



UNIVERSITY OF KABIANGA
ISO 9001:2008 BASED QUALITY MANAGEMENT SYSTEM
CONTRACTS AND LITIGATION PROCEDURES MANUAL
REF: UoK/PM/MR/012

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PROCEDURE NUMBER 1: HANDLING LITIGATION AND PROVISION OF LEGAL OPINION

1.0 GENERAL

1.1 PURPOSE

To ensure effectiveness in handling University contentious matters to safeguard its interest.

1.2 SCOPE

This applies to all contentious matters in which the University is a defendant / respondent.

1.3 REFERENCES

- a) Quality Manual – UoK/QM/MR/002.
- b) Universities Act 2012
- c) UoK statutes (2013)
- d) The relevant Laws of Kenya

1.4 TERMS AND DEFINITIONS

- a) Universities Act 2012
- b) VC – Vice-chancellor
- c) DVC (A&F) –Deputy Vice -Chancellor (Administration and Finance)
- d) FO – Finance Officer
- e) LO – Legal Officer

1.5 PRINCIPAL RESPONSIBILITY

Deputy Vice -Chancellor (A & F)(V.C) shall ensure adherence to this procedure

2.0 STEPS

2.1 General

The legal unit shall handle litigations where;

- a) The University is a defendant / respondent
- b) The University is a claimant

2.2 Handling Litigation where the University is a defendant

- 2.2.1 On receipt of intentions to sue, the LO shall discuss the matter with the Vice-Chancellor, Deputy Vice-Chancellor (A&F) and the concerned officer / department to establish the true position of the matter.

- 2.2.2 The forum shall decide on the most viable option of handling the matter. This shall either be;
- a) Out of court settlement
 - b) The matter proceeding to full hearing
- 2.2.3 If the decision is to handle the matter out of court, the LO shall establish contact with the claimant and deliberate on the matter
- 2.2.4 If and once the claimant accept the terms of the out of court settlement, the LO shall in liaison with the relevant office ensure the matter is amicably determined
- 2.2.5 IF the decision is to have the matter proceed to full hearing or the claimant decline the terms of the out of court settlement, the LO shall identify and instruct external advocate from the University's Panel of advocates to defend the matter
- 2.2.6 In course of the legal proceeding, the LO shall keep track of the matter with external advocate
- 2.2.7 On determination of the matter by the court, the LO shall advice the Vice Chancellor, Deputy Vice-Chancellor (A&F) and concerned officer / department on the way forward including
- a) Appealing against the court ruling
 - b) Abiding by the court ruling
- 2.3 Handling Litigation where the University is a Claimant**
- 2.3.1 On receipt of contentious matter from any University's officer / department in which the University is a claimant, the Legal Officer shall discuss the matter with the Vice-Chancellor , Deputy Vice-Chancellor (A&F) and the concerned officer / department to establish the true position of the matter
- 2.3.2 The Vice-Chancellor and/or Deputy Vice-Chancellor (A&F) shall issue instructions to the Legal Officer on the way forward based on the discussion. The instructions shall include;
- a) Rest the matter
 - b) Settle the matter out of court
 - c) Pursue legal proceeding
- 2.3.3 **In If** the instructions are the matter be rested, the Legal Officer shall advise the concerned officer / department and the procedure shall not proceed

- 2.3.4 In the event the instructions are to pursue out of court settlement, the Legal Officer shall establish contact with the respondent and deliberate on the matter
- 2.3.5 If and once the respondent accept the terms of the out of court settlement, the LO shall in liaison with the relevant office ensure the matter is amicably determined
- 2.3.6 If the Instructions are to pursue legal proceedings or the respondent decline the terms of the out of court settlement, the Legal Officer shall issue a demand letter to the respondent
- 2.3.7 On receipt of a favourable response, the Legal Officer shall advice concerned office and ensure the matter is amicably determined.
- 2.3.8 On receipt of unfavourable response, the Legal Officer shall identify and instruct external advocate from the University’s Panel of advocates to pursue the matter in court
- 2.3.9 In course of the legal proceeding, the Legal Officer shall keep track of the matter with external advocate
- 2.3.10 On determination of the matter by the court, the Legal Officer shall advice the Vice Chancellor, Deputy Vice-Chancellor (A&F) and concerned officer / department on the way forward including
- c) Appealing against the court ruling
 - d) Abiding by the court ruling

2.4 Provision of Legal Opinion

- 2.4.1 This shall start with the Legal Officer receiving a request for a legal opinion from any department / office in the University.
- 2.4.2 On receipt of the Request, the Legal Officer shall research on the matter in line with set precedence and applicable legislation, rules, notices and circulars
- 2.4.3 The LO shall as need be consult with an external advocates of the University
- 2.4.4 After research the Legal Officer shall write the legal opinion and send it to the requesting officer.

PROCEDURE NUMBER 2: MANAGEMENT OF CONTRACTS/AGREEMENTS/MEMORANDA OF UNDERSTANDING

1.0 GENERAL

1.1 PURPOSE

To ensure effectiveness and consistency in management of Contracts, Agreements and Memoranda of Understanding.

