

### **Trustee Practice on Indemnification**

Subject to the provisions of law or policies of the Board of Trustees, the University System shall indemnify any person who was or is a party or is threatened to be a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that such person was or is a trustee, officer, employee or agent of the University System, or was or is acting in the course and scope of such person's duties or at the request of the University System against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually or reasonably incurred by such person in connection with such action suit or proceeding.

No indemnification shall be provided for any person with respect to any matter as to which the employee shall have been finally adjudicated in any action, not to have acted in good faith in the reasonable belief that the employee's action was in the best interest of the University System or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The termination of any action by judgment, order or conviction adverse to such person, or by settlement or plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith in the reasonable belief that the action was in the best interests of the University System, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful. Any provision of this subsection to the contrary notwithstanding, to the extent that a person has been successful on the merits or otherwise in defense of any action, or in defense of any claim, issue or matter therein, that person shall be indemnified against expenses.

Any indemnification of an officer, employee or agent, unless ordered by a court, shall be made by the University System only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth above. Such determination shall be made by the Board of Trustees. Such a determination once made by the Board of Trustees may not be revoked by the Board of Trustees, and upon the making of such determination by the Board of Trustees, the person may enforce the indemnification against the University System by a separate action notwithstanding any attempted or actual subsequent action by the Board of Trustees.

The right to indemnification may be enforced by a separate action against the University System, if an order for indemnification is not entered by a court in the action wherein he was successful on the merits or otherwise.

Expenses incurred in defending an action may be paid by the University System in advance of the final disposition of such action in the case of a trustee, officer, employee or agent provided that in the case of an officer, employee or agent the University System receives an undertaking by or on behalf of the person to repay such amount, unless it shall ultimately be determined that the person is entitled to be indemnified by the University System as authorized herein.

The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled, and shall continue as to a person who has ceased to be a trustee, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. A right to indemnification may be enforced by a separate action against the University System, if an order for indemnification has not been entered by a court in any action in respect to which indemnification is sought.

Any person who seeks indemnification under these provisions, (a) shall give notice of the action to the University System within a reasonable time after knowledge of the fact that it is threatened and in all events within 20 days after service of the process or notice of its commencement, provided, however, that such notice need not be given if the University System is also a party in the action; and (b) shall give the University System a reasonable opportunity to defend, or to participate in the defense of, the action.

These indemnification provisions shall not apply in any action in which the University System is the plaintiff, or moving party, against the person who might otherwise be entitled to indemnification hereunder.

In the case of expenses of officers, employees and agents of the University System, the indemnification provided pursuant to these provisions shall be effective and enforceable only to the extent that the expenses to be indemnified exceed payments on account of such expenses from insurance proceeds, whether the insurance proceeds arise from insurance maintained by the person, by the University System, or by any other party.