Key Legal and Ethical Issues for University Leaders

Presented by:
NCSU Office of General Counsel

March 29, 2012
Lawyers: A User’s Manual

Key Legal and Ethical Issues for University Leaders
Acknowledgement

Significant portions of this presentation are used or adapted from the presentation “Lawyers: A User’s Manual” by Steve McDonald, General Counsel of the Rhode Island School of Design. The NC State Office of General Counsel appreciates Steve granting us permission to use his work. It is one of many excellent and insightful works Steve has presented to his colleagues in NACUA and throughout the higher education community over the years.

This material is presented for general educational purposes only, and is not intended to communicate legal advice to any person or entity. Any questions about this presentation should be directed to Mike Poterala, Deputy General Counsel, NC State University, who is solely responsible for its contents.
OGC is YOUR law firm

- OGC provides legal and risk management advice on a wide variety of matters to the Board of Trustees, the Chancellor, senior officers, other university administrators, and faculty and staff who are acting on behalf of the University

- We do not represent or advise on personal legal matters
How Do YOU Make Decisions?

- Opportunities
- Risks
- Benefits
- Costs
- Law
- Values
- Relationships
- Public Relations
- Practicalities
- …
Can: What is Possible

May: What is Permissible

Must: What is Required
Get By With a Little Help From Your Friends

- Lawyers give *advice*
- Administrators make *decisions* and *choices*
- “*Can* (may) I do X?”
- “*How* can (may) I do X?”

Lawyers don't make your decisions. Lawyers help make your decisions better.
Who Is the Client in a University Setting?

“A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”

—Rule 1.13(a) of the North Carolina State Bar Rules of Professional Conduct
The Attorney-Client Privilege: A Quick Primer

The attorney-client privilege is a rule of evidence that protects confidential communications made between an attorney and a client for the purpose of providing legal assistance to the client.
How Do You Preserve the Privilege?

1. Communicate only with an OGC attorney.
2. Do not disclose the contents of such a communication to anyone not employed by NC State.
3. Allow disclosures within NC State to be made by the OGC attorney.
4. Be savvy about what you do and do not write down.
5. Remember that e-mails can be risky and web postings are often fatal.
University “Miranda” Warning: Everything You Write Can (and Will) Be Used Against You!
What are Public Records?

• “Made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.”

• They exist "regardless of physical form or characteristics."
Whose Property is it Anyway?

• “…[T]he property of the people.”

• “…[O]btain copies of their public records and public information free or at minimal cost….,”
Exceptions to Public Release and Inspection

• Education Records
• “Trade Secrets”
• Personnel Files
• SSNs
• Minutes/General Accounts*

*For public bodies properly convened in closed session
Record v. Information

• Record: Fully-compiled, complete document/data set/recording capable of discrete inspection and review

• Information: Free-floating bits of data scattered throughout one or more records
Scope of Records Requests, Subpoenas, and E-Discovery

• **Records Requests**: Limited to public records only

• **Subpoena**: Usually limited to relevant content only

• **E-Discovery**: Includes all relevant content and metadata
It’s All Fun and Games Until…

*Abandoned in plain view when NCSU academic department relocated to another part of campus.*
Hey there! So, it's late. Like really late. And I'm having trouble sleeping so I just sent you a bunch of pics for my day. I want your Tuesday to start off on the right foot, so you're gonna have like a ton of emails from me. This one is probably fixin' to be a sweet sweet one given my mood. I'm still up because I can NOT stop thinking about you. And this lovely message below that you sent me earlier. I ADORE messages like these. LOOOOOOVE them!!! Have I mentioned that before? Because I do! I love the ones that let me in— the ones that check in with me and let me know that under your skin you are still crazy about me. I know you have a lot on your plate and it takes wicked amounts of time to "shift gears" but when I catch glimpses of what's going on inside you. I am in awe. It makes me giddy all over. So thank you for sending me that note! "What?" you ask. .. by encouraging me to suspect I was making that gesture towards something in front of you, but as I was, did I even care if you'd always get the attention of a love interest? I think in some ways I'm very similar to the bird of paradise (animal, not flower—watch him on YouTube if you haven't laughed your head off over him already). But yet despite my ummm... shortcomings, you always seem to meet me right where I'm at.

... Goodnight! I love you. I love you so so sooooo much. Don't stop sending me those texts that say xoxo. They get me through lots when you're not around. :)

Miss you, miss you, really wanna _______ you...
“It’s All Fun and Games Until...”

Media seeks text messages sent to state trooper
By Anne Blythe and Michael Biesecker - Staff writers
Published in: Local

RALEIGH On the same day that state media outlets filed a lawsuit against the state Department of Crime Control and Public Safety and its top administrator seeking text messages that a high-ranking state trooper received from his secretary on a state-owned BlackBerry, the agency released some of the messages.

The messages were sent by Pamela Maynard, an office assistant with the state Highway Patrol, to Everett Clendenin, who until his forced resignation in mid-June was a 22-year trooper who long served as the spokesman for the Highway Patrol.

In late June, the department released public records showing Clendenin's more than 2,600 messages to Maynard over the past three months, many of them sexual in nature.

In late June, the department released public records showing Clendenin's more than 2,600 messages to Maynard over the past three months, many of them sexual in nature.

*State Patrol embarrassed...again
“It’s All Fun and Games Until…”

N&O sues Easley over records law

Matthew Eisley - Staff Writer

PUBLISHED IN: HEALTH/SCIENCE

The News & Observer and nine other North Carolina news organizations sued Gov. Mike Easley on Monday over his administration's deletion of e-mail, which they say violates the state's Public Records Law.

The news media coalition accuses Easley's administration of "the systematic deletion, destruction or concealment of e-mail messages sent from or received by the Governor's Office" in violation of the law, according to the lawsuit, which was filed in Wake County Superior Court.

The lawsuit also accuses the state Department of Cultural Resources, which oversees government records, of establishing an illegal policy permitting government workers to delete e-mail messages that

*Governor’s office trying to use private email account to circumvent public records law
“It’s All Fun and Games Until…”

From: Perez, Lorenzo <lperez@newsobserver.com>
Date: Mon, Mar 12, 2012 at 2:28 PM
Subject: Re: Letter from Yow?
To: Annabelle Myers <amyers@ncsu.edu>, Mick Kulikowski <mick_kulikowski@ncsu.edu>

In that case,

Can you forward this email to N.C. State's news services and treat this as a public record request for all of Debbie Yow's emails (incoming and outcoming) and other correspondence related to ACC basketball officiating, between the dates of Feb. 18 and today.

For expediency's sake, we would to receive copies of any correspondence from March 10 through today as quickly as possible.

This is no fun….believe me.
Mythbusters: The Scope of Academic Freedom
Mythbusters: The Scope of Academic Freedom

• What is it?
  Is it a Constitutional right?
  Is it a byproduct of the Constitution?
  Freedom to do what?

• Rights and Responsibilities
  Who holds it?
  Students?
  Faculty?
  Collectively or Individually?
  The University?
Mythbusters: The Scope of Academic Freedom

• **MYTH**: Faculty (and maybe students but definitely not administrators) can say and do anything they want under the protections of Academic Freedom

• **FACT**: Justice Frankfurter, in a concurring opinion, stated essential freedoms of a university, to determine for itself on academic grounds, the following:
  • Who may teach
  • What may be taught
  • How it shall be taught
  • Who may be admitted to study

(Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957))
Mythbusters: The Scope of Academic Freedom

- **MYTH**: As a constitutional matter, Academic Freedom inheres to individual professors

- **FACT**: Established Fourth Circuit opinion holds that:
  “to the extent the Constitution recognizes any right of ‘academic freedom’ above and beyond the First Amendment rights to which every citizen is entitled, the right inheres in the University, not in individual professors.”

(Urofsky v. Gilmore, 216 F.3d 401, 410 (4th Cir. 2000), cert. denied, 531 U.S. 1070 (2001))
Mythbusters: The Scope of Academic Freedom

• The AAUP’s Statement of Principals of Academic Freedom and Tenure (1940):

“Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.”

(*Added interpretive comments in 1970)
Mythbusters: The Scope of Academic Freedom

AAUP -- Responsibilities

1. Should not teach controversial matter which has no relation to the subject

2. Research for pecuniary gain should be in compliance with university policies

3. Faculty should be accurate, show respect for other opinions, and should indicate they are not speaking on behalf of the university
Mythbusters: The Scope of Academic Freedom

The Code of the Board of Governors

- Section 600: Freedom and Responsibility in the University Community
- Section 601: Academic Freedom and Responsibility of Faculty
Academic Freedom as it relates to individual faculty members, not as a constitutional right but as a byproduct (perhaps) and the UNC Code, allows faculty to teach and conduct research without interference from internal and external factors (e.g.):

- Legislators (Ward Churchill)
- Attorney General (UVA climate research)
Worth the Paper It’s Printed On
(or Digitized)
Getting to Yes . . .

- What is a contract?
- Two parties +
- Offer and acceptance +
- Consideration

Contracts

1. DEFINITION

agreement between parties.
Is It a Contract?

- Generally Yes
- MOUs
- MOAs
- Leases
- Internship Agreements
- Letters of Intent
- Rental Agreements
- Etc.
<table>
<thead>
<tr>
<th>AGREEMENT/CONTRACT</th>
<th>USE &amp; SIGNATORY AUTHORITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 3X Memorandum of Agreement</td>
<td>This agreement is for use by the Office of International Affairs when entering into a &quot;3+X&quot; program with a foreign institution. For assistance in completing this agreement please contact the Office of International Affairs at 919-515-3201. The completed agreement is forwarded to the Office of International Affairs for review and signature.</td>
</tr>
<tr>
<td>2 Co-operative Employer Agreement</td>
<td>This agreement is for use by the Cooperative Education Program. The agreement is for use by the Office of International Affairs when entering into a student internship agreement with a third party. For assistance in completing this agreement please contact the Office of General Counsel at 919-515-3075. The completed agreement is forwarded to the Office of General Counsel for review and processing for signature by Provost's Office.</td>
</tr>
<tr>
<td>3 General Memorandum of Understanding</td>
<td>This agreement is for use by the Office of International Affairs when entering into an agreement for an academic exchange with a foreign institution (long form). For assistance in completing this agreement contact the Office of International Affairs at 919-515-3201. The completed agreement is forwarded to the Office of International Affairs for review and signature.</td>
</tr>
<tr>
<td>4 General Memorandum of Understanding</td>
<td>This agreement is for use by the Office of International Affairs when entering into a student internship agreement with a third party. For assistance in completing this agreement please contact the Office of General Counsel at 919-515-3075. The completed agreement is forwarded to the Office of General Counsel for review and processing for signature by Provost's Office.</td>
</tr>
<tr>
<td>5 Internship Agreement</td>
<td>This agreement is for use by NC State Departments and Units when entering into a student internship agreement with a third party. For assistance in completing this agreement please contact the Office of General Counsel at 919-515-3075. The completed agreement is forwarded to the Office of General Counsel for review and processing for signature by Provost's Office.</td>
</tr>
<tr>
<td>6 Short Term Experiential Partnership Agreement (&quot;STEP&quot;)</td>
<td>This agreement is for use by the Cooperative Education Program. The STEP program puts students to work, part-time (paid and unpaid), for one semester. The students also take a six (6) hour course load. For assistance in completing this form please contact the Director of the NC State Cooperative Education Program at 919-515-4420. The completed agreement is forwarded to the Director for review and an authorized signature.</td>
</tr>
<tr>
<td>7 Social Work Memorandum of Agreement</td>
<td>This agreement is for use by the Department of Social Work. Students within the Social Work program obtain hands-on experience by placement in a field instruction program or internship at participating organizations or agencies. For assistance in completing this form please contact either the MSW Field Director at 919-513-2784 or BSW Field Director at 919-513-7503. The completed agreement is forwarded to the appropriate Director for review and an authorized signature.</td>
</tr>
<tr>
<td>8 Student Exchange Agreement</td>
<td>This agreement is for use by the Office of International Affairs when entering into an agreement with a foreign institution for an academic exchange. The agreement is for use by the Office of International Affairs when entering into an agreement with a foreign institution for an academic exchange. The completed agreement is forwarded to the Office of International Affairs for review and signature.</td>
</tr>
</tbody>
</table>

Please note: The Office of General Counsel ("OGC") and the Purchasing Department process for negotiating and processing contracts for routine transactions, not including research/infrastructure property or real estate.

The OGC has drafted these Standard University Contracts for use when (1) contracting (2) allowing others to use University facilities or (3) University personnel providing services to the University. The Standard University Contracts may be required for departments with minor modifications by OGC. The Standard University Contracts have been created by providing service contract forms.

NORTH CAROLINA STATE UNIVERSITY

Phone: 919-515-3075
Email: goc-contracts@ncsu.edu
Address: 304 Holladay Hall, Campus Box 7008, Raleigh, NC 27695

Standard University Contract formats are subject to be updated at any time. These contracts include the upper right-hand corner of each document. To the extent of the agreement, download the agreements from this website each time contracts and contact the Office of International Affairs of the appropriate NC State Department.
Can I Sign a Contract?

- Have you been delegated authority?
  - Check NCSU Reg 01.20.02
  - Check the Delegation of Signature Authority Chart
REG 01.20.02 - Delegation of Authority to Sign Contracts

Authority: Issued by the Chancellor. Changes or exceptions to administrative regulations issued by the Chancellor may only be made by the Chancellor.

History: First Issued: April 11, 1987; Last Revised: February 7, 2011.

Related Policies:
- UNC Policy Manual 600.1.3 - Leasing and Acquisition of Real Property Authority
- UNC Policy Manual 200.5 - Initiating and Settling Lawsuits
- NCSU Purchasing Regulations
- NCSU REG07.05.02 - Payments - Small Purchases
- NCSU REG01.25.06 - Use of the University's Names, Marks, Symbols, Images, and Copyrights
- NCSU REG01.25.01 - Trademark Licensing Rules
- NCSU REG01.25.05 - Procedure for Formatting, Adopting, and Publishing Policies, Regulations and Rules
- NCSU REG01.20.01 - Delegations of Authority for Appointments, Compensation and Other Personnel Actions for Employees Exempt from the State Personnel Act (EPA)
- NCSU POL01.20.02 - Authority of Vice Chancellor for Finance and Business
- NCSU POL01.20.01 - Authority of the Chancellor

Additional References:
- Contracts and Purchasing
- SORCS Standard Operating Procedure, Delegations of Signature Authority
- The Code of the Board of Governors of the University of North Carolina

Delegation of Signature Authority Chart

1.1 Full executive and administrative power is vested in the Chancellor by N.C. Gen. Stat. 116-34(a) and Section 502A of The Code of the Board of Governors of the University of North Carolina. Inherent within this power is the authority to sign contracts binding North Carolina State University, and to delegate and permit the further delegation of such authority not otherwise retained by the Board of Governors, the Board of Trustees or other state administrative agencies or officials.

1.2 This regulation sets forth the Chancellor’s approved delegations and sub-delegations of contract signature authority to various administrative officials for contracts signed on or after the regulation’s effective date. All other delegations of contract signature authority are superseded.

1.3 For purposes of this regulation, a contract means an agreement between two or more persons that creates a legal binding obligation to do or not to do a particular thing. A contract may be titled as an agreement, a memorandum of understanding, memorandum of agreement, a promise to pay, or may use other terminology. A contract may or may not involve the payment of money.

1.4 This Regulation excludes the delegation of authority for faculty, EPA professional and administrative personnel appointments, compensation and related personnel actions. Such delegations are governed by NCSU REG01.20.01 - Delegations of Authority for Appointments, Compensation and Other Personnel Actions for Employees Exempt from the State Personnel Act (EPA).

2. UNAUTHORIZED CONTRACTS

2.1 North Carolina State University does not recognize contracts signed by University employees or agents as binding on the University unless the employee who signed the contract has duly delegated signature authority.
**Delegations of Signature Authority**

<table>
<thead>
<tr>
<th>Contract Type</th>
<th>Delegated Authority</th>
<th>Sub-Delegated Authority</th>
<th>Source of Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Authority to Sign Contracts for NC State University</td>
<td>Chancellor</td>
<td>Vice Chancellor for Finance and Business (All Contracts which may be Sub-Delegated)</td>
<td>N.C.S.U. REG 01.20.02 § 3.1 and 3.2</td>
</tr>
</tbody>
</table>

*The asterisks indicate Standard Form Agreements. Delegation and sub-delegation of authority to sign a Standard Form Agreement does not include authority to make changes to the Standard Form Agreement. A Standard Form Agreement is one that has been approved as to legal form and sufficiency by the Office of General Counsel. Prior to execution, the Office of General Counsel must review any changes to the Standard Form Agreement. Additionally, prior to execution, the Office of General Counsel must review and approve any agreements in this category where a third party supplies the agreement.*

