

Howling Counsel

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OGC RUNS WITH THE PACK



OGC makes recent house call on JC Raulston Arboretum clients.

Have lawyer, will travel? That's the idea behind OGC's innovative new campus outreach program called "Run With The Pack."

"It's a way for OGC's attorneys and staff to get out and meet our clients where they conduct *their* business, while also having some fun," explained Vice Chancellor and General Counsel Eileen Goldgeier. "There's no better way to learn our clients' business than to visit them on their turf."

LEGAL BRIEFS

Each month OGC will bring topics of interest to the university community. We hope that you will find this useful, but please be aware that each topic covers only a fraction of the law that may be applicable to the legal issue. For this reason, if a topic is of interest to you, we encourage you to contact OGC for specific guidance.

While a relatively new program, OGC has made tracks across campus in only a few months. Recent office visits have included meeting with staff at the Office of Greek Life and touring the future site of Greek Village, visiting the NC State nuclear reactor and its staff at Burlington Labs, getting back to nature with the staff of the JC Raulston Arboretum, visiting the pyrotechnics lab at the College of Textiles, and exploring the NC State bell tower with Vice Chancellor of Student Affairs Tom Stafford.

Run With The Pack has already provided tangible benefits to numerous clients. One notable example occurred during a recent visit when a client gained practical legal advice from OGC on how best to increase their foot traffic and revenue. "The situation really was a win-win

State Employee Involvement in Lawsuits—Most employees working within the scope of their job duties will be defended by the State in legal action. But when will the State not defend you? Read the full legal brief and learn more from OGC at www.ncsu.edu/general_counsel/legal_topics/.

for the client because they realized that OGC is their legal support system with things like this," remarked Associate General Counsel Terry White. Future Run With The Pack house calls for summer/fall 2011 include dropping in on the staff at the Gregg Museum of Art and Design, Schenk Forest, and the ROTC units.

If interested in having your office, or college added to the Run With The Pack program, please contact Denise Hall at 919-515-3071.



Eileen Goldgeier talks turf with JC Raulston Arboretum Director Ted Bilderback during a recent Run With The Pack tour.

Extensive Changes to Human Subjects Regulations Proposed—Federal offices have jointly published an Advanced Notice of Proposed Rulemaking that would make significant changes to Subpart A of 45 CFR 46, known as the "Common Rule." Read the full text of the Federal Register notice on the OHRP website at www.hhs.gov/ohrp/humansubjects.

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We make house calls!

Send your inquiries to:
howlingcounsel@ncsu.edu
or call (919) 515-3071

Related Links:

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Howling Counsel

Fake Facebook Profiles

Fake Facebook profiles or posts can pose potential risks to the reputation or image of NC State or a university official. If you suspect such a profile or post, OGC suggests you follow these steps to get it removed:

1. Log onto your Facebook account, or ask a Facebook account holder to log on for you (as Facebook only takes such complaints through its site from a current account holder).
2. Search for the suspect profile, or profile containing a suspect post, using the Search Function at the top of the profile page.
3. From the resulting list of profiles, select the suspect profile or profile containing the suspect post.
4. When the selected profile populates on the screen, scroll to the bottom of the left column and click "Report/Block This Person."
5. From the list of options, click on the option "This profile is pretending to be someone or is fake."
6. Select "Pretending To Be Me" or "Pretending To Be Someone I Know" from the drop-down menu (whichever is appropriate).
7. Click the "Continue" block in the bottom right hand portion of the screen to submit your report.
8. Contact OGC who will correspond with Facebook by letter reiterating the request to remove the profile or post you feel is fake.

New Distance Education Rules Invalid

Recently-enacted Department of Education rules on distance education were struck down in July by a D.C.– area federal district court. The court said that the department failed to follow its own administrative procedure by not asking for comments on one key aspect of the rules, or making it clear that it was considering a "particular change to the authorization obligations of distance educators."¹

In October 2010, the department issued the rules on topics relating to the integrity of federal financial aid programs under Title IV of the Higher Education Act of 1965, as amended, significantly impacting colleges and universities offering distance and correspondence education.² The rules require that if a school offers postsecondary distance education to students in a state in which the school is not physically located, it must comply with all licensure and/or other state approval requirements applicable in that particular state.³ There is no minimum number of student enrollments that would trigger this requirement; nor do the rules provide clarification on the meaning of "students in a state."⁴

Since their enactment, the legality of the new rules had been challenged by both for-profit and non-profit higher education institutions alike. Although the court ruling has given schools offering distance education a temporary reprieve from burdensome state licensure and approval requirements, the department is currently reviewing its options which include appealing the ruling or restarting its rule-making process free from procedural error. Despite the court's ruling, and as one article noted, "the federal government has brought this issue to the forefront" and "has irrevocably changed the landscape for online programs."⁵ In addition, "State regulators are newly aware that there are many institutions operating in their states without approval."⁶

OGC is working with Distance Education and Learning Technology Applications (DELTA) to develop a distance education management process, including reviewing each state's approval procedures and taking the initial steps to file applications for licensure or authorization with each state, where necessary.

For more information, contact either Shawn Troxler, Assistant General Counsel (919-515-1527) or Rebecca Swanson, Associate Vice Provost for Distance Education (919-515-9323).

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The Harvard Experiment: Student Privacy and Social Media

A recent article in the *Chronicle of Higher Education* explains how Harvard researchers are being criticized for failing to adequately protect the privacy of students who were unwitting subjects in a social science study.

In 2006, Harvard sociologists obtained permission from Facebook to download the Facebook profiles for one Harvard class over a period of four years in order to study how friendships and interests evolve. Although the study was approved by Harvard's Institutional Review Board with the intent to remove data that would identify the students, the students' permission was not obtained. The information downloaded included

home state, musical interest, majors, gender, network of friends and romantic tastes.

The researchers decided to release some of their data in 2008 and, in an effort to protect the student's privacy, required an application for those wanting access to the information. However, enough identifiable information was made available that those viewing the data were able to ascertain that the data belonged to the Harvard Class of 2009. Michael Zimmer, a privacy scholar at the University of Wisconsin-Milwaukee, stated that he was able to figure out the class and pinpoint at least one specific student. Zimmer and others have criticized the

study due to its lack of protection of student privacy, and the ethical questions raised have tainted what would otherwise be valuable research data.

Although the research continues, the data set is no longer available online. It is also unclear if the data will ever be made available to the public again. Harvard's experience in this case highlights the problem of applying regulations written before adoption of the internet to assess the risks inherent in using new and emerging technologies, such as social media, to conduct scientific research. For more information, see the *Chronicle* article at <http://chronicle.com/article/Harvards-Privacy-Meltdown/128166/>.

QUESTION OF THE MONTH

"Why have I received a litigation hold letter, and what are my obligations as a result?"

You have received a litigation hold letter because you, your employees, or a project on which you or your employees worked have a connection to a lawsuit filed (or reasonably anticipated in the future) against or on behalf of the university. Receiving the litigation hold letter means you have a legal duty to do the following (and instruct your employees to do the same): preserve all relevant records (both paper and electronic) of all the "key players" in your unit, school, or college; halt destruction of all relevant

records—particularly when it comes to former employees' records that are in your possession; preserve backup tapes when they are the sole source of relevant information; and designate a collection method for all relevant documents to be searched by someone other than you or your employees.

Failure to abide by these obligations may subject you personally to civil liability, which could include large fines in the six figures or even possible jail time for civil

contempt in the more extreme cases. In addition, the University may be subject to large fines (which could total millions of dollars) for its employees' failure to abide by the above obligations.

For more information on this topic, please see the [Litigation Holds and E-Discovery](#) page on OGC's website.

We'd like to hear from you. Send your questions to howlingcounsel@ncsu.edu.

NEWS & NOTABLES

Policies Regulations and Rules (PRR) Website - OGC has worked collaboratively with the Office of Information Technology (OIT) to redesign the PRR website which launched July 1, 2011.

Compliance Calendar - OGC has compiled a university wide Compliance Calendar aimed at highlighting important reporting deadlines relevant to NC State.

Contracts Library - OGC is happy to share with you an electronic resource of updated standard contracts that are used frequently on campus when conducting business.

Yolanda Smith, OGC Paralegal, has been appointed to serve as Chair of the Paralegal Division for the NC Bar Association for 2011-12. Yolanda has been a dedicated member of the NCBA Paralegal Division

for 11 years serving in a variety of roles from Vice-Chair, Council Member and liaison to various NCBA committees and sections.