

SUBJECT: LEGAL COUNSEL SELECTION

ADOPTED: DECEMBER 7, 2006

**AMENDED: OCTOBER 8, 2009
SEPTEMBER 16, 2010
MAY 10, 2012
OCTOBER 23, 2014
MAY 5, 2016
SEPTEMBER 7, 2017
MAY 2, 2019**

EFFECTIVE: JANUARY 1, 2007

POLICY & PROCEDURE NO.: (FORMERLY) 3C-LIAB

Should there be any discrepancy between this document and either the MEMORANDUM OF COVERAGE or PARTICIPATION AGREEMENT between the AORMA Committee and the MEMBER, the MEMORANDUM OF COVERAGE and/or the PARTICIPATION AGREEMENT will govern.

POLICY

1. The TPA shall appoint all LEGAL COUNSEL to represent AORMA and its MEMBERS in defense of a covered liability claim. All appointed LEGAL COUNSEL shall be selected from the AORMA APPROVED LEGAL COUNSEL LIST and subject to the MAXIMUM ALLOWABLE HOURLY RATE for LEGAL COUNSEL. The TPA will send to LEGAL COUNSEL an engagement letter which the LEGAL COUNSEL will be asked to acknowledge and accept.
2. The CSURMA Secretary-Auditor approves the selection of defense counsel to be added to the AORMA APPROVED LEGAL COUNSEL LIST.
3. To avoid any appearance of a conflict of interest, actual or potential, any attorney who has advised a MEMBER in any capacity (such as serving as general or labor counsel) shall not be engaged as LEGAL COUNSEL for a matter on which that attorney previously advised the MEMBER without prior approval of the CSURMA Secretary-Auditor.

PROCEDURE

1. The TPA shall maintain and update the AORMA APPROVED LEGAL COUNSEL LIST of attorneys (not firms) to which claims will be assigned.
2. The AORMA APPROVED LEGAL COUNSEL LIST will also include specialty LEGAL COUNSEL which are subject to a higher MAXIMUM ALLOWABLE HOURLY RATE.

The CSURMA Secretary-Auditor and CSURMA Legal Counsel will determine if specialty LEGAL COUNSEL is required.

3. The TPA shall at least every 36 months survey LEGAL COUNSEL compensation and recommend to the AORMA COMMITTEE a fair and equitable MAXIMUM ALLOWABLE HOURLY RATE for LEGAL COUNSEL which will address specialty LEGAL COUNSEL rates, partner rates, associate rates and blended rates. The AORMA COMMITTEE shall consider and take action at a regularly scheduled meeting to establish the MAXIMUM ALLOWABLE HOURLY RATE.
4. If LEGAL COUNSEL is handling the defense of any University case, then LEGAL COUNSEL will be retained at the University's hourly rate.
5. MEMBERS shall have the right to recommend LEGAL COUNSEL from the AORMA APPROVED LEGAL COUNSEL LIST; however, the CSURMA Secretary-Auditor shall make the final selection of LEGAL COUNSEL. If the MEMBER disapproves of the selection of LEGAL COUNSEL for a particular matter, the MEMBER may submit an appeal in writing to the AORMA COMMITTEE.
6. Any MEMBER wishing to recommend LEGAL COUNSEL for inclusion on the AORMA APPROVED LEGAL COUNSEL LIST may do so by submitting background information on the individual attorney to the TPA. The TPA will then review the information and, if appropriate, request that the CSURMA Secretary-Auditor approve inclusion of the attorney on the AORMA APPROVED LEGAL COUNSEL LIST.
7. Due to the potential conflict of interest, attorneys who serve regularly as general counsel, in-house counsel or labor counsel for that MEMBER may not defend that MEMBER unless prior written approval is granted by the CSURMA Secretary-Auditor.
8. Except as permitted by Paragraph Nos. 10, 11 and 12 below, the CSURMA Secretary-Auditor and the TPA shall have the sole responsibility to select and engage LEGAL COUNSEL to represent MEMBERS of AORMA as to any matters tendered by a MEMBER through AORMA for DEFENSE and INDEMNITY. A MEMBER may request selection of LEGAL COUNSEL from the AORMA APPROVED LEGAL COUNSEL LIST for a specific claim.
9. The TPA shall assign claims to LEGAL COUNSEL within five days after receipt of notice from the MEMBER that a Summons and Complaint has been received by the TPA.
10. If there is a conflict of interest between AORMA and a MEMBER (which would be a conflict of interest between an insured and its insurer within the meaning of California Civil Code Section 2860) then that MEMBER has the same rights to select and engage INDEPENDENT COUNSEL as would an insured under Civil Code Section 2860. AORMA also has all of the rights reserved to an insurer under Civil Code Section 2860, and all of the provisions of Civil Code Section 2860 shall apply as if AORMA was an insurer and the MEMBER was an insured.