**Academic Contracts**

<table>
<thead>
<tr>
<th>Academic Contracts</th>
<th>Delegated Authority</th>
<th>Sub-Delegated Authority</th>
<th>Source of Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academic Contracts Not Involving Purchases of Goods/Services (Academic Personnel and Student Exchange, Academic Cooperative Agreements, Academic Placements, Academic Matriculation, etc.)</td>
<td>Provost and Executive Vice Chancellor</td>
<td>Vice Provost for Faculty Affairs</td>
<td>N.C.S.U. REG 01.20.02 § 4.1</td>
</tr>
<tr>
<td>Academic Cooperation Agreements* (Between NCARS, the NC Dept. of Agriculture and Consumer Services) That Do Not Involve Purchases of Goods/Services and Are Not Research Agreements</td>
<td>Provost and Executive Vice Chancellor</td>
<td>The Dean of the College of Agriculture and Life Sciences</td>
<td>N.C.S.U. REG 01.20.02 § 4.1</td>
</tr>
</tbody>
</table>

**Athletic Contracts**
### Settlement Agreements

| Authority to Settle Workers Compensation Claims Through Mediation Settlement Agreements | Up to $15,000.00 Associate Vice Chancellor for Human Resources | Up to $5,000.00 Can be Further Sub-delegated | N.C.S.U. REG 01.20.02 § 4.6.5 |
| Settlement Agreements for the Veterinary Teaching Hospital (VTH) (where VTH Forgoes Receiving Payment for Services and the Other Party Releases the VTH) | Hospital Administrator |  | N.C.S.U. REG 01.20.02 § 4.6 |
| Settlement Involving Litigation | Requires the University to Pay $50,000.00 - $75,000.00 Chancellor | Requires the University to Pay Less than $50,000.00 Vice Chancellor for Finance and Business | N.C.S.U. REG 01.20.02 § 4.6.1 |
| Settlement Agreements Involving FACULTY where Litigation is Involved | Requires the University to Pay $50,000.00 to $75,000.00 Chancellor | Requires the University to Pay Less than $50,000 Provost and Executive Vice Chancellor | N.C.S.U. REG 01.20.02 § 4.6.5.2 |
| Settlement Agreements Involving NON-FACULTY EMPLOYEES | Requires the University to Pay $50,000.00 to $75,000.00 | Requires the University to Pay Less than $50,000 | N.C.S.U. REG 01.20.02 § 4.6.5.3 |
Can I Sign a Contract?

• When in doubt
• Don’t sign!
• Contact Purchasing or OGC
Why We Do What We Do

• Contract Clauses that Help . .
  • Indemnify us
  • Choice of Law and Venue
  • Non-Automatic Renewal
  • Confidential Info Protections

Or Hurt Us . .
Indemnification

Each party (the "Indemnifying Party") hereby agrees, at its own expense, to indemnify the other party and its parent, subsidiaries and affiliates, from, against and in respect of any damages, claims, losses, actions and reasonable costs and expenses (including reasonable attorneys' fees) to the extent arising out of (i) the Indemnifying Party's breach of this Agreement, (ii) the Indemnifying Party's negligent acts or omissions, or (iii) any claim that the normal possession of or use of any of the information, deliverables or work product provided by the Indemnifying Party infringes the patent copyright registered design or trademark rights of the said third party (an "Intellectual Property Infringement") provided that notice is given of any Intellectual Property Infringement forthwith upon becoming aware of this.

Liability

Your services are to be performed at no risk to Kodak as respects bodily injury or property damage incurred by or caused by you, and you agree that you will not have recourse against Kodak for any such bodily injury or property damage occurring during the term of this agreement.

Publication / Use of Kodak Name

You agree not to publish the results of any work hereunder without specific approval by Kodak. You also agree not to refer to Kodak, by Name or description in any written or other material used in promoting your services, unless written permission from an authorized Kodak representative is obtained in advance.

You have advised us this agreement does not conflict with your duties and obligations under any other agreement to which you are party and also that you are free to disclose all information which you will furnish in connection with your work for us.

