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LEGAL SPOTLIGHT

It's All in the Family

More than a few times a year, situations arise on campus that require application of the policy covering [Interpersonal Relationships Among Faculty, Staff and Students \(NC POL 04.20.06\)](#). This policy, sometimes referred to as the "nepotism" policy, not only covers familial relationships (relationships between related persons), but also amorous relationships (dating relationships).

The policy is designed to provide assurances that all NC State students and employees are able to learn or work in an environment where they can be instructed, evaluated or supervised in an objective manner. Accordingly, the policy prohibits anyone in a familial or amorous relationship from being able to 1) have educational responsibility for, or 2) make employment-related decisions for, the other party to the relationship.

Occasionally, unavoidable situations occur which implicate the policy. For example, a potential violation would occur where the spouse of a faculty member is named the department head for the department in which the faculty member resides. In such cases, the conflict of interest that creates the issue is disclosed and a management plan is designed and implemented to ensure that the department head makes no employment related decisions for the faculty

member. Here are illustrations of other common situations that invoke the policy :

Q: I am a single tenured faculty member and a Principal Investigator on a federal grant. I have been in a consensual dating relationship with a graduate student in my lab. I am also on the student's advisory committee. Have I violated the policy?

A: Yes. You cannot serve on the student's advisory committee (educational responsibility) nor supervise the work on the grant (educational responsibility and employment-related decisions). In addition to the actual conflict of interest, this type of relationship has the potential to create favoritism, morale issues and disruption in the lab. In this scenario, the violation could be the basis for disciplinary action against you. If you plan to continue the relationship, you must disclose the relationship to your supervisor and, a management plan will have to be created and implemented. Normally such plan would include requiring you to step down from the student's advisory committee and possibly moving the student to a different lab.

Q: I work in Facilities and my brother-in-law was selected the manager of my division, making him my second level supervisor. Is this covered by the policy?

A: Yes. In-law relationships are covered (even if the primary relationship is dissolved). Though your brother-in-law is not your immediate supervisor, he would still have employment-related decision making responsibility over you (e.g. signing your performance evaluation). Unless you decided to voluntarily move to another division within Facilities (if feasible), you would be required to disclose the relationship. A management plan would be put into place that would provide for a different reporting relationship for you so you could continue to work in your position.

These are only a few of the types of situations that implicate the policy. If you have questions about the policy, please feel free to contact the Vice Provost for Equal Opportunity and Equity (Joanne Woodard) at (919) 515-4559 or the Office of General Counsel (Sarah Lannom or Eileen Goldgeier) at (919) 515-3071.

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We make house calls!

Send your inquiries to:
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or call
(919) 515-3071

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Strategic Risk Management (SRM)

In order to enhance the likelihood of achieving the goals set forth in *The Pathway to the Future: NC State's 2011-2020 Strategic Plan*, NC State is using strategic risk management (SRM) practices to identify and address risks with the potential to significantly affect the entire uni-

versity. The SRM process is intended to proactively treat the causes and consequences of the top risks facing NC State, thereby minimizing their impact. The results of the process will be used to inform the implementation of the **strategic initiatives**. NC State's SRM process is

lead by the executive officers with guidance from Professors Mark Beasley and Bonnie Hancock of the Poole College of Management's **Enterprise Risk Management Initiative**.

LEGAL BRIEFS

Court: Public Records May Reside on Personally-Owned Phones

Many know that the term 'public record' refers to documents created or received while at work. Did you also know that public records may be stored on your personally-owned phone? A local court ruled recently that university business performed on personal devices could subject personal phone records to public inspection upon request.

The case involved the ongoing controversies related to UNC-CH's football program and its former coach, Butch Davis. Led by a coalition of media groups, the plaintiffs asked the court for full access to Davis's personal cell phone records from March 1, 2009 through his November 2010 statement. The court declined this broad request, but did order Davis to

release phone numbers for calls related to university business. Davis ultimately complied with the **order** after consenting to a review of the phone records by the trial judge.

Fisher v. University of Texas, Austin

Fisher v. University of Texas, Austin, one of the most anticipated cases in higher education this year, is scheduled for oral argument before the U.S. Supreme Court on October 10, 2012. In this case, the Supreme Court is being asked to revisit its decisions in Grutter v. Bollinger and Gratz v. Bollinger in which it held that consideration of race as one factor in the selection of a diverse student body is constitutionally permissible. Since the

court decided Grutter and Gratz in 2003, Justices O'Connor, Stevens, Rehnquist, and Souter have been replaced with Justices Alito, Roberts, Sotomajor and Kagan. Justice Kagan has recused herself from the Fisher case since she was U.S. Solicitor General when the case was decided in the Fifth Circuit Court of Appeals and she authored the brief on behalf of the U.S. As a result, the decision in Fisher could be a tie, with just eight jus-

tices voting. In such a situation, the lower court ruling would stand. Here, the Fifth Circuit upheld the University of Texas, Austin's use of race in selecting a diverse student body.

For all of the latest court filings and access to the oral argument, log onto the **Supreme Court Blog**.

NEWS & NOTABLES

Brenton McConkey. OGC is pleased to introduce the newest member of our team, Brenton McConkey. Brent joined OGC as Assistant General Counsel on July 16, 2012, and brings a wealth of knowledge and experience to the university. Prior to employment with NC State, Brent practiced as an attorney for Parker Poe Adams & Bernstein LLP and served

as the Town Attorney for the Town of Clayton, North Carolina. Brent received his Bachelor of Arts degree (B.A.) in Politics from Wake Forest University, and a Juris Doctor (J.D.) degree from the University of North Carolina School of Law. His primary areas of practice include real estate, construction, purchasing and contracting.

Bocce Ball 2012! OGC will take on the University Controller's Office on October 11, 2012 at the Court of Carolinas at 12 noon.