

AS 200 OFFICE OF GENERAL COUNSEL

Revision Date: 1/1/2008

AS 200.1 Candidate Appearance Policy

AS 200.1—CANDIDATE APPEARANCE POLICY

PURPOSE

Morehouse College is a 501(c)(3) organization. The purpose of this policy is to ensure the College's compliance with federal tax law.

SOURCE

The Internal Revenue Code and applicable advisories, including IRS Fact Sheet, FS-2006-17, February 2006

SCOPE

This policy applies to faculty, staff, students, and third-parties that seek to hold an event on the campus of Morehouse College.

POLICY

Speaking as a Candidate

When a candidate is invited to speak at an event held on campus or sponsored by any Morehouse organization, the College, including student, third party or other sponsored organizations, must take steps to ensure that:

- It provides an equal opportunity to political candidates seeking the same office;
- It does not indicate any support for or opposition to the candidate (this should be stated explicitly when the candidate is introduced and in communications concerning the candidate's attendance); and
- No political fundraising occurs.

Equal Opportunity to Participate

In determining whether candidates are given an equal opportunity to participate, the

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College should consider the nature of the event to which each candidate is invited, in addition to the manner of presentation. For example, a College organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the tax law's political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

Public Forums

When the College invites several candidates for the same office to speak at a forum, it should consider the following factors:

- Whether questions for the candidate are prepared and presented by an independent nonpartisan panel;
- Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public;
- Whether each candidate is given an equal opportunity to present his or her view on the issues discussed;
- Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the College; and
- Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Speaking or Participating as a Non-Candidate

Candidates may also appear or speak at College events in a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at a College-sponsored event does not, by itself, cause the College to be engaged in political campaign intervention. However, if the candidate is publicly recognized by the College, or if the candidate is invited to speak, the College must ensure that:

- The individual is chosen to speak solely for reasons other than candidacy for public office;

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- The individual speaks only in a non-candidate capacity;
- Neither the individual nor any representative of the College makes any mention of his or her candidacy or the election;
- No campaign activity occurs in connection with the candidate's attendance; and
- The College maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present.

In addition, the College should clearly indicate the capacity in which the candidate is appearing and should not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

PROCEDURE

Prior to inviting or accepting the invitation of a political candidate to speak, review this policy.

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AS 200.2 Lawful Requests for Information and/or Documents

AS 200.2—LAWFUL REQUESTS FOR INFORMATION AND/OR DOCUMENTS

PURPOSE

From time to time, Morehouse College receives subpoenas, document requests, and other types of official requests for specified records. It is Morehouse's policy to comply fully with all such lawful requests.

SOURCE

- The Federal Rules of Civil Procedure
- The Georgia Civil Practice Act
- This policy

SCOPE

This policy applies to Morehouse College faculty and staff.

POLICY

Definitions

A subpoena is a legal document that commands a person or entity to attend at a particular time and place to testify as a witness (at a deposition, trial, or hearing), and/or to produce documents or other tangible objects in a legal proceeding. It is equivalent to a direct order from a Court.

A *subpoena duces tecum* (Latin for "bring with you under penalty of punishment") is a court summons to appear and produce tangible evidence for use at a hearing or trial. A *subpoena duces tecum* is a specific form of subpoena requiring that a person bring certain documents or other evidence to the court.

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What Can Be Requested in a Subpoena?

A subpoena may require the individual to do any or all of the following:

- Appear and testify in person at a trial, hearing, or other court proceeding,
- Hand over papers, records, books, or other physical items (including electronic records or information contained on other devices) for inspection and/or copying,
- Appear in person for a deposition before trial and/or produce documents at the deposition.

The College also receives Requests for Production of Documents (“RFPs”). In Georgia, a party in a lawsuit may serve on a non-party a RFP under Rule 34 of the Georgia Civil Practice Act. Finally, the College may receive a summons from the Internal Revenue Service (“IRS”) or other federal agency. An agency summons is equivalent to a subpoena and should be treated that way.

To determine whether a particular request is proper and to oversee compliance with appropriate requests, the Office of General Counsel must review all requests as soon as possible. If you receive any request for documents or records* or any other legal pleading or filing, you should immediately forward it to the Office of General Counsel. These types of requests typically have firm deadlines associated with them. Missing these deadlines could potentially result in fines, penalties, and other costs being assessed against the College, and therefore, your prompt transmission of these requests to the Office of General Counsel is critically important.

