

## UT Institutions: Recommendations for Drafting Delegation Memoranda

### **Delegation Basics**

UT Institutions are state agencies. *Actual authority* (not apparent authority) is required to bind a state agency. State agencies cannot legally perform obligations that are agreed to by representatives who do not have *actual authority* to bind the agency.

At UT Institutions *actual authority* is granted through written delegations of authority originating from the Board of Regents (ref. Sections 65.31 and 65.34, *Education Code*).

Officers and employees of UT Institutions must know whether they have actual authority to act on behalf of the Institution before attempting to bind the Institution (Rule 10501, Regents' *Rules and Regulations*).

### **Recommendations**

To avoid the need to revise delegations of authority (also called delegation memoranda) that have already been signed by the UT Institution's President, please follow these recommendations when drafting delegation memoranda.

Because the following recommendations cover only the most common issues, it is strongly recommended that UT Institutions forward drafts of all delegation memoranda to OGC for a brief review before obtaining the President's signature.

1. **Always use the current online template as a starting point; do not use a prior delegation memorandum.**

OGC keeps track of changes to laws, regulations, Regents' *Rules* and UT System policies that affect delegations. The online delegation memorandum templates (posted at <https://www.utsystem.edu/offices/general-counsel/delegations-of-authority-ut-institutions>) are updated as these changes occur. UT Institutions can be assured that they are utilizing the most appropriate verbiage, citations and dollar amounts if the Institution uses the current templates.

2. **Presidents at UT Institutions may delegate authority to an individual, a title, or both individual and title. Whichever method is used, the President should consider staying consistent.**

- When a delegation memorandum has only the delegate's name, if the name changes, a new delegation memorandum with the correct name will be required and the prior delegation must be revoked.

- When a delegation memorandum has only the title of the delegate, then all employees who have that title have delegated authority. It is not necessary to create a new delegation memo when someone new is granted the same title. The UT Institution

should, however, confirm that it is in fact the President's intent to delegate to the person that is subsequently granted the same title and authority. If the title of the delegate changes, a new delegation memorandum with the correct title will be required and the prior delegation must be revoked.

- When a delegation memorandum contains both the delegate's name and title, a change to either the name or the title will require a new delegation memorandum and the prior delegation must be revoked.

3. **It's the who in the "To" that counts.**

A delegation memorandum is not an ordinary memo. It is an official notification to a delegate that actual authority (as described in the memo) has been delegated to the delegate, along with a summary of the delegate's rights and responsibilities.

In order to avoid ambiguity, *regardless of what is stated in the text of the delegation memorandum*, the individual(s) and/or title(s) listed in the "To" section of the delegation memorandum is considered by the UT System Office of General Counsel to be the delegate(s). Do not add any names or titles in the "To" section who are not intended to be delegates. Place all other recipients of the memo in the "cc" section at the bottom of the memo, including any individual who is named as a delegate by title only in the "To" section.

*Example:* John Doe is the Vice President of Purchasing. The institution utilizes only titles for delegates. The "To" section in the memo states, "Vice President of Purchasing." To ensure that John Doe receives a copy of this delegation, his name would be placed in the "cc" section at the bottom of the memo.

4. **Don't forget the revocation.**

Maintain a clean paper trail by specifically noting that a prior delegation has been superseded by the new delegation. There are two ways to do this:

a) If your draft delegation memorandum will supersede an existing delegation memorandum, utilize the revocation paragraph found at the bottom of all delegation memorandum templates. When referencing the prior delegation memorandum, be as specific as possible: prior memo date, name and/or title of delegate, name of person granting delegation of authority, and type of delegation.

b) If an individual is a delegate for multiple types of delegations, and, for example, has retired from UT, utilize the "Revocation of Delegation" template. The verbiage in the template may be adjusted to be as all-encompassing or specific as needed.

If you have questions or concerns, please feel free to contact the UT System Office of General Counsel for assistance.

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