

# Howling Counsel

NC STATE UNIVERSITY  
OFFICE OF GENERAL COUNSEL

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Volume 2 Issue 2

February 21, 2012

## OGC CORDIALLY INVITES YOU TO OUR ANNUAL OPEN HOUSE "PIE DAY"!



Meet the staff  
Homemade pie tasting\*  
Pie judging

Please come eat our pies or just  
to recite  $\pi$  to ten figures or  
more!

\*Disclaimer: These pies are being  
made by the OGC staff. Eat  
at your own risk!!!!

March 14, 2012  
2:30 - 4:00 p.m.  
305 Holladay Hall

## LEGAL BRIEFS

### Ears Wide Open: How to Conduct an Effective Reference Check

NC State employs approximately 7600 employees, give or take a few. At any given time, there are units all across campus who are hiring new employees all across the org chart.

A crucial part of the hiring process is the reference check—not only because of the timing (reference checks normally occur near the end of the search), but because of what they can tell you about the applicant. Failing to ask the right questions and/or to really listen to what references say (or won't say) about an applicant can sometimes lead to a bad hire. After all, the best predictor of future performance is past performance. In addition, an effective reference check can help employers minimize the risk of liability for a negligent hiring claim. Some best practices for conducting effective and confi-

dential reference checks by hiring officials include:

- 1) Use a standard set of open ended questions to ask of all references and a standard form to document responses; (Check out [Recommended Employment Reference Questions](#));
- 2) Obtain permission from the applicant before calling the employee's current employer/supervisor (it can be a red flag if permission is not granted);
- 3) Always ask "Would you rehire [the applicant]?";
- 4) Check two or more references;
- 5) Inform the applicant if you decide to check references other than those listed;
- 6) References should be to persons who have supervised the applicant or who have direct knowledge of the applicant's

skills, abilities and experience. If a reference hesitates to talk about the applicant, consider seeking a release to grant permission from the applicant to allow the reference to speak truthfully without fear of liability (OGC can help with this!).

Lastly, hiring officials considering internal candidates for a position should always conduct as vigorous a reference check as for any outside applicant.

For assistance in conducting an effective reference check, do not hesitate to contact Kathy Lambert, Director of Employment Services at (515-4277), Carson Cook, Assistant EEO Officer (513-2099) or Sarah Lanom, Associate General Counsel (515-2333).

### Let's Ask the Librarians: Copyright & Fair Use

Who better to ask about copyright and fair use than librarians? The Association of Research Libraries (ARL), in partnership with the Center for Social Media and the Washington College of Law at American University, did just that when it

engaged academic and research librarians from across the country to develop guidelines for fair use. The guidelines were released on January 26, 2012, as the [Code of Best Practices in Fair Use for Academic and Research Librarians](#). The right to

exclude others from reproducing the work is the most important right granted to owners of copyright. This right is subject to limitations, however, found in the copyright statute (17 U.S.C. 107-118) and case law.

*Continued on page 2*

## Inside this issue:

OPEN HOUSE INVITATION

LEGAL BRIEFS

QUESTION OF THE MONTH

125TH ANNIVERSARY

NEWS & NOTABLES

## We make house calls!

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

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# Howling Counsel

## Let's Ask the Librarians: Copyright & Fair Use *continued*

Of these limitations, "fair use" is the most critical to the academic community and perhaps the least understood. The ARL Code of Best Practices provides a reasonable approach to guide the academic and research community when dealing with questions such as: When and how much copyright material can be digitized for student use? Should video material be treated the same as print? Can libraries archive websites for the use of future students and scholars? It is im-

portant to note that these guidelines are not law, and when there is any question about whether "fair use" applies, university faculty and staff should contact Will Cross, Director of the Copyright and [Digital Scholarship Center](#), at 515-4221 or Shawn Troxler, Assistant General Counsel at 515-1527.

