



**Northern Illinois
University**

Board of Trustees

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February 27, 2015

MEMORANDUM – PERSONNEL MATTER – CONFIDENTIAL

TO: Douglas D. Baker, President
Northern Illinois University

FROM: John Butler, Board Chair

cc: Members, Board of Trustees of Northern Illinois University
Jerry D. Blakemore, Vice President and General Counsel

RE: **President's Engagement of Mintz Levin**

On February 26, 2015, the Board of Trustees reviewed the retainer agreement between you and the Law Firm of Mintz Levin Cohn Ferris Glovgsky and Popeo, PC. This agreement was precipitated by your interest in retaining separate counsel given the ongoing investigation by the Office of the Executive Inspector General ("OEIG") and the question of whether there exists or in the future may exist a material conflict between the Board and the President on matters related to that investigation. The Board is unaware at this time of any material conflict or a divergence of interests of the Board and the President; however, the lack of knowledge and the broad parameters of the OEIG investigation cause the Board to consider your request for financial support to cover the costs of legal representation.

The Board believes that professional and practical reasons exist for you to retain counsel. During our discussion, however, Board members expressed concerns over the hourly rate of the attorney proposing the engagement (\$██████ per hour). After inquiries, we noted that the average hourly rate paid for outside counsel by Northern Illinois University appears to be approximately \$363.00, supporting the notion that the reasonable and necessary rate for such services is considerably less than the rate proposed in the retainer agreement. The Board does not wish to deny you the ability to work with the attorney of your choice; however, we also believe it is prudent and responsible to limit the scope of representation. As such, we ask you and your counsel abide by the following limitations:

First, the Board will only be responsible as it pertains to the ongoing inquiry by the OEIG. The current agreement indicates that the firm "will represent and advise you regarding your employment by Northern Illinois University, and the ongoing inquiry by State Office of the Inspector General, and related matters." We want to be clear that we are approving financial support for representation only for the ongoing OEIG investigation, and that this does not include representation concerning employment matters unrelated to the OEIG investigation, or

representation following OEIG findings which require Board action. Following the findings by the OEIG, the Board will consider whether indemnification is appropriate and the scope and cost of such indemnification.

Second, the Board does not support the payment of any amount exceeding \$ [REDACTED] per hour. It is our understanding that a provision in an earlier version of the agreement would have allowed an increase in the hourly rate, and that has been deleted. Please note that, any amount above the quoted \$ [REDACTED] per hour rate will need to be covered by your personal funds.

Third, the Board supports the payment of up to \$50,000.00, for all services and expenses billed by your attorney for representation for the ongoing OEIG investigation related to the investigation, so far as the payment can be made within the parameters of the Illinois Procurement Code.

Fourth, the Board understands that any purchase of professional services, including – under present law – legal services once reaching \$20,000.00 must be handled through a State-mandated competitive selection process facilitated by the university's purchasing and procurement office. This involves use of a formal Request for Proposal (RFP) process. Therefore, we have asked the Vice President and General Council, *and are also asking you*, to inform your attorney that services under the agreement must cease before expenses incurred result in total payments in excess of \$19,999.00. At that point, we have asked that the Vice President and General Council determine the requirements in place under current law (whether any exemption of legal services has been restored by then) and assist you in facilitating any RFP process. If an RFP process is required, we ask that you notify the Board Chair of the results of that process and submit to the Chair any new or revised retainer agreements you intend to execute.

Finally, in order to provide actual and perceived assurances that the representation is independent of the General Counsel's Office, the Board believes that the costs and management of this matter should be within the prerogative (i.e., cost center) of the Board or the President with oversight of the services being provided by the Board Chair. Management by the Board Chair will include approving requests for and distribution of payments thereof.

Please feel free to raise any questions or concerns you have about the Board's consideration and determination by contacting me directly.