Legal Issues for New Faculty

PRESENTED BY:
THE OFFICE OF THE GENERAL COUNSEL

2016-17 ACADEMIC YEAR
Hot Topic 1:
What is the Office of the General Counsel and what does it have to do with me?
Office of the General Counsel

- The Office of the General Counsel represents UVM as an institutional client, the institution acting through its authorized officials, including the Board of Trustees, the President, the Provost and Senior Vice President, Vice Presidents, deans and directors, and other persons responsible for the management of academic and administrative units.

Fran Bazluke, Tom Mercurio, Lucy Singer & Jennifer Papillo
357 Waterman Building
(802) 656-8585
General.Counsel@uvm.edu
http://www.uvm.edu/~gencnsel/
Defense & Indemnification Policy

Indemnification – Officers & Employees
http://www.uvm.edu/policies/general_html/indem.pdf

- Can faculty members be sued in their capacity as employees of UVM? **YES**.

- Will the University help? **YES, if:**
  - The conduct occurred within the scope of University employment; and
  - The conduct or actions were taken in good faith (a manner reasonably believed to be lawful and without gross negligence).
Matters Outside the Scope of Representation

- The General Counsel's Office has an obligation to refrain from advising faculty on matters within the scope of their union representation.
  - Copies of collective bargaining agreements may be found at:
    - [http://www.uvm.edu/~facrsrscs/?Page=ftcontract.html](http://www.uvm.edu/~facrsrscs/?Page=ftcontract.html) (Full Time)
    - [http://www.uvm.edu/~facrsrscs/?Page=ptcontract.html](http://www.uvm.edu/~facrsrscs/?Page=ptcontract.html) (Part Time)

- The Office does not provide personal legal advice or representation to UVM administrators, faculty, students, or staff.
Hot Topic 2: Records Requests, Subpoenas & Agency Investigations
Vermont Public Records Act

Records and Documents Request Policy
http://www.uvm.edu/policies/general_html/records_request.pdf

- UVM is an instrumentality of the State of Vermont, and is subject to the requirements of the Public Records Act (Title 1, sections 315-320).

- **Public Record or Document:** is a written or recorded matter produced or acquired in the course of University business. All public records and documents are subject to prompt disclosure upon request unless they are exempt under the provisions of the Vermont Public Records Act.

- **ALL Public Records Requests should be directed to:**

  Gary Derr, VP for Executive Operations
  348 Waterman Building
  Gary.Derr@uvm.edu
  (802) 656-8937
Government Reviews

Government Reviews Protocol
http://www.