

**NC STATE UNIVERSITY
OFFICE OF LEGAL AFFAIRS**

COMPACT PLAN - FISCAL YEARS 2007-2010

I. CONTEXT FOR PLANNING

The Office of Legal Affairs provides legal advice to the university and works with the Office of the Attorney General, which represents the university in litigation. The Office of Legal Affairs has two main functions:

- Legal Advice and Counsel - This includes but is not limited to contract review, negotiation and drafting; interpretation of federal and state laws; handling internal and external administrative and regulatory matters; policy review and development; general legal education of the campus community and the provision of timely and effective legal advice before legal problems arise in order to prevent or minimize legal liability.
- Litigation Support - This involves gathering factual information and assisting the Office of the Attorney General in the development and furtherance of the university's position in judicial and administrative forums.

Our continuous focus is to provide high quality effective legal services in an efficient and service-oriented manner.

Much of the work done by the Office of Legal Affairs is reactive, i.e., the attorneys are asked to provide legal advice in response to pending unit matters or unanticipated events. In addition to its reactive work, the Office of Legal Affairs identifies proactive initiatives that are designed to minimize legal exposure, implement new federal and state laws and/or policies of the University of North Carolina, and otherwise facilitate the mission and goals of NC State University. The Office of Legal Affairs continually reviews the work it is performing and the current needs of the university and adjusts its projects and priorities in response to those needs. This compact plan developed in fiscal year 2006-2007 addresses significant action items for 2007-2010 in accordance with the Guidelines for Preparing a Compact Plan for the years 2007-2010.

A. Key Findings From Recent Reviews

The university continues to operate in an increasingly regulated legal environment. New Federal and State laws and regulations continue to be enacted and increase the need for effective and efficient legal services. New projects arising at the university also increase the need for responsive legal advice. New lawsuits and complaints are filed and new areas of potential legal exposure and liability are identified. These new matters require additional legal research and response time.

We have talented and creative lawyers who can address these new issues and projects. We also, however, need to continue to respond to the myriad of daily transactional

matters such as contract review, Centennial Campus development, technology transfer and intellectual property issues; student matters; the processing of grievances and discrimination complaints and other employment matters; responding to tort claims, public records requests, subpoenas, litigation and administrative agency complaints; assisting in the development of our international programs and study abroad; providing legal research on other current issues and anticipating legal problems for the university and mitigating them in advance as much as possible. Our challenges are to continue to deal with all these legal areas in a responsive and timely manner without sacrificing quality. Our attorneys need thinking time to devote to legal analysis and time to do appropriate research on the legal issues they are responding to, as well as time to stay abreast of current new legal developments that impact pending and planned and future university initiatives. We believe that we respond timely with quality legal advice to the various units with which we interact but we continue to be concerned about an increasing workload and the ability to continue providing the range and quality of services that we have always provided to a wide campus clientele.

B. Performance Measures

The compact planning instructions ask for at least three specific performance measures to be used for evaluating our unit's performance.

1. Primary Measure – OLA's Annual Performance Report to the Chancellor

The annual reports provided to the Chancellor identify the major matters handled during the year. They also provide statistics regarding the number of purchasing contracts reviewed, the number of lawsuits handled, the number of grievances handled, and the number of workshops conducted. While these empirical data provide some comparative basis for performance from year-to-year, they do not give a complete picture of performance at the Office of Legal Affairs. For example, one contract or grievance may require a large number of attorney hours, while others require few, so the total number of contracts or grievances says little about productivity. Nor does it reflect the quality of performance. A lawsuit or grievance that is avoided through timely legal advice, or a reduction in damages, is not reflected in any empirical measure. Creativity in solving legal problems or minimizing legal risk is also not reflected in empirical data. Thus the best assessment is by reference to the annual performance reports provided to the Chancellor and the commentary and discussion about these items.

