

Howling Counsel

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LEGAL SPOTLIGHT

Reminder: Restrictions on Political Campaign Related Activities at Work

North Carolina's Primary Election is on Tuesday, May 8th. Being an active citizen means being engaged in the political process and exercising your right to vote. As State employees, we do not lose our rights as private citizens to be involved in supporting or opposing candidates or issues. However, we are not permitted to campaign or to lobby while working and university resources cannot be used in this regard. State law prohibits employees from using work time and university resources (e.g. computers and email, copy machines, telephones, vehicles) to support or oppose political candidates and issues. As a citizen you can write letters and emails to candidates and to newspapers, but not on university letterhead stationary. You cannot dissemi-

nate campaign or issue related literature on the University's email listservs. While working, you may engage in incidental personal communications about political issues and candidates provided you do not violate these legal restrictions.

Under Federal law, the university is permitted to conduct broad voter education, public opinion polls on issues, and voter registration drives provided they are conducted in a non-partisan way. Providing opportunities to speak on an equal basis for all registered candidates for public office is also allowed. Candidate appearances, speeches and debates for partisan political purposes are allowed in university facilities only if a registered student organization sponsors the can-

didate and the facilities use regulation (REG07.25.11) is followed.

For guidelines on the "do's and don'ts" of permissible political campaign related activities as an employee at NC State, please read our [Political Activities](#) legal topic.

For questions relating to specific situations, please contact Assistant General Counsel Shawn Troxler (919-515-1527) or General Counsel Eileen Goldgeier (919-515-3932).

The State Board of Elections website can be accessed at this URL: <http://www.ncsbe.gov/>

LEGAL BRIEFS

NC Court of Appeals Upholds Law on Damages for Pets—In *Shera v. N.C. State University Veterinary Teaching Hospital*, a unanimous decision of the North Carolina Court of Appeals held that the measure of damages for the loss of the animal is the replacement cost since pets are considered personal property under North Carolina law. Although the court recognized the unique emotional bond that exists between an owner and his or her pet, the

court believed that any evidence to quantify the intrinsic value of the animal cannot be measured in monetary terms or compensated under the current law. Ultimately, the court concluded that applying the actual or intrinsic value measure of damages to pets in order to compensate owners for the value of their emotional bond would expand the category of damages beyond what is currently recognized under North Carolina law. Therefore, the

court declined to recognize intrinsic value as the proper measure of damages for loss of an animal, and affirmed the Industrial Commission's decision to only award the replacement cost. To read more of the court's opinion, please visit: <http://caselaw.findlaw.com/nc-court-of-appeals/1595087.html>.

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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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Hey, Hey, What Do You Say?

In our last newsletter, the Howling Counsel discussed how to conduct an effective reference check. This month, the focus is what to do when asked to provide an employment reference. A failure to exercise caution could result in exposure to liability. A negative reference might lead to a defamation lawsuit. A glowing reference (for an employee who turns out to be not-so-wonderful at the new employer) might lead to a negligent referral claim.

Pursuant to [N.C. Gen. Stat. § 126-23](#), some information about a current or former NC State employee is public (i.e. name, age, etc.) It is a misdemeanor to disclose personnel information about an employee beyond that which is public. However, another statute, [N.C. Gen. Stat. § 1-539.12](#), provides employers with immunity from civil liability for

disclosing information about an employee to a prospective employer (upon request by the prospective employer or the employee).

Even with the immunity statute in place, utilizing certain best practices will help to minimize any risk to employers, and to you as a supervisor:

- Always document requests for references, including the name/organization of the requestor.
- Be truthful.
- Respond only to the questions asked by the prospective employer (and make sure you understand what question is being asked).
- Limit responses to objective facts that can be substantiated with documentation about the individual's skills,

abilities, and qualifications; do not provide opinions. Only give first-hand information

- If possible, obtain a release from the employee waiving all claims against NC State and you relating to the disclosure of employment information. (Draft releases may be found on the OGC website).

If you are called upon to give a reference and are unsure about what to say to a prospective employer, do not hesitate to tell the prospective employer that you will get back to them and then seek advice from the OGC (919-515-3071) or Human Resources-Employment Services (919-515-2135) for further guidance.

QUESTION OF THE MONTH

“Does the university have a public record template statement that should be included on email messages?”

Yes. The university has an approved e-mail tag line to add to employee signature blocks for university e-mail communications. The language is as follows: *“All electronic mail messages in connection*

with State business which are sent to or received by this account are subject to the NC Public Records Law and may be disclosed to third parties.”

We'd like to hear from you. Send your questions to howlingcounsel@ncsu.edu or any member of OGC.

NEWS & NOTABLES

Did You Know? Higher Education is one of the most regulated industries in the country. As a means of keeping track of the myriad of compliance obligations, an alliance of higher education associations has created an online resource called the Higher Education Compliance Alliance, which organizes the obligations by topic and program. You can access this online resource along with a Compliance Calendar on the [OGC Compliance Legal Topics](#) Webpage.

For questions about our compliance obligations, please contact Deputy General Counsel, Mike Poterala at 919-515-0234.

OGC Training News—The presentation slides from the legal symposium “Key Legal & Ethical Issues for University Leaders” held on March 29, 2012 are now available on the OGC [Online Training](#) webpage.

Judith Curry, Associate General Counsel, has been invited to speak at the National Association of College & University Attorneys (NACUA) annual conference in Chicago, IL on June 29, 2012. Judith will be on a panel with other patent experts to address “America Invents: Patent Reform: Practical Implications for Research Institutions.”

Clifton Williams, University Records Officer, was awarded the SPA Employee Award for Excellence for the Chancellor's Unit on April 10, 2012.

Pie Day! OGC had another successful Pie Day event. Thank you to everyone who attended and especially to our celebrity judges Charlie Leffler, Retta Clemons, Tom O'Brien, Sheri Schwab, and Shawn Hosh.