency with these guidelines as well as any agreement under which UE shares costs with another entity and/or any other relevant agreement to which UE is a party.

UE's review also may include an audit to review counsel's files and invoices during which UE may request additional documentation or informational interviews with firm personnel. UE will perform any such audit in a manner that preserves the attorney-client privilege and in a matter that won't compromise work product protections. Counsel agrees to comply with any reasonable requests for information and documentation and to cooperate with the invoice review and audit process.

Payment

UE's goal is to process invoice payments within 45 days from receipt. However, we won't pay late fees or interest on any invoice. A firm's compliance with these guidelines supports UE's ability to issue timely payments. UE reserves the right to withhold payment for any disputed portion of an invoice and/or to seek reductions of items charged that don't comply with these guidelines or UE's approved directions. Payment of an invoice doesn't constitute a waiver of UE's right to subsequently review, dispute, or seek reimbursement of legal fees or expenses paid to a firm that are outside of or in violation of these guidelines.

Invoice Adjustments and Appeals

Defense counsel may appeal disallowance of charges or rejection of invoices. Counsel must request consideration of an appeal for an invoice adjustment within 60 days from the date UE finishes reviewing the invoice. Within that time frame, counsel should discuss the charge(s) in question with the UE matter contact listed in CounselLink.

If UE subsequently allows a charge, defense counsel should submit a new invoice containing just the charge in question; use the original invoice number followed by an “A” to denote the appeal. Counsel shouldn't bill any disallowed charge to the member; if such charges are made, they should be credited back on future invoices.
Information Security

UE recognizes the critical importance of information security. Just as we make every effort to ensure the security of confidential information our members and partners share with us, we expect that counsel will implement adequate controls to secure the confidential information we entrust to our law firms for safekeeping. As outside counsel is often privy to some of the most sensitive data of UE and our members, we reserve the right to assess the information security practices of outside counsel as we deem necessary.

**Information Security**: Counsel must implement and maintain reasonable and appropriate administrative, physical, and technical safeguards designed to protect the confidentiality, integrity, and availability of UE and our members’ confidential information.

**Data Encryption**: Counsel must implement industry standard encryption technology for the storage and transmission of UE and our members’ confidential information.

**Data Access Controls**: Counsel must implement and enforce access controls to UE and our members’ confidential information, including, but not limited to, unique user identification, secure authentication, and role-based access controls.

**Incident Response**: Counsel must have a written incident response plan and must promptly notify UE if any unauthorized access to or disclosure of UE’s or our members’ confidential information occurs.

**Compliance with Law**: Counsel must comply with all applicable federal, state, and local laws and regulations related to information security and data protection, privacy, and cybersecurity.

**Audit Rights**: UE must have the right upon reasonable notice and during normal business hours to audit counsel’s information security processes and procedures to ensure compliance with this agreement.

**Termination**: UE may immediately terminate counsel's appointment if counsel breaches its information security obligations under this agreement.

Conflicts of Interest

Counsel is responsible for identifying and disclosing to UE any existing or prospective engagement by another client that could create an actual or potential conflict of interest with counsel’s representation of UE or our member. Counsel must perform a conflict of interest check at the outset of each engagement to ensure it is free of any actual or apparent conflict of interest. UE expects counsel’s conflict of interest assessment to include a review of whether any attorney at counsel’s firm is or previously was retained to represent a client in a matter that is/was adverse to UE or our member.

If an ethical conflict of interest exists such that counsel’s representation of the member is directly adverse, counsel must notify UE in writing of the situation. UE will consider the facts and circumstances to determine whether a conflict of interest exists and, if so, whether or not to waive the conflict. Such waivers will be considered in light of the relevant facts and circumstances and may be granted with limitations requiring that counsel undertake certain actions to protect the UE member’s interests.

UE considers representation adverse to educational institutions to be a business conflict. If the reported facts and circumstances represent a business conflict such that the representation is adverse to the interests of UE or our member, UE may take actions including, but not limited to, withdrawing the appointment of counsel.

To the extent that any actual or potential ethical conflict arises with the member or UE during the course of the representation, counsel must immediately notify UE and advise of the surrounding details.
Liability Insurance

Counsel must maintain, at its own expense, a policy of professional liability insurance with an insurance company rated A or better by AM Best. The policy must provide coverage in an amount no less than $5 million. Upon request, counsel must provide proof of insurance to UE and must provide written notice to UE immediately if such required insurance is cancelled or terminates for any reason. The insurance coverage required must be for claims arising out of counsel’s professional services performed for UE and our member and must remain in full force and effect throughout the duration of the representation. Counsel must indemnity, defend, and hold harmless UE, our officers, directors, employees, agents, and affiliates from and against any and all claims, losses, damages, expenses, and liability arising out of or in connection with any breach by counsel under these guidelines or in the performance of counsel’s professional services.

Dispute Resolution

These guidelines and any and all dispute or claim arising out of it or in connection with the subject matter must be governed by and construed in accordance with the laws of New York. If informal attempts to resolve a dispute aren’t successful, the Courts of New York will be the exclusive venue for disputes arising out of this agreement.
Appendix A

Initial Assessment

Member/Client:

Plaintiff/Charging Party:

Result of counsel’s factual investigation:

Liability
• Does counsel consider this a case of liability and basis for opinion?
• What are the case’s strengths and weaknesses?
• What is the credibility of defense witnesses?
• Does documentation support the defense? Are there troublesome documents?
• How suitable are dispositive motions, and what is the likelihood of (percentage) success?
• Is expert testimony likely to be needed?

For general liability claims, also discuss:
• Causation issues
• Joint and several liability
• Negligence

Damages
• What is counsel’s estimate of potential damages exposure, including:
  • Economic damages (including back pay, front pay, medical expenses, and special damages)?
  • Likelihood of emotional distress damages and punitive damages?
  • Prejudgment interest?
  • Availability of plaintiff’s attorneys’ fees?
• For Equal Employment Opportunity Commission/state agency charges (if applicable), damages available from the agency?
• What is the probable range of verdicts if the case was tried?

For general liability claims, also discuss:
• Medical specials (past, present, and future)
• The possible range of non-economic damages

Settlement
• Do you have recommendations for ADR? If not, why not?
• Do you expect settlement demands from the plaintiff?
• Have there been negotiations?

Defense strategy
• What defense strategies do you expect to undertake over the next six months to a year:
  • Additional investigation?
  • Anticipated discovery and expected discovery disputes? Motion practice?
  • Use of experts?

Other considerations
• What is your opinion of plaintiff’s counsel (ability and general reputation)?
• What is your opinion of the judge?
• Have other unique issues been presented or are there extraordinary costs that may be required?
Appendix B
Pretrial Assessment

Member/Client:

Plaintiff/Charging Party:

Trial date and probability of being tried on that date:

Final pretrial conference date:

Pending claims
• Liability evaluation of each:
• Damages associated with each:
• Probability of verdict for each:
• Attorney fees awarded (if applicable):

Witnesses
• Demeanor and credibility and role of all plaintiff’s trial witnesses:
• Demeanor and credibility of each defense witness:

Additional work between now and trial:

Budget
• Total budget:
• Budget to date:
• Amount billed to date:
• Amount anticipated through trial:

Please explain differences between budgeted and billed or anticipated amounts to be billed: