

OFFICE OF GENERAL COUNSEL ANNUAL REPORT 2021-2022

This report reflects the office's efforts to support many of the strategic goals of the Wolfpack 2030: Powering the Extraordinary Strategic Plan, and also summarizes significant matters that reflect the Office of General Counsel's collective contributions to the mission of the University.

I. Overview and Overall Highlights and Accomplishments for FY 21-22

The Vice Chancellor and General Counsel is the chief legal officer for the University. The Office of General Counsel is the university's legal representative, and is responsible for providing all legal services to the University, senior leadership, Board of Trustees, and other members of the University community. Over the course of FY 21-22, OGC obtained significant and positive results for the university clients in legal matters. We also effectively served our other university administrative functions. We added two new attorneys to the staff. We procured and implemented two significant software programs that have greatly enhanced the efficiency and productivity of the office. OGC continues to maintain strong partnerships with our campus clients and maintenance and development of those relationships continues to be a focus for the office. The attorneys and staff have the opportunity to engage in meaningful, challenging work. OGC attorneys and staff make a collective effort to stay on top of the trends and focus of the higher education industry, both in the state of North Carolina but also nationwide. We have significantly improved the content and functionality of the office's website (improvements are continuing) and are striving toward continuous improvement in the compliance program. OGC remains guided by the university's land-grant mission, and our focus as an office and in our individual practices continues to be on providing mission-oriented advice and counsel.

OGC implemented a significant new software program called Clio. Clio allows the office to track and manage information and data relating to matters the office handles. It also allows access to matters and functionality for the entire office regardless of where an individual may be working, and has been a useful tool as our office has transitioned to a hybrid work environment. Clio allows attorneys to securely access matters and share information electronically and will allow a greater amount of data on the office. We anticipate that Clio will help us to assess and address any gaps in our office's services.

II. OGC Staff Updates and Professional Development

- Leslie Mize was hired as Assistant General Counsel in September 2021.
- Jordan Nance was hired as Associate General Counsel in March 2022.
- OGC is actively recruiting for both an Assistant General Counsel position and a Senior Associate General Counsel position.

III. Representative Legal Matters for 2021-2022

As the unit responsible for providing legal services to the University community, OGC has a broad portfolio of work across the University. Below are some examples of the significant and important legal matters that OGC has handled over the past fiscal year. They are organized according to the University's goals set forth in the new strategic plan: "Wolfpack 2030: Powering the Extraordinary."

Goal 1: Empower students for a lifetime of success and impact.

- **Advise/Counsel SAO and SAERT:** OGC (Betsy Lanzen) counseled the Study Abroad Office (SAO) and the Study Abroad Emergency Response Team (SAERT) on a myriad of issues relating to international travel during the evolving stages of the pandemic.
- **Advise/Counsel – OIED, OSC, and BAT:** OGC (Betsy Lanzen and Leslie Mize) advised the Office for Institutional Equity and Diversity (OIED), the Office of Student Conduct (OSC) and the Behavior Assessment Team (BAT) on many complex legal issues relating to allegations of discrimination, harassment, and actual or threatened assaults.
- **Advise/Counsel Admissions Background Review:** OGC (Betsy Lanzen) provided counsel to the Admissions Background Review and Investigation of Applicant Committee (ABRIC) on legal issues about their review process and helped them to revise their policies and procedures accordingly.

Goal 2: Ensure preeminence in research, scholarship, innovation and collaboration.

- **University's Response to COVID-19 Pandemic:** During 21-22, OGC has continued to collaborate with University divisions, departments, and units to respond to the COVID-19 pandemic. Deputy General Counsel Shawn Troxler continued to lead the COVID-19 response legal work by helping to review and adjust the Community Standards, as well as providing guidance on testing, face

covering, and vaccination requirements. The issuance of Executive Order (EO) 14942, requiring vaccination of federal contractor personnel, raised new legal and practical issues, including interpreting the EO and devising and implementing a strategy for compliance.

Goal 3: Expand and advance our engagement with and service to North Carolina and beyond, defining the standard for a 21st-century land-grant university.

- **Centennial Campus-Innovation District:** OGC (Jordan Nance) worked with Mike Fausnight of University Real Estate and Development (URED) to remedy a Plant Sciences Building encroachment issue and execute a land swap between the State of North Carolina and the Endowment Fund as well as record new plats for all parcels within the Innovation District so that development projects could commence.
- **Centennial Campus:** OGC (Jordan Nance) worked with URED to negotiate and finalize documents for a developer's exercise of the Ground Lease Option for 1200 Capability Drive which would allow for the development of an additional phase of North Shore townhome development and related infrastructure.

Goal 4: Champion a culture of equity, diversity, inclusion, belonging and well-being in all we do.

- **Ongoing advice, counsel, and policy analysis:** Equity, diversity, inclusion, belonging and well-being are central to all we do. Everyone in OGC regularly supports these efforts by providing advice and counsel and supporting policy changes to ensure the furtherance of these objectives.