2. Secondary Assessment Tools

Valuable secondary assessment tools are the introspective review conducted by Legal Affairs in our annual retreat and weekly staff meetings. We will continue these assessments. Legal Affairs periodically reviews its legal work and anecdotally assesses responsiveness and effectiveness in assisting the university with its legal matters. Weekly staff meetings are held to discuss complex legal issues, review legal advice and cases handled by each attorney, review litigation case strategy, and identify policy issues and business practices that may need legal attention. This process is effective in identifying problems and issues in the university community and the appropriate response. We also receive evaluative information through our interactions with the UNC attorneys group and with the National Association of

Colleges and Universities. These interactions involve legal issues of common interest and in many instances we find ourselves ahead of the curve on emerging legal problems. Often we are called because attorneys and other institutional personnel see our work product as a model they seek to emulate.

In addition to our introspective review, we periodically conduct client satisfaction surveys. These surveys are distributed to executive officers, deans, directors and selected academic and administrative unit heads. Surveys were conducted in 1998 and 2003. We will continue to conduct the survey periodically as a tool to assist us in determining how well we are meeting the expectations of our campus clients.

In reviewing the work we have accomplished in the past three years we note a tremendous increase in requests for legal assistance via Groupwise. We also note increases in internal grievances, tort claims, and external agency discrimination claims. Our work is directly impacted by the initiatives of the administrative units that we serve. When we see legal issues arising we look to the source of the issue and seek to take proactive steps so that such issues will not reoccur or if they do occur the university will be better able to successfully address. We believe that we provide quality legal services both reactive and proactive and hope that increases in workload will not negatively impact our ability to continue to meet this performance objective.

C. Forecast

There are critical events and trends outside OLA that are important to understand in relation to our unit's performance and our future goals. We are impacted by our clients' initiatives as well as external legal regulatory developments. Several illustrative examples follow:

Personnel Matters: (1) Recently CES updated its MOU with all 100 counties which substantially changed operating practices with regard to how county operations personnel are paid. In the review process leading to this change, CES discovered a number of matters that continue to present HR with potential legal issues and which will continue to require a lot of legal assistance. These two matters will require continued legal input as we implement the MOU's and deal with individual personnel situations. (2) Increased discrimination complaints that are filed externally and increased internal grievances will continue to demand attorney time as we provide assistance at multiple review levels. We have seen an increase in the number of administrators requesting assistance in addressing employee disciplinary matters. When these can be resolved at an early level, it may avoid grievances, external agency complaints and potential lawsuits. We will continue to focus on providing early legal advice and developing or assisting in training to positively affect the outcome of these matters.

Economic Development and Technology Transfer: (1) The trend to Open Source licensing of software presents a new model of technology transfer that requires analysis and development of new legal expertise. (2) The attorney who works predominately on technology transfer is directly affected by the transition in the Office of Technology Transfer (OTT). The turnover in interim directors and licensing associates has required, and will continue to require, more "hands on" involvement in legal matters and in patent administration. In order to manage legal risk training in intellectual property and licensing law must be increased over the next year or two. In addition, our office will

work with the Vice Chancellor for Research to identify processes for legal risk management related to sponsored research and technology transfer. An example is the need for a seamless interface, such as a shared database between OTT and Sponsored Programs, to ensure that NC State does not grant rights in research agreements that are inconsistent with licenses or options granted by OTT or with existing patent applications. (3) New rulings in patent cases will require additional attention. For example, the United States Supreme Court recently in Medimmune, Inc v Genentech, removed a significant barrier for licensees desiring to challenge the validity and enforceability of licensed patents. Overturning decades of settled law in this area, the Supreme Court held that a patent licensee may seek a Declaratory Judgment that a licensed patent is invalid while retaining the benefit of the license. This ruling is anticipated to result in increased lawsuits being filed by patent licensees, but will also require efforts by universities to negotiate language in license agreements to avoid this contingency. Other cases out of the Federal Circuit will make it more difficult for the university to enforce its patents without risking litigation.

International Programs: (1) Our recent work with the College of Design has brought to our attention a number of employment, tax, and compliance issues with regard to our overseas academic programs. Operating educational programs abroad has significant implications – legal, budgetary and otherwise, for the university as it continues to focus on establishing an international presence in other foreign countries (e.g., China). Continuing to develop sufficient knowledge of these issues to provide advice to other colleges seeking to operate programs abroad will take additional attorney time. (2) An increase in our international ventures, academic, research, and business also presents issues of compliance with export laws and regulations, and this will require increased focus in the next three to five years.