Once the Office of General Counsel has reviewed a records request and determines which records, if any, Morehouse is required to locate and produce, the Office of General Counsel will contact the appropriate persons to produce copies of the requested records and/or to put a “hold” on the types of records that need to be produced. In the event of the latter, applicable retention procedures that might otherwise apply to these documents will be suspended.

In some cases, requests may be so broad that all or virtually all areas may be required to undertake a search for responsive records. In those cases, the Office of General Counsel may circulate a College-wide “litigation hold” memoranda to alert employees to the need to collect and maintain certain documents. It is important that employees familiarize themselves and fully implement the Office of General Counsel’s directives. If you ever

* This policy does not apply to routine, non-legal requests for student records, which is handled primarily by Records and Registration.

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have a doubt about whether a record in your custody is responsive to one of these requests, you should discuss it with the Office of General Counsel as soon as possible. Once the legal requirement expires, the Office of General Counsel will notify the areas maintaining such documents that the request has been "cleared." Once the need to maintain documents for legal or audit purposes has passed, the retention practices and procedures outlined in the Policy will once again apply to these materials.

Contact by Outside Attorneys

On occasion, employees may be contacted by an outside lawyer, who represents a former employee or is seeking some type of information about the College. Employees should direct contacts from outside lawyers to the OGC.

PROCEDURE

1. If a legal official, such as the sheriff, seeks to serve you with a subpoena that is directed to the College,* please direct the official to the OGC in Room 109, Gloster. (The General Counsel is the official agent for service of process.)
2. If you receive a document request in the mail, please forward a copy of it to the OGC.
3. Once the OGC receives the subpoena and document request, typically, the Associate General Counsel will contact the area which is the custodian of the documents sought.

* A subpoena to a particular person can only be accepted by that person.

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Contract Review

AS 200.3—CONTRACT REVIEW

PURPOSE

The purpose of this policy is to ensure the appropriate review of contracts for legal issues prior to the College's execution of the agreement.

SOURCE

College Policy

SCOPE

This policy applies to all Morehouse College faculty and staff.

POLICY

It is the policy of the College that the Office of General Counsel review all contracts prior to signature. The OGC will review contracts as to form and legality. The unit submitting the proposed contract is responsible for reading the contract and ensuring that the business terms and conditions of the contract are clear, accurate, complete, and will satisfy the unit's business needs.

Time for Review

Proposed contracts should be forwarded to the OGC in sufficient time to allow for a proper review based upon the length and complexity of the agreement. At a minimum, contracts should be submitted for review at least fourteen (14) days in advance of their anticipated execution. Therefore, please consider the turnaround time and plan accordingly.

General Contractual Terms

General contract terms that may appear in contracts are identified below. This list includes contract terms with suggested contract language and contract language to avoid and should be used as a general guide during contract negotiations. Not all of these terms

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appear in every contract you encounter. This information should not be used as a substitute for contract review by the OGC.

1. **ARBITRATION.** Whenever possible you should avoid entering into contracts that require arbitration as a method of alternative dispute resolution. Make sure that the contract does not contain such a provision.

LANGUAGE TO AVOID:

Any award made in arbitration shall be binding and conclusive on the parties and judgment may be, but need not be, entered into any court having jurisdiction.

2. **ASSIGNMENT.** Morehouse wants to make sure that the other party cannot assign its interest in the contract to a third party without the College's consent because that could upset the expectations the College had of the specific vendor when it entered into the contract.

SUGGESTED LANGUAGE:

This Agreement may not be assigned without the written consent of the non-assigning party.

3. **AUTOMATIC RENEWAL.** The College generally does not enter into contracts that automatically renew year after year. The contract should contain a specific term.

LANGUAGE TO AVOID:

At the end of the initial term, this Agreement shall automatically renew for successive one- year periods unless terminated by either party.

4. **BANKRUPTCY.** In order to protect its interests, the College seeks to ensure that it has the right to terminate a contract with a vendor that files for bankruptcy.

SUGGESTED LANGUAGE:

In the event of the bankruptcy or insolvency of either party or if either party shall make any assignment for the benefit of creditors, take advantage of any act or law for relief of its debtors, has a receiver, custodian or trustee appointed for all or a material portion of its assets and/or has its stock de-listed from the securities exchange on which it is currently listed, the other party to this Agreement shall have the right to terminate this Agreement without further obligation or liability on its part. Should Morehouse College terminate the Agreement in accordance with this section, all amounts paid to Vendor by Morehouse College for services which have not yet been rendered will immediately become due and payable to Morehouse College, or if some or all of such amounts are not available for immediate repayment, such amounts will be deemed to be

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amounts owed to Morehouse College by Vendor and Morehouse College shall be identified as a creditor of Vendor in such amounts.