Goal 5: Improve university effectiveness through transformative technologies, cutting-edge processes and actionable data.

- **Federal Compliance Implementation Group:** OGC (Mike Jung) participated in a working group tasked with identifying and then implementing the university's obligations under federal regulation (34 C.F.R. § 668.43) relating to professional licensure programs. The group has guided the identification of academic programs subject to the regulations, analyzed each program to determine compliance, developed a campus-wide compliance list, and drafted notices to departments and individual students as required by the regulations.
- **Tort Claims Process Review:** OGC (Leslie Mize) analyzed how the tort claim process had been handled previously and developed and implemented a new process, which includes coordinating

with an investigator and the Attorney General's office for review of claims. Several claims have been addressed under the new system and the process continues to be refined.

Goal 6: Lead in developing innovative partnerships, entrepreneurial thinking and applied problem-solving.

- **Space Lease Template:** OGC (Brent McConkey) assisted University Real Estate and Development (URED) with a variety of matters, including the development of a new space lease template for partners in the Plant Sciences Building and negotiation of several leases for other tenants on Centennial Campus.
- **Flexible Work Arrangement and Remote Work Location Regulations:** These two regulations were the result of work by a small group including OGC (Sarah Lannom). NC State's regulation has become a model for other UNC System schools dealing with the issues associated with the different regulations.
- **NIL Policy Guidance:** OGC (Shawn Troxler and Allison Newhart) assisted Athletics with drafting a policy and providing guidance on name, image, and likeness. OGC also provides ongoing legal and compliance advice and counsel on NIL as questions and issues arise in this new frontier of college athletics.
- **Covid-19 Response:** OGC (Shawn Troxler and Allison Newhart) led the development of a strategy for compliance with the contractor vaccine mandate.

Goal 7: Elevate the national and global reputation and visibility of NC State.

- **eSports Steering Committee:** The eSports Steering Committee was developed in response to NC State's receipt of \$16M in funding to build a dedicated eSports facility and mobile arena truck. OGC (Mike Jung) is a member of the steering committee and has been assisting in guiding the development, build-out and operation of the facility and arena truck as a research, education, competition, and outreach platform.
- **NC State's Hallowed Places Wine:** OGC (Shawn Troxler) drafted and negotiated trademark and production licenses for NC State's Hallowed Places Wine ("The Brickyard" and "The Court of North Carolina"), the university's first-ever licensed wine.

- **New Regulation 03.00.05 University Qualified Sponsorships Relationships:** OGC (Brent McConkey) worked with the Office of Strategic Brand Management within UCOM to prepare the new regulation and an accompanying Standard Operating Procedure (SOP) for approving University sponsorship programs and individual sponsors. This Regulation is intended to enhance efficiencies and facilitate more advantageous strategic partnerships with external parties.
- **Ongoing Involvement with NACUA:** OGC attorneys and staff regularly participate and speak at national and regional conferences. Allison Newhart is a longtime member of the National Association of College and University Attorneys (NACUA) and has just completed a three year term on the Board of Directors. The board service and NACUA membership have provided a platform in which NC State's OGC can continue to establish itself as a leader among the national practice of higher education law.

IV. Additional Functions Of OGC

Consistent with the University's mission and in furtherance of the objective of organizational excellence, the Office of General Counsel also has additional functions and responsibilities within the University. These are listed as follows:

Training

OGC presents specialized training to many campus units. This training has included topics such as records retention and disposition, FERPA, faculty grievances and mediation, information security, minors on campus, privacy in cyberspace, political activities, computer use as well as First Amendment, freedom of speech and the Clery Act.

Policies, Regulations and Rules

Policies, Regulations and Rules ("PRR"s) are the internal "law" of the university. OGC continues to manage and update the PRR website. This year, OGC posted 15 policy/rule/regulation revisions; to include 3 new regulations, 2 policies and 7 regulations revised, 1 rule revision and 1 regulation repealed. In addition, significant time was spent updating 13 revisions to the Provost Rules. This summer, OGC is undertaking a significant review of the PRR process, which is intended to result in a

streamlined process for writing, revising, and repealing PRRs.

Public Records

As a state agency, NC State University is subject to the Public Records Act. Another key function of OGC is the advice and management of the University's responses to requests for public records.

Lynda Mottershead is the University's Public Records Officer. In this capacity, she coordinates responses to public records requests per the state Public Records Law, provides advice and support to university units on the document retention and disposition schedule, and works on policies relating to maintaining records and data. For fiscal year 21-22, the University received over 212 records requests and more than 30 subpoenas. **Improvements:** During the 21-22 fiscal year, OGC purchased and implemented a new software program (NextRequest) to better assist in processing, managing, and responding to public records requests.