Conflicts of Interest: (1) The recent enactment of a new State Ethics Law has focused attention on this general subject area. In addition, recent federal scrutiny involving consolidation of student loans has heightened public interest in how universities handle ethical concerns. We see this area as an area of increasing work due to the heightened public concerns as well as potential regulatory response to these issues. (2) Continued Economic Development and Technology Transfer also raise significant issues with regard to consulting and conflicts of interest that will also take up significant attorney time.

Privacy Issues and Electronic Data Security: This area has increased over the last several years and remains a source of continued legal work. Peer-to-Peer file sharing will continue to take attorney time as well as federal regulatory responses to Privacy issues. National Security Issues will continue to have an impact as we deal with CALEA and other federal regulatory initiatives in this arena.

Centennial Campus Development: Continued development of Centennial Campus is also a large part of our work and we see no decrease in the amount of legal work this entails. We have three compact plan initiatives related to future development on Centennial Campus and the Biomedical Centennial Campus.

We have noted an increase in the number of attorneys that UNC constituent institutions have added over the last several years. We believe these additions are due to the same trends we see happening on our campus – increase workload to accomplish the goals of the university in all it programs, traditional as well as new initiatives, as well as increased

federal and state regulatory initiatives. We note these increases with regard to our peer institution legal offices as well.

II. DIVISION GOALS FOR 2010

Our goals are to continue to provide quality legal services on the various matters we handle for the university and to assist the university in meeting its Vision and Investment Priorities as described in the strategic plan.

III. ACTION ITEMS

In addition to responding to daily legal work that covers a variety of subject areas, OLA is proposing the following proactive initiatives:

A. International Programs

Establishing and operating educational programs abroad (such as the Prague Institute) is a complex business venture with complex legal issues. Our work with the College of Design involving the Prague Institute has brought to our attention a number of employment, tax, and compliance issues with regard to our overseas academic programs. Operating educational programs abroad has significant implications, budgetary and otherwise, for the university as it continues to focus on establishing an international presence in other foreign countries, such as China. Recently the National Association for College and University Attorneys sponsored a workshop on overseas programs that provided additional insight into some of these legal issues. These insights led OLA to propose a compact initiative designed to put our international programs on firmer legal ground. We propose to work with the Office of International Affairs in this endeavor. This initiative would envision the hiring of outside counsel versed in foreign laws and their impact on study abroad programs. The goal is to avoid significant potential liabilities such as civil damages and government fines for tax, employment, contract and regulatory mistakes.

B. Violence in the Campus Environment

In light of the recent tragic incident at Virginia Tech, there is no better time than now to raise awareness, and discuss prevention and response to violence in the workplace and student setting. Two initiatives are proposed to address this topic:

1. Student Mental Health & Violence Protocol

This initiative involves the development of a protocol for handling different levels of safety concerns with mentally ill persons, from counseling and health awareness programs at one end to arrest or involuntary commitment at the other end. It would involve pulling together a team from Campus Police, the Counseling Center and Student Health Services, Environmental Health and Safety and Student Conduct to discuss how NC State can reduce the risks of student violence in the wake of the Virginia Tech shootings and to involve these units in the development of the protocol. UNC-CH has received favorable press for undertaking an initiative in this area. In

the interest of our student and employee safety, and for prevention of negligence claims, the university should have a well-planned and up-to-date protocol.

2. Workplace Violence Protocol

This initiative is to create a workplace protocol to address workplace violence. Currently the university is not in compliance with workplace violence prevention directives mandated by the Office of State Personnel. This initiative proposes to work with HR to come up with a PRR on this topic as well as mandatory training for all employees, if possible.