5. **CHOICE OF LAW AND JURISDICTION.** Failure to include a choice of law, jurisdiction, and venue clause could subject the College to being forced to resolve a dispute in a jurisdiction outside the State of Georgia.

SUGGESTED LANGUAGE:

This Agreement shall be governed in all respects by the laws of the State of Georgia. The parties to this agreement agree to use the State of Georgia for Jurisdiction and the County of Fulton as Venue for any disputes between the parties.

6. **ENTIRE AGREEMENT.** Including a term like this will prevent a vendor from later claiming that the College made verbal promises or concessions that are not indicated in the written contract.

SUGGESTED LANGUAGE:

This agreement embodies the entire understanding between and among the signatories hereto, and may not be amended or changed in any way except by written instrument signed by the parties hereto.

7. **EXCLUSIVES.** As a general rule, the College does not enter into exclusive contracts with its vendors. Any such contract will require executive approval.

LANGUAGE TO AVOID:

Morehouse College agrees to grant to vendor the following rights, all of which shall be exclusive....

8. **INDEMNIFICATION.** Typically, Morehouse wants a guarantee from its vendors that they will defend and/or reimburse the College for any losses it incurs solely due to the vendor's negligence.

SUGGESTED LANGUAGE:

Vendor will defend, indemnify, and hold Morehouse College, its affiliates, trustees, directors, officers, faculty, employees, and agents, past or present, harmless from and against all claims, causes of action, fees, liabilities, damages, expenses (including reasonable attorney's fees) and costs relating to or arising from or based upon the negligent or willful acts, omissions, or breach of warranty by Vendor, its employees or its agents.

LANGUAGE TO AVOID:

Morehouse College agrees to indemnify and hold harmless Vendor from all claims, causes of action, fees, liabilities, damages, expenses, and costs relating to, arising from, or based upon the negligent or willful acts of Vendor, its employees, or agents.

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9. **MODIFICATIONS.** This term will prevent either party from claiming the contract has been modified through course of dealings or any other manner without the College's knowledge or consent.

SUGGESTED LANGUAGE:

This Agreement may not be modified, amended, supplemented, or otherwise changed, except by writing executed by both parties.

Record Retention

Original contracts will be kept on file in the OGC. Units should retain copies of their contracts.

PROCEDURE

If your unit would like to enter into a contract, send the proposed contract to the Contracts Paralegal in the OGC. Taking a few steps on the front end will expedite the review of your proposed contract.

Step One

1. **Read the Contract.** Prior to submission of the contract to the OGC, read the contract. It should accomplish what you desire. If not, some preliminary discussion and negotiation between the parties is in order.
2. **Department Approval.** Individuals should not submit a contract for review until the contract has been approved by their department. The first step toward approval of a contract is written approval (by cover memo) from the head of the department from which the agreement originates. Note that if the resources of more than one department are implicated by the arrangement in any way, written approval from all the departments involved must also be provided. The OGC does not take responsibility for contacting College management and other units about your proposed contract.
2. **Consult the Risk Management Experts.** If the contract involves special risk management issues or the College is required to provide proof of insurance, Business & Finance will need to give its approval.
3. **Remember to Watch for Particular Contract Provisions.** Remember that provisions which require the College to agree to arbitration are not acceptable and should be removed prior to submission to the OGC. Also, many form contracts

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contain choice of law provisions. If your proposed contract contains such a provision, generally, the choice of law should be Georgia.

4. **Attachments and Exhibits.** If the contract references any attachments or exhibits, those outside documents should be attached to the proposed contract when submitted to the OGC.
5. **Student Organizations.** If your contract involves a student organization, the proposed contract must be submitted with a letter from the sponsoring dean, department chair or advisor stating that (a) you read the contract, (b) you support and are responsible for the student organization and the venture that is the subject of the proposed contract, and (c) your department has the funding to pay for the goods or services. Also, the Student Handbook states that, "All events requiring contracts must be scheduled at least (60 days) 2 months in advance to allow time for the lawyers to peruse" (p. 71).
6. **Requisitions.** Completely filled out requisitions (when payment is to be made to the other contracting party) or purchase orders (when payments will be recurring) should accompany the proposed contract.

Step Two

The contract, the departmental approval(s) and any comments must then be submitted to the Contracts Paralegal in the OGC for OGC review.

Step Three

Once reviewed by the OGC, the contract will be forwarded to the Vice President for Business & Finance for final approval and signature.