Former Kodak Employees / No Solicitation

You have been made aware of Kodak's policy regarding conflicts of interest and business ethics. To avoid conflicts from arising and preserve ethical practices, you agree to notify Kodak of your intention to use any former Kodak employees in the implementation of this Agreement. You agree that individuals who have left the employ of Kodak less than one year shall not be permitted to engage in the implementation of this Agreement without the prior written permission of Kodak, which shall not be unreasonably withheld.

During the term of this Agreement, you will not directly or indirectly solicit to employ or solicit to otherwise use the

Legal Process

All matters pertaining to this agreement (including its interpretation, application, validity, performance and breach), shall be governed by, construed and enforced in accordance with the laws of the State of New York. The parties herein waive trial
by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in Monroe County, State of New York.

Entire Agreement

This agreement constitutes the entire and unless specifically acknowledged agreement specifically supersedes all documents or papers signed by or executed requirements set forth previously in the requirements.

If the foregoing terms are agreeable and returning both copies to John B., Rochester, NY 14650-0507. We in
Test your knowledge!

**Question #1:** NC State and Duke create a MOU that outlines the parties’ understanding regarding a joint program. As such, the MOU is not a contract.

1/A. True
2/B. False
NC State and Duke create a MOU that outlines the parties’ understanding regarding a joint program. As such, the MOU is not a contract.

1. True
2. False
• **Question #2**: OGC maintains a website with PDF-fillable contracts covering a variety of common business and academic scenarios. A manager has the ability to change the language of the PDF contract to fit the unit’s business needs without notifying OGC.

1/A. True
2/B. False
OGC maintains a website with PDF-fillable contracts covering a variety of common business and academic scenarios. A manager has the ability to change the language of the PDF contract to fit the unit's business needs without notifying OGC.

1. True
2. False
Question #3: Any department head on campus may sign any contract if the value of the agreement is $5,000 or less.

1/A. True
2/B. False
Any department head on campus may sign *any* contract if the value of the agreement is $5,000 or less.

1. True
2. False
• **Question #4**: Agreements that only provide for an exchange of services, but with no money changing hands, are not contracts.

1/A. True
2/B. False
Agreements that only provide for an exchange of services, but with no money changing hands, are not contracts.

1. True
2. False
Worth The Paper It’s Printed On (or Digitized): Contracts 101

• Question #5: NC State has a number of agreements with students. These agreements are not contracts because one of the parties is a student.

1/A. True
2/B. False
NC State has a number of agreements with students. These agreements are not contracts because one of the parties is a student.

1. True
2. False
Question #6: Johnny Startup approached me, a department head or manager, asking if I wanted to buy his software for a pilot project. If I am unsure whether I have delegated signing authority for this proposed contract, I first should…

1/A. Just go ahead and sign anyway
2/B. Check to see if I have authority to sign the contract
Johnny Startup approached me, a department head or manager, asking if I wanted to buy his software for a pilot project. If I am unsure whether I have delegated signing authority for this proposed contract, I first should...

1. Just go ahead and sign anyway
2. Check to see if I have authority to sign the contract
Key Legal and Ethical Issues for University Leaders
“Who You Gonna Call?”
…To Report a Crime or Suspected Criminal Activity

• Call NC State University Police
  • For emergencies call 9-1-1
  • For non-emergencies call 515-3000

• Clery Act requires collection of data and notification of ongoing threat to campus community
...To Report Accidents and Health/Safety Issues

• Environmental Health and Safety (EH&S)
  • Accidents
  • Hazards
  • Safety Issues

• Occupational Safety & Health Act (OSHA)

• Workers’ Compensation
…To report misuse of state property

• Duty to report misuse, theft and destruction of/from state property

• NC State REG 07.40.02

• Steps to follow:
  • Employees report to immediate supervisor
  • Supervisor reports to OGC
  • OGC notifies NC State police, internal audit and/or SBI (as appropriate)

• SBI Form 78
…To Report Threatening/Concerning Behaviors of Employees or Students

• NC State REG 04.05.02

• **Behavior Assessment Team (BAT)** - A team dedicated to the prevention, identification, assessment, intervention and management of situations that pose, or may pose, a threat to the safety of our campus community
  • Risk Assessment Case Manager, 515-4224
...To Report Possible Unlawful Discrimination/Harassment/Retaliation

• Duty to investigate allegations of discrimination (including harassment and retaliation)