C. Education/Training and Associated PRR Development and Revision

1. Education/Training

- a. Purchasing & Contract Training - This initiative would involve working with the offices of Purchasing and Contract Management to prepare and present a presentation to faculty on purchasing rules and regulations. OLA believes that developing and providing this type of training would be helpful to faculty morale and support their academic core programs.
- b. Intellectual Property and Consulting Education/Training – OLA will develop and present seminars to educate faculty on consulting agreements/duties to the university regarding intellectual property and conflicts of interest.

Due to the number of new licensing associates, the fact that the office has operated with an interim director for over a year, and that it will have a new director shortly, training is needed for OTT in intellectual property and licensing law. OLA will develop a series of training sessions for that office in these areas.

- c. Department Head Training - This initiative will provide training to Department Heads and involve working with the Provost's Office and HR to develop a training program for department heads that is modeled after the QuickStart program (we could call it "HeadStart"). It would incorporate modules from different units of the university to conduct training for department heads and involve administrators and OLA attorneys, as appropriate. It will acquaint new department heads with university procedures and policies in various areas. For example, there could be modules on outside professional activities for pay and conflicts of interest associated with consulting; research misconduct; post-tenure review (how to manage it); disciplinary action/discharge for cause; dealing with problem employees and responding to grievances; compliance with public records laws and laws relating to privacy; hiring faculty members; etc. Developing the topics for this initiative would involve discussions with relatively new department heads about the types of matters they would have wanted to know at the beginning of their tenure as an administrator.

2. Policies, Regulations and Related Practices and Procedures

- a. Discrimination Complaints (Prevention, Investigation and Resolution) - This initiative is proposed to improve the prevention, investigation and resolution of discrimination complaints at NC State. Within the last fiscal year, employees have filed an unprecedented number of charges of discrimination with outside agencies (currently the number is at 15). In the past this number has been around 4-5 per year. In responding to these charges on behalf of NC State and in communicating with investigators from the outside agencies (EEOC and OAH-CRD), it has become evident that the current process can be improved. We have had meetings with representatives from OEO and HR to discuss action items to meet this objective. These action items currently include: 1) consolidating all of the discrimination PRRs from around nine to two or three and updating the Harassment Resolution Procedures to address all discrimination complaints not only harassment complaints; 2) completely revising the current SPA Grievance and Appeal Procedure; 3) coming up with a protocol for investigation of discrimination complaints when they involve SPA employees; and 4) creating some uniform forms and a database that OEO and HR can use to improve communication when investigations are referred to OEO. This initiative has the potential for reducing liability for NC State as it may reduce the number of outside complaints that are filed. In addition it will clarify processes for both employees and OEO/HR and foreclose employees raising procedural issues in litigation to detract from the main issue of whether the employee was in fact the victim of unlawful discrimination in the workplace.
- b. 603 Discharge Procedures and EPA Policy/Grievance Procedures - This initiative is proposed as a result of the increase in the number of faculty members who are being discharged for cause, and the recent focus by UNC-GA on post tenure review and related policies and procedures. We anticipate that the recent UNC Task Force chaired by Provost Nielsen will result in UNC Code changes that impact our procedures and that will require significant changes to these policies and procedures. Independent of this task force, ensuring that there are clear procedures for conducting post tenure review along with training materials for 603 Hearing Committees will facilitate post tenure review and related procedures. Clear procedures and training will help streamline the process and ensure that hearing committees are making recommendations based on proper considerations.

In addition, changes in the EPA Policy and a new EPA Grievance Procedure are needed to ensure consistency with BOG policies and UNC-GA regulations. Currently EPA employee grievances are processed through the Faculty Senate Chair following the Faculty Grievance procedure, a procedure that is more designed to accommodate faculty than EPA professionals or SAAO employees. It is logical to create a separate procedure for these employees.

