



The State University  
of New York

## Office of General Counsel

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### **Procedure: Requesting Representation in Administrative Proceedings**

This document provides an overview of the procedure for SUNY state officers and employees to request representation by the SUNY Office of General Counsel in the event that such officers and employees are named individually in an administrative proceeding arising from an act or omission which occurred or is alleged to have occurred while the employee or officer was acting within the scope of their public employment or duties.

This procedure is issued on a pilot basis and may be re-examined and/or rescinded in the future.

### **Defense of State Officers and Employees in Administrative Proceedings**

Current and former state officers and employees named individually in an administrative proceeding for acts or omissions that occurred, or were alleged in the complaint to have occurred, within the scope of their public employment or duties may be eligible for representation by the SUNY Office of General Counsel in such administrative proceedings.

To request such representation, the officer or employee must deliver a copy of any administrative complaint or claim, as well as a request for representation (template available at the link below), to the SUNY General Counsel or designee within 7 days of receiving the complaint or claim. This 7 day deadline may be waived or extended by the SUNY General Counsel or designee when deemed warranted under the circumstances. The employee must also cooperate fully with the SUNY Office of General Counsel in the defense of the matter, the defense of any related action against the state, SUNY, and/or any SUNY institution, and in the prosecution of any appeal.

Following receipt of such request, the SUNY General Counsel or designee will determine whether representation is warranted pursuant to the terms of this Procedure and will so advise the individual officer or employee. The determination of whether an officer or employee is eligible for representation pursuant to the requirements of this Procedure is in the sole discretion of the SUNY General Counsel or designee. A request may be denied if the SUNY General Counsel or designee determines that the acts or omissions alleged occurred outside the scope of the requester's public employment or duties, or that an actual or perceived conflict of interest exists with the SUNY Office of General Counsel's legal representation of the State, SUNY, any SUNY institution, and/or other individuals. If the SUNY General Counsel or designee determines that an officer or employee is eligible for representation, and the individual declines such representation, or representation is denied pursuant to this Procedure, all legal fees will be borne by the officer or employee.

If the SUNY General Counsel or designee determines that the officer or employee is eligible for representation pursuant to this Procedure, such representation will only be provided if and when the officer or employee signs the SUNY Office of General Counsel's representation agreement.

Neither this Procedure, nor any such representation agreement, will constitute an agreement by SUNY or the Office of General Counsel to provide insurance or indemnification for any judgment or determination issued in the administrative proceeding. Further, any decision to enter into a settlement agreement will be in the sole discretion of the SUNY General Counsel or designee (pursuant to any other required approvals), and only settlements that are in the best interests of SUNY and the State of New York will be approved.

Continued eligibility for representation under this Procedure will be contingent upon the officer or employee's continued cooperation and participation in the administrative proceeding and compliance with this Procedure and the terms of any representation agreement. In the event the SUNY Office of General Counsel determines that the officer or employee is no longer eligible for representation under this Procedure for any reason, including but not limited to a conflict of interest or a determination that the acts or omissions alleged occurred outside the scope of public employment or duties, the SUNY Office of General Counsel will notify the officer or employee of their ineligibility for continued representation and the officer or employee will be permitted to obtain their own legal representation, at their own expense.

All SUNY employees and officers maintain the right to refuse representation by the SUNY Office of General Counsel, and to retain a private attorney at their own expense, at any time.

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## **Definitions**

For purposes of this guidance, "state officer or employee" is defined as State University of New York officers, employees, trustees and council members serving the state-operated campuses or SUNY System Administration, and authorized volunteers. This extends to any person holding a position by election, appointment or employment in the service of the state, whether or not compensated, or a volunteer expressly authorized to participate in a state-sponsored volunteer program, but shall not include an independent contractor. The term employee includes a former employee, their estate or judicially appointed personal representative. An employee for purposes of this procedure does not include physicians who are subject to the provisions of the plan for the management of clinical practice income as set forth in Article XVI of the Policies of the Board of Trustees (codified in 8 NYCRR §340) regarding any proceeding arising out of the physician's involvement in clinical practice as there defined.

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## **Links**

[Model Employee Request for Representation](#)

[Chancellor Authorization](#)

Effective: March 28, 2023