Contracts/Agreements Review

OGC plays a significant role in reviewing and providing guidance on University contracts and agreements. This includes all manner of agreements in support of Procurement and Business Services, Advancement Services, University Real Estate and Development, the Provost's Office, Athletics, Technology Transfer and Sponsored Research, Employment/Personnel Matters, Global Engagement, SPARCS, Facilities, Fraternity and Sorority Life, the Office of Research Commercialization, the Endowment Fund, various affiliated foundations and other associated entities, and service agreements performed by our centers, institutes, and College and non-College service centers. OGC estimates that it has collectively reviewed 1,000+ contracts in the 2021-2022 fiscal year.

Tort Claims/State Property Incident Reports

In accordance with state law, OGC handles tort claims and state property incident reports involving claims of damage or injury on University property. This year OGC processed 25 tort claims, 2 motor vehicle complaints, and 2 State Bureau of Investigation complaints.

Compliance and Enterprise Risk Management

OGC is responsible for the University's Compliance and Integrity Program and Strategic Enterprise Risk

Management (ERM) Initiative. Kristen Meeks is the University's Compliance, Ethics, and Risk Management Officer. The following is a list of critical Compliance and Enterprise Risk Management projects over the 21-22 fiscal year.

- **Compliance**

- Conducted an initial review of the university's compliance and integrity program.
- Updated the Compliance program's website and the compliance matrix.
- Developed a written annual program report
- Administration of EthicsPoint
- Coordination of the efforts of the University Compliance Steering Committee and the Compliance Officials Working Group.
- All of us in OGC are involved in advising and coordinating with other offices on significant compliance initiatives. Examples of significant compliance initiatives:
 - Title VI Compliance review by the NCDOT (OIED).
 - Developing a code of conduct for hosting conferences sponsored by NSF/NIH (OIED and SPARCS).
 - Coordinating Foreign Gifts and Contracts Reporting process
 - Implementing compliance processes to fulfill regulatory requirements regarding professional licensure programs (DELTA).
 - Reviewing and enhancing compliance processes around research security (Research Compliance)
 - Supporting the HIPAA Security Assessment initiative (OIT).

- **ERM**

- Coordinated the Cabinet's annual ERM risk prioritization exercise.
- Designed enhancements to the ERM process for future cycles
- Partnered with Internal Audit to complete strategic risk conversations with approximately 35 university leaders to gather perspectives to inform the Cabinet's annual ERM risk prioritization exercise.
- Ongoing coordination with Institutional Strategy and Internal Audit.

COVID-19 Legal Response Team

Over the past year, with testing and vaccines more readily available, but also the rise of COVID-19 variants, the university moved into a different phase of its COVID-19 pandemic response. Novel legal and compliance issues continued to arise, including those related to testing and vaccination requirements. In the FY 21-22, the COVID Legal Response Team, led by Shawn Troxler, continued its work on coordinating, researching, assessing, assisting, and responding to issues created by the COVID-19 pandemic, including the following:

- Presidential Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors
- OSHA Emergency Temporary Standards related to COVID vaccination and testing
- Governor's Executive Orders, as well as Raleigh and Wake County ordinances and directives, on testing and face covering requirements
- Use of federal funds provided to universities in response to the pandemic
- Protect the Pack Community Standards and Rule on Personal Safety Requirements Related to COVID-19, as well as other policies and rules
- Guidance on employee leave provisions, safety training, volunteer activities, and remote work.
- Use of and/or requiring face coverings and COVID-19 vaccinations
- University contracts and complex agreements related to the use and sale of nonwovens fabric
- Waivers and "assumption of the risk" language specifically related to COVID-19
- Participating in University meetings on operations and event activities
- Providing ongoing advice on issues related to travel, study abroad, and special events
- Records and privacy issues in connection with vaccination and other employment records
- Assisted with contract for COVID-19-response equipment and support to the WHO
- State law requirement that all healthcare providers obtain written consent from a parent or legal guardian prior to administering to anyone under 18 years of age any vaccine that was granted emergency use authorization
- Advised clients regarding enforcement of the community standards and COVID-19 PRRs
- Use of HEERF funds

- Issues arising around student travel, study abroad, and faculty and staff travel
- Housing assignments and COVID-19-related requests for accommodation
- Waivers for minors on campus
- Compliance with NC Immunity Statute
- Various academic affairs course-specific questions
- Third-party vaccination and face covering requirements for our students visiting these third party facilities
- Exemptions from COVID-19 requirements for employees, including vaccine exemptions
- COVID-19 related public records requests
- University contracts related to loss of goods and services due to COVID-19
- Negotiation of lease provisions related to federal safety task force requirements

Workgroups and Reactivation Task Forces

- Attending and participating in COVID-19 Operational Briefing meetings
- Attending and participating in COVID-19 state and federal funds meetings
- Participating in Research Operations Council meetings to advise on issues related to the effect of the pandemic on NC State research operations