• Title VII, Title IX, ADA, ADEA, etc.
  • Office for Institutional Equity and Diversity (OIED)
    Main line 515-3148, Investigator 513-1234
...To Report Potential Improper Relationships

• NC State POL 04.20.6
• Covers familial and amorous relationships
• Some are okay; others are not
  • Contact the OIED
To Report Possible Research Misconduct

(SPARCS) – Research Integrity Officer 513-2148
Mandated by federal law/funding agencies
(Sponsored Programs and Research Compliance)
Researc...
Conflicts of Interest: What They Are and Why You Should Care
Conflict of Interest Defined

Any outside interest that may compromise (or have the appearance of compromising) objectivity in performing employment duties.
Conflicts of Interest in the Academic Community May Arise In...

- Conduct of Research
- Entrepreneurial Activity for Pay
- Consulting and Other External Activities
- Student Supervision
- Contract Management
NC Gen. Stat. §14-234

• “No ...employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract”

• “Administers” = oversees performance, or make decisions about the contract

• “Direct Benefit” = >10% ownership in other party, or derives income directly
What If I Have one?

• IDENTIFY
• MANAGE
• ELIMINATE

• Contact OGC or Richard Best in the Office of Sponsored Programs and Research Compliance (515-0158)
Why Should You Care?

- **CRIMINAL LIABILITY**
  - Prosecution under §14-234
  - Criminal Liability under the federal and state False Claims Acts (Treble damages plus up to $11,000 per false claim)

- **LOSS OF FUNDING**
Public Perception

- We are state employees entrusted by the State of North Carolina with the opportunity to carry out the state’s work and we have a fiduciary duty to the citizens of the State to exercise the highest regard for objectivity and integrity.
Resources

• UNC Conflicts of Interest/Commitment
  • UNC Policy Manual 300.2.2
• NC State Conflicts of Interest/Commitment
  • NC State REG 01.25.01
    • http://policies.ncsu.edu/regulation/reg-01-25-01
• PHS Regulations
Am I Covered?

What You Need to Know about the Tort Claims Act, Defense of State Employees Act, Insurance, and Waivers
Once Upon a Time . . .

The State enjoyed the doctrine of Sovereign Immunity...

"No government," says Mr. Justice Miller, "has ever held itself liable to individuals for the misfeasance, laches, or unauthorized exercise of power by its officers and agents." Gibbons v. United States, 75 U.S. 269, 8 Wall. 269, 19 L. Ed. 453.
Based Upon the Old English Premise
That the King Could Do No Wrong...
Errors Sometimes Do Occur…
The Tort Claims Act


• Constitutes limited waiver of State’s immunity

• Limitations:
  • Only applies to negligence actions
    • Employees, former employees, authorized volunteers, or agents of the State
  • Recovery capped at $1,000,000
Jurisdiction

- The Industrial Commission
- Limitations
  - Intentional misconduct
  - Damages, not injunctive relief
How About a Settlement?

University
- UNC Board of Governors
  - $≥75,000
  - $50K-74,999
  - $0-49,999
- Chancellor

Attorney General’s Office
- Chief Deputy AG
  - $≥150,000
- Assistant AG
  - $75K-149,999
- Senior Deputy AG for Administrative Section
  - $0-74,999

Industrial Commission
- $≥$25,000 or suits involving minors
Working with OGC to Provide the Best Defense

• Report any incident to OGC and Risk Management when it occurs

• Identify potential witnesses or people with knowledge, any documents, records, photographs, and recordings

• Be careful what you write

• Comply with any litigation holds

Remember: We’re your law firm!
Excess Liability Policy

• Insurer: Lexington Insurance Company

• Covers judgment >$1,000,000, up to $10,000,000/$25,000,000

• Covers - employees officers, agents, volunteers but does not include independent contractors
Policy Exclusions

• Nuclear Liability
• Pollution
• Asbestos
• Criminal Acts
• Liability for automobiles, aircraft, or watercraft
• Medical, surgical, dental, x-ray, services
• Autopsies
• Sexual/immoral acts or abuse
• Workers' Compensation
• Sickness/death arising out of, and in the course of employment
• Terrorism
Defense of State Employees

N.C. Gen. Stat. § 143-300.1 *et seq*.

- State officers and employees may be sued in their *individual capacity for negligence*

- State *may* provide for the defense of any civil or criminal action or proceeding brought against him in his official or individual capacity