



ATTORNEY GENERAL OF TEXAS
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Limited Exemption Under OAG Administrative Rules Governing the OAG's Review of Invoices

TO: University Systems and Institutions of Higher Education

FROM: Office of the Attorney General – General Counsel Division

DATE: April 2, 2012

Pursuant to subsection 402.0212(f) of the Texas Government Code, the Office of the Attorney General (“OAG”) has recently adopted new administrative rules related to the retention and contracting of outside legal counsel by state agencies, university systems, and institutions of higher education. These rules, which can be found in Title 1, Chapter 57 of the Texas Administrative Code, include several requirements and prohibitions applicable to agencies, university systems, and institutions of higher education. Among the new requirements and prohibitions found in these rules is the general prohibition on paying an outside counsel’s invoice without first receiving the OAG’s approval to do so, and the general requirement that certain information be submitted to the OAG before an outside counsel’s invoice can be paid. 1 Tex. Admin. Code § 57.8(a)-(b). The OAG may grant exemptions from the requirements and prohibitions found in these rules in certain instances. *Id.* § 57.2(d).

We understand that university systems and institutions of higher education often enter into contracts for legal services with outside counsel related to intellectual property matters. These matters include, but are not limited to, the filing, management, and/or enforcement of system or institution patents, trademarks, and copyrights. After reviewing our rules, and recognizing the unique nature of university system and institution of higher education outside counsel contracts related to intellectual property matters, the OAG has determined to grant a limited exemption to university systems and institutions of higher education as outlined below.

LIMITED EXEMPTION: An exemption from the requirements and prohibitions found in subsections 57.8(a)-(b) of the rules is hereby granted to university systems and institutions of higher education for invoices submitted by an outside counsel that provides legal services under an OAG approved outside counsel contract that is solely related to the filing, management, and/or enforcement of system or institution patents, trademarks, and/or copyrights. Accordingly, unless otherwise required to do so by the OAG, university systems and institutions of higher education are not required to seek OAG approval, or submit the information specified in subsection 57.8(b)(1)-(7), before paying such an outside counsel’s invoice. Please note that: (1) this exemption does not extend to invoices submitted pursuant to a contract that involves litigation; (2) this exemption does not extend to invoices submitted pursuant to a contract that is not solely and exclusively related to the intellectual property matters referenced above; (3) this exemption does not exempt university systems or institutions of higher education from any of the other requirements and prohibitions found in the rules; and (4) university systems and institutions of higher education must still seek and receive OAG approval of all outside counsel contracts, including those intellectual property contracts that are covered under the exemption granted herein.

Because university systems and institutions of higher education will not be required to submit the invoices described above to the OAG for review, the respective outside counsel will not be required to

pay the administrative fee described in section 57.9 of the rules. However, it is anticipated that the OAG will conduct periodic testing to determine whether university systems and institutions of higher education are properly approving and paying such outside counsel invoices and whether this exemption continues to be appropriate. Upon notice of such testing, a system or institution must submit to the OAG any requested invoice and information related to such invoice. If the OAG undertakes such an invoice review, the administrative fee described in section 57.9 will become due.

Please note that the exemption granted herein can be rescinded by the OAG at any time. Should the OAG rescind this exemption, the university systems and institutions of higher education will receive written notice of that rescission.

University systems and institutions of higher education that wish to take advantage of this exemption for current OAG approved outside counsel contracts must notify the OAG's General Counsel Division of their desire to do so and provide a list of the contracts (including the OAG's OCC number) that qualify for the exemption. This notification should be sent to the following e-mail address: **general.counsel@texasattorneygeneral.gov**. University systems and institutions of higher education that wish to take advantage of this exemption for a future contract must notify the OAG's General Counsel Division when they submit the contract for OAG approval.