1.2 SCOPE

Applies to drawing and monitoring of Contracts/ Agreements/ Memoranda of Understanding at the University

1.3 REFERENCES

- a) Quality Manual – UoK/QM/MR/002.
- b) Universities Act 2012
- c) University of Kabianga Statutes, 2013
- d) Public Procurement and Disposal Act, 2005
- e) Public Procurement and Disposal Regulations, 2006
- f) Kenya's Law of Contract Act
- g) Law Society of Kenya Conditions of Sale
- h) Any other applicable Laws of Kenya

1.4 TERMS AND DEFINITIONS

- a) DVC (A & F) - Deputy Vice Chancellor , Administration and Finance
- b) LO – Legal Officer

1.5 PRINCIPAL RESPONSIBILITY

The DVC (A & F) shall ensure that this procedure is effectively adhered to.

2.0 STEPS

- 2.1 This procedure shall start with any department / office identifying a need to enter into a contract/agreement/MOU with an external party
- 2.2 The department shall forward the need to the LO for drafting of the relevant document.
- 2.3 The LO shall draft the document in line with the instructions given and the applicable legal provisions
- 2.4 The LO shall send the draft to instructing officer to confirm that the document contains the agreed terms.
- 2.5 The LO shall incorporate any applicable inputs from the instructing officer in case of any

- 2.6 The LO shall then forward the document to the Vice Chancellor and the Deputy Vice-Chancellor (A & F) or the Deputy Vice-Chancellor (A&SA) for their input
- 2.7 Upon inclusion of the input of the Officers in 2.6 above the LO shall send the draft document to the other party for approval.
- 2.8 The LO shall receive any proposal on the document receive proposals from the other party if any and incorporate the applicable changes before production of the final document.
- 2.9 The LO shall ensure the document is executed by the Vice Chancellor and **DP** DVC(AP&F)(**A&F**) on behalf of the University in the presence of the LO
- 2.10 The LO shall ensure the other party representative (s) execute their part of the document in accordance to the agreed terms of the document
- 2.11 The LO shall receive the executed document from the other party and shall ensure that the copies of the signed documents are circulated to the relevant officer(s) and the other party.
- 2.12 The LO shall monitor the implementation of the Contract/ Agreement/ Memoranda of Understanding until its renewal or termination.



UoK/F/MR/003

**UNIVERSITY OF KABIANGA
ANNEX INDICATING CHANGES MADE IN THE PROCEDURES**

Proc.No and clause	Date	Details of changes		Authorization - Officer Authorizing
		Initial clause details	Current approved clause details	
		Changes effected		Comment
Clauses as applicable	18/04/13	Kabianga University College (KUC)	University of Kabianga (UoK)	Approved
	18/04/13	Principal	Vice Chancellor	Approved
	18/04/13	Deputy Principal (AP&F)	Deputy Vice Chancellor (A&F)	approved approved
	18/04/13	Kabianga University order 2009	Universities Act 2012	Approved
	18/04/13	Kabianga University College Statutes 2009	University of Kabianga Statutes 2013	Approved

Approval

I _____ the Vice Chancellor UoK, having read and understood the content of the foregoing document, do hereby approve and authorize it for use in UoK Main Campus and its' other Campuses on this _____ day of (Month) _____ (year) _____.

Signed: _____ Date: _____

UNIVERSITY OF KABIANGA
THE LEGAL OFFICE
ISO 9001:2015
QUALITY OBJECTIVES

1. TO REDUCE THE NUMBER OF DAYS FROM 10 TO 7 UPON RECEIPT OF INSTRUCTIONS TO PROVIDE SUCH LEGAL ADVICE TO SECTIONS OF THE UNIVERSITY STARTING 1ST JANUARY 2018
2. TO REDUCE THE NUMBER OF DAYS IN DRAFTING AND/OR REVIEWING LEGAL INSTRUMENTS FROM 14 TO 10 UPON RECEIPT OF SUCH INSTRUCTIONS STARTING 1ST JANUARY 2018.



UNIVERSITY OF KABIANGA

ISO 9001:2015

QUALITY OBJECTIVES REGISTER

Activity	Quality Objective	Resources required	Responsibility	KPI
Provision of legal advice	To reduce the number of days from 14 to 10 upon receipt of instructions to provide such legal advice to sections of the university starting 30 th June 2018	<ul style="list-style-type: none"> ❖ Policies ❖ Requests from the affected department 	HOD	<ul style="list-style-type: none"> ❖ Number of requests
Drafting and/or Reviewing legal instruments	To reduce the number of days in drafting and/or reviewing legal instruments from 14 to 10 upon receipt of such instructions starting 30 th June 2018	<ul style="list-style-type: none"> ❖ Legal gazette ❖ Reviewed policies 	HOD	<ul style="list-style-type: none"> ❖ compliance with the applicable laws of the land



UNIVERSITY OF KABIANGA

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RISK REGISTER

Activity	Risks	Risk Level	Risk value	Mitigation Measures	Evaluation
Contracting	Involvement with strangers <i>uberimae fidei</i> (utmost good faith)	High	16	❖ Having an inclusivity clause	❖ Part-performance. (<i>Quantum Meruit</i>)
Drafting of M.o.U	Non-disclosure	High	15	Due diligence	Continuous engagement.

OPPORTUNITY REGISTER

Activity	Opportunity	Opportunity risk level	Action	Evaluation
Legal management information Systems	Automation of the process.	Cost and resistance by members	Infrastructural development.	continuous
Training	Continuous Legal education	Cost and availability of training slots by the University	Training plan	