- c. Intellectual Property Matters - OLA is proposing four compact plan initiatives that will involve working with the new Director and other Technology Transfer personnel to minimize potential liability and facilitate

the management and transfer of intellectual property developed at the university:

- Royalty Distribution of Patent Income – Work with the Associate Vice Chancellor for Research and the Intellectual Property Committee and assist them with the development of an amendment to the Administrative Regulation on Royalty Distribution which would allow the university to recoup its actual costs of patent prosecution and licensing before royalty distribution. Royalties would be distributed from “Net” rather than “Gross” royalty income, consistent with UNC Chapel Hill and most other public universities.
 - Ownership of Intellectual Property - Resolve legal uncertainty regarding university ownership of patents developed by employees/students arising from inconsistency of language in pertinent Board of Governors policies and NCSU policies
 - Review all processes and procedures to identify risks of university liability related to management of university intellectual property and advise on actions to ameliorate risk.
 - Work with the Vice Chancellor for Research to review the role and efficacy of the Intellectual Property Committee and make recommendations for change if needed.
- d. Cooperative Extension Service County Based Employees - Currently pending before the North Carolina General Assembly is proposed legislation to clarify that CES county-based employees are exempt from the State Personnel Act. If this legislation is enacted CALS Personnel and OLA will team up to review, revise and create new policies to implement this legislative clarification. This initiative will be time intensive depending upon the number and types of policies that need to be developed and/or revised.
- e. Records Retention and Disposition - The retention and disposition of university records is governed by state law, which requires the university to have an approved records retention and disposition schedule. The university’s current schedule consists of a schedule established in 1963, several unit amendments that were approved in the mid to late 80’s, and several miscellaneous university records series that were more recently approved. In the spring of 2003, OLA identified the need to update our schedule but put the project on hold when the State Department of Cultural Resources established a working group (which included representatives from UNC constituent institutions) to create a uniform general schedule for the entire UNC system. The uniform general schedule would allow constituent institutions to supplement the general schedule with unit specific schedules for documents not addressed in the university wide schedule.

In April 2007, the uniform schedule was finalized and sent to President Bowles for his final approval before being issued to the UNC campuses for implementation, where it is now pending. Once the new UNC General Schedule is implemented, this office will develop a regulation to clarify that

the University General Schedule approved by the Department of Cultural Archives is the approved NCSU schedule, that all previously approved schedules including any that were unit specific are superceded, and that any unit specific records that are not addressed in the schedule must be permanently retained unless NCSU seeks and obtains approval from the Department of Cultural Archives for a unit specific addendum to the General Schedule. This office will also draft a procedure for obtaining approval of unit specific addendum that may not be addressed in the General Schedule.

D. Contract Review and Revision

1. Athletic Coach Contracts - The goal of this initiative is to standardize the language in our head coach contracts, to have templates available before they are needed, and to develop a list of other financial and employment terms and conditions that are used by other institutions that may arise in future negotiations of head coach contracts.
2. Technology Transfer Contracts – Work with the Office of Technology Transfer to review and revise all standard legal documents. Revisions would include language to address legal issues that have arisen in the past and would anticipate future issues. This process will involve reviewing a number of legal documents from peer institutions to assist in identifying legal issues that should be addressed, but also to strive for consistency with our peers, which can enhance the efficiency of negotiations.
3. Real Estate Agreements – Work with the State Property Office and the Attorney General’s Office to prepare standard procedures for review and execution of NC State real estate instruments.

E. Centennial Campus Expansion

1. Alliance Center – This initiative involves working with the Centennial Campus Development Office and the Real Estate Office to negotiate the lease for the Alliance Center.
2. American Homes Project – This initiative involves working with the Centennial Campus Development Office and the Forestry Foundation on the development of the American Homes project on Centennial Campus. This will involve developing a ground lease and construction documents between the university and the LLC set up to develop the project. Additionally, there will be design and construction contract review and work with the advancement offices related to in-kind and monetary contributions that will be made for this project.
3. CBC Flex Building – This initiative involves working with the Centennial Campus Development Office and the Real Estate Office on development of a lease for an office building on the CBC.

IV. RESOURCES

A. Progress Report on 2000-07 Compact Plan Initiatives

Compact plan initiatives have been accomplished by current staffing and within annual salary and operating budget allocations.

B. Budget Review

The Office of Legal Affairs is a small office. Our primary budget is comprised of salaries for attorneys and staff and an operational budget to enable the office to function. We also have a separate budget that covers contracted services associated with student and faculty grievances and faculty discharges and related appeals. During the past several years we have not added any attorney positions yet our legal work has increased due to new initiatives and an increase in the federal and state regulatory environment. Further, our operating budget has been reduced by across the board cuts in response to decreasing legislative appropriations.