Fair use and copyright are "hot" issues at universities right now. If you would like to learn more, join OGC on February 23,

2012 at 12:00 noon when we host a live webcast from the National Association of College & University Attorneys (NACUA) on "*Copyright and Fair Use: Codes of Best Practice in Higher Education*".

To attend the webcast, please contact OGC Staffer, Denise Hall at 515-3071 or [dwhall@ncsu.edu](mailto:dwhall@ncsu.edu).

## QUESTION OF THE MONTH

### *"What type of liability insurance does the university have and am I covered as an employee?"*

As a constituent institution of the UNC System and a state agency, NC State is a self-insured entity as required by and set forth in state law (N.C.G.S. §143-291, [et seq.](#)). The university is not allowed to acquire additional or other insurance except by authorization and procurement by the State Department of Insurance (N.C.G.S. §58-31-55). Subject to and consistent with applicable statutes, coverage under the State's self-insurance program applies to: a) all individuals currently employed by or working for the State and covered by the Defense of State Employees Act; b) authorized volunteers; c) agents of the State; d) individuals previously employed by the State and covered under the Defense of State Employees Act and the policy during their period of employment with the university; and e) individuals employed by NC State or the University System. Independent contractors are not covered by this insurance.

The [Defense of State Employees Act](#) (N.C.G.S. §143-300.3 *et seq.*) is designed to provide coverage up to a maximum of \$1 million per claimant for damages awarded in lawsuits or settlements against State employees. This law recognizes that state employees, while in the course and scope of employment duties, may be named as defendants in their individual capacities, as well as their official capacities, and allows the State to pay damages on their behalf, at the discretion of the Attorney General. The [Employees Excess Liability Insurance](#) policy

provides liability insurance for university employees (including volunteers and agents in certain situations) of \$10 million per occurrence, with a \$1 million retention per claim. It provides coverage for civil errors, acts and omissions which are committed by state employees in the performance of their job duties which result in bodily injury, property damage, or other losses. The policy pays judgments in excess of the Defense of State Employees Act (\$1 million Tort Claims Limit) subject to the policy terms, conditions, exclusions and policy limits. Exclusions include, but are not limited to, fraud, corruption or actual malice, sexual assault, other criminal acts, immoral acts, and automobiles (coverage provided under motor pool insurance).

The key coverage consideration to remember is that the employee must be acting within the course and scope of his/her employment duties if a liability claim or lawsuit arises from the employee's actions or inactions. This highlights the importance of having a thorough job description and also documenting travel related to university business.

The university also purchases [Professional Liability Insurance](#) coverage on behalf of our medical and veterinary employees who provide patient services as part of their university employment duties. The State of North Carolina [Motor Vehicle Insurance](#) program provides liability coverage for employees as drivers of state-owned vehicles when on univer-

sity business. There is also [physical damage coverage](#) (known as comprehensive and collision coverage) for commercial rental vehicles when leased by an employee on university business within the United States, United States Territories, and Canada. When leasing a commercial rental vehicle [overseas](#), a university business traveler can opt for the Collision Damage Waiver/Lost Damage Waiver (CDW/LDW) coverage. Please note that if leasing a state vehicle from Motor Fleet Management (MFM), in the event of physical damage, your department may be held responsible for damage to the MFM vehicle. If traveling internationally for business, employees should also consider obtaining travel insurance coverage through the [Business Travelers Insurance Plan](#) or [Study Abroad program](#). This coverage provides additional benefits to include medical evacuation and medical provider locator services.

At NC State University, the General Counsel is responsible for providing notice to the Attorney General regarding all potential claims falling under the Defense of State Employees Act and the Excess Liability Policy. Potential claims should be reported immediately to the OGC at 515-3071. Motor Vehicle Insurance claims should be reported to [Insurance & Risk Management](#) at 515-6124. For more information related to insurance policies, contact Insurance and Risk Management at 515-6124.

# Volume 2 Issue 2

## NC STATE'S 125TH ANNIVERSARY—LEGAL HIGHLIGHTS AT NC STATE

July 2, 1862 - Morrill Act becomes law providing national funding to establish a land-grant college in each state.

March 7, 1887 - Legislation enacted creating the NC College of Agriculture and Mechanic Arts (now NC State) as the state's land-grant institution.

March 22, 1887 - First land transfer of 508.10 acres in a deed from R. S. Pullen to the State of North Carolina is recorded in Deed Book 95, Page 246 of the Wake County Registry.

April 22, 1887 - NC State Board of Trustees meet for the first time.

September 1921 - First record of actual use of the "Wolfpack" nickname for the football team, while other sports continued using the term "Red Terrors" until official adoption of the nickname "Wolfpack" by all sports in 1974.

January 5, 1931 - The General Assembly redefined the University of North Carolina to include existing campuses and North Carolina State College (now NC State).

January 13, 1971 - The General Assembly passed legislation bringing into the University of North Carolina all existing 16 public institutions and forming the UNC System with an effective date of July 1, 1972.

September 27, 1973 - After passage of the Civil Rights laws, NC State is desig-

nated an equal opportunity employer and develops the Affirmative Action Plan. Although the university has a record of employing African-Americans at the university as early as 1889.

December 7, 1974 - After passage of the Title IX Act, the first varsity women's basketball team at NC State took to the court winning their first game against the Virginia Cavaliers (57-45) under first head coach Robert Doak. The NC State Women ended the first season with a record of 11-4.

November 29, 1983 - Wolfpack® registered as a Trademark.

December 27, 1983 - NC State® registered as a Trademark.

January 17, 1984 - "Strutting Wolf"® logo registered as a Trademark .

December 19, 1984 - Centennial Campus established with Governor James B. Hunt, Jr. allocating the initial 355-acre parcel of land.

March 3, 1986 - Chancellor Bruce Poulton established the Office of Legal Affairs with one attorney (Clauston Jenkins) and two support staff.

June 19, 1997 - NC State entered into contract with the Centennial Authority to play basketball games and hold commencement ceremonies at the Raleigh Entertainment and Sports Arena (now RBC Center, soon to be the PNC Center).

July 22, 1997 - Raleigh Entertainment and Sports Arena (now the RBC Center) groundbreaking ceremony is held for the new arena that is now the home of NC State Men's Basketball.

February 20, 1998 - Policies of the Board of Trustees first posted on the university Web site.

January 1, 2003 - Policies, Regulations & Rules (PRR) Web site went live.

March 24, 2010 - Name changed from Office of Legal Affairs to Office of General Counsel.

February 21, 2012 - U.S. Supreme Court agreed to consider the diversity in admission decision in [Fisher v. University of Texas at Austin](#). Stay tuned to the Howling Counsel for more updates.



1974-75 NC State Women's Basketball Team  
Source: University Archives, NCSU Libraries

## NEWS & NOTABLES

**Did You Know?** OGC is hosting a legal symposium on **"Key Legal and Ethical Issues for University Leaders"** on March 29, 2012 from 2:00 to 5:00 p.m. If you are interested in attending, please contact Denise Hall at 515-3071. Space is filling up fast!

**Mike Poterala**, Deputy General Counsel, has been invited to speak at the Association of University Technology Managers (AUTM) annual meeting in Anaheim, Cali-

fornia on March 17. Mike will share a panel with other licensing experts to address "Utilizing Cutting-edge Techniques to Successfully License Technology".

**Cary High Mock Trial Team Shines in Regional Semis**—Despite being its first year in existence, Cary High's mock trial team recently proved its mettle by reaching the regional semifinals at North Carolina's only statewide mock trial competition. Eight teams competed at the Ra-

leigh regional on February 4th, including teams from as far away as Asheboro. **OGC staffer Clifton Williams** served as one of two attorney advisors for the team. The competition is sponsored annually by the Carolina Center for Civic Education, a non-profit corporation formed by the North Carolina Advocates for Justice.