11. A MEMBER may recommend LEGAL COUNSEL to defend an action if all of the following conditions apply:
 - a. Recommended LEGAL COUNSEL is selected from the AORMA APPROVED LEGAL COUNSEL LIST;
 - b. The CSURMA Secretary-Auditor approves the recommendation. (The recommendation will be approved by the CSURMA Secretary-Auditor unless the MEMBER's selection is found to be imprudent, i.e., LEGAL COUNSEL proposed by the MEMBER does not have sufficient experience, expertise or other qualifications required to competently undertake the defense assignment).
 - c. One or more of the following circumstances exists:
 - i. The MEMBER has significant exposure to a claim which the AORMA COMMITTEE has either denied coverage for, or has reserved its rights to deny coverage for, but which claims there may not be a conflict of interest between AORMA and MEMBER of the kind referred to in Paragraph No. 10 above. If the MEMBER chooses to avail itself of the privilege of selecting LEGAL COUNSEL under this No. 11 c(i), the MEMBER shall affirmatively waive its rights under No. 10 above.
 - ii. The case involves legal or factual issues which merit handling by LEGAL COUNSEL with specialized expertise.
 - iii. The case involves unusual ancillary factors, which justify retaining LEGAL COUNSEL having special sensitivity in dealing with those factors.
12. The MEMBER always may select and engage, *at its own expense*, MONITORING COUNSEL in addition to the LEGAL COUNSEL. However, the LEGAL COUNSEL selected by the CSURMA Secretary-Auditor or the TPA shall manage and control the litigation.
13. AORMA will pay for INDEPENDENT COUNSEL and LEGAL COUNSEL selected and engaged pursuant to Paragraph Nos. 10 and 11 above. AORMA *will not pay for* MONITORING COUNSEL engaged pursuant to Paragraph 12, above.
14. In conjunction with LEGAL COUNSEL, selected pursuant to No. 10, above, the AORMA COMMITTEE and the TPA shall have the right to manage and control the conduct of the litigation. INDEPENDENT COUNSEL selected pursuant to No. 10, above, may participate in the defense of the litigation but shall not interfere with AORMA's right of control.
15. If a MEMBER has concerns regarding the selected LEGAL COUNSEL, they must communicate with the CSURMA Secretary-Auditor prior to initiating the MEMBER Appeal Process as described below.

NOTIFICATION

The TPA shall notify the MEMBER of LEGAL COUNSEL assigned to a claim, and confirm by sending the MEMBER a copy of the TPA's engagement letter. Before AORMA will pay any costs for LEGAL COUNSEL fees, selected LEGAL COUNSEL must confirm IN WRITING to the TPA that the engagement is between LEGAL COUNSEL and AORMA, not LEGAL COUNSEL and MEMBER.

MEMBER APPEAL PROCESS

If a MEMBER wishes to appeal a decision resulting from the enforcement of this policy & procedure, the MEMBER must present an appeal in writing to the AORMA COMMITTEE within 30 days of the disputed decision. The AORMA COMMITTEE will review the appeal at its next regularly scheduled meeting and inform the MEMBER within five business days of its final decision.

If a Member wishes to appeal the AORMA COMMITTEE's decision, the MEMBER will notify the CSURMA Secretary-Auditor in writing within five business days of receipt of the AORMA's decision. The CSURMA EXECUTIVE COMMITTEE will then review the appeal at its next meeting or sooner. The CSURMA EXECUTIVE COMMITTEE's decision will be the final determination.

DEFINITIONS:

APPROVED LEGAL COUNSEL LIST - A list of pre-approved attorneys approved by the CSURMA Secretary-Auditor and the TPA to handle defense and litigation of AORMA MEMBER claims.

AORMA – Auxiliary Organizations Risk Management Alliance is the group of programs under the California State University Risk Management Authority representing the auxiliary organizations.

AORMA COMMITTEE - The governing body of AORMA.

CSURMA - The California State University Risk Management Authority, a California Joint Powers Authority, comprised of the California State University and its auxiliary organizations.

DEFENSE - Legal costs incurred as the result of defending a covered claim. These may include claimant's and defense counsel's attorney fees.

EXECUTIVE COMMITTEE – The CSURMA Executive Committee.

INDEMNITY - Compensation for an incurred injury, loss or damage

INDEPENDENT COUNSEL – Legal Counsel selected if a potential conflict of interest exists between AORMA and a MEMBER. INDEPENDENT COUNSEL may participate in the defense of the litigation but shall not interfere with LEGAL COUNSEL'S right of control.

IN WRITING - The required manner for reporting a claim to the AORMA TPA. Notification in writing includes email correspondence, faxed transmissions, and original, hard copy notifications.

LEGAL COUNSEL - Any attorney selected to represent an AORMA member. Legal Counsel is selected from the approved legal counsel list maintained by the TPA.

MAXIMUM ALLOWABLE HOURLY RATE – The maximum hourly fee for which AORMA will pay for an attorney to defend a covered claim. The TPA will survey the legal counsel marketplace to determine the maximum allowable hourly rate for AORMA in accordance with this Policy and Procedure. If the maximum allowable hourly rate is increase, it will be applicable only to current litigation and open claims. The change to the maximum allowable hourly rate does not apply retroactively to closed claims.

MEMBER – The MEMBER is a signatory to the CSURMA Joint Powers Authority.

MEMORANDUM OF COVERAGE – The AORMA Liability Program MEMORANDUM OF COVERAGE is a governing document which outlines the AORMA Liability Program's definitions, coverages, exclusions and provisions. The AORMA Liability Program MEMORANDUM OF COVERAGE does not provide insurance, but instead provides for pooled-insurance. The MEMORANDUM OF COVERAGE is a negotiated agreement among the MEMBERS of CSURMA AORMA.

MONITORING COUNSEL – Legal Counsel hired by the MEMBER to monitor.



CSURMA AORMA

POLICY AND PROCEDURE NO. L-3

PARTICIPATION AGREEMENT – A governing document of CSURMA AORMA which outlines the roles and responsibilities of AORMA and its **MEMBERS**.

TPA - Third party liability claim administrator whose responsibilities include claim handling, litigation management, and excess liability carrier reporting.