When our office lost three attorneys (two to promotional opportunities at sister institutions), we requested additional salary monies in order to recruit the expertise necessary for us to continue to provide quality legal services in discrete subject areas and to fund an internal promotion. We also requested additional funds to cover increased expenditures associated with an increase in internal faculty discharge hearings and grievances.

During fiscal year 2005-06 expenditures totaled \$903,442.76 of which 91.64% was expended on salaries and benefits, 6.01% for operating costs, 0.17% on discretionary spending, and 1.87% on contracted services for legal fees associated with the disposition of lawsuits and faculty discharge and grievances.

C. Recent Efficiency Improvements

While we have a limited budget and have had to request additional funds for attorney salaries and contracted services, we still have tried to maximize efficiency. For two successive years we transferred monies from our operating budget to cover increased contracted services expenses. However, we subsequently needed to request additional funding for the contracted services budget because we needed to use operating line money for other operating expenses.

To further maximize efficiencies, we have cancelled several legal subscriptions, and reclassified an SPA position to enable the creation of an additional support staff position. This office is diligent in responding to the time constraints of our clients and strives to complete time-sensitive tasks within deadlines without sacrificing quality. To this end and recognizing budget constraints, we have focused on working more efficiently by assigning appropriate tasks to law clerks and referring more non-legal matters to other administrative offices. Law clerks however need supervision and are here for limited times during the summer months. It is our strong opinion that the Legal Office and the University would benefit greatly from the addition of a permanent full-time entry-level attorney position to ensure this office continues to operate in a timely, efficient and effective manner.

D. Future Efficiency Improvements

It will be difficult for the Legal Affairs Office to realize further efficiencies within the current budget for the following reasons: (1) In the last seven years this office has endured substantial budget reductions for a small office. (2) This office has a limited operating budget and there is little room within the budgeted categories to add new positions, provide market salary increases, or reallocate monies within the operating budget. (3) This office is understaffed and continues to experience an increase in case load related to public records requests, technology and research related matters, administrative agency complaints, lawsuits and tort liability issues as well as increasing federal and state regulatory requirements. Should additional monies become available, such monies should be devoted to the hiring of an additional entry level staff to permit senior attorneys to devote more time to complex legal issues and compact plan initiatives and additional law clerks during the summer months. (Since we do not have a law school, law clerks are generally not available to us during the school year.)

E. Summary of Action Items requiring new resources

Despite increased workload, during the last seven years we have not added any new attorney positions to the legal office but we have continued to do our traditional recurring legal work and new compact plan initiatives with the same level of staffing. We have hired summer law clerks, but we are at a disadvantage in hiring law clerks during the remaining months of the year. To maximize attorney efficiency, ideally, the office should add at least one entry level position to assist senior level attorneys with entry level daily work so that senior level attorneys can focus on staying current with new legal developments and developing skills and knowledge to address major institutional initiatives and complex legal matters. It is essential for attorneys to stay current in relevant areas of the law and to conduct sufficient research to be able to provide quality legal advice and representation.

IV. PLANNING PROCESS

Legal Affairs formulated the information for this compact plan through analysis and review of a broad array of legal issues that impact the core business processes and goals and objectives of a public, land grant institution. We have examined major new trends in federal and state laws and regulations, current events and past practices, pending litigation and administrative proceedings and areas of potential legal exposure and risk, and major institutional goals, objectives and initiatives. Our planning process included: (1) several in depth meetings to discuss and review these matters; (2) the submission of three to five compact plan initiatives by each attorney addressing their areas of work; (3) meetings with stakeholders from HR, OEO, Research and Sponsored Programs, CES, Real Estate and Centennial Campus Development to build a collaborative partnership and discuss the identified compact plan initiatives and action items; (4) and a review of attorney work load, financial resources, and savings and efficiencies. Between April and June 2007 several internal planning sessions were held to develop and finalize our final submission of major compact plan initiatives for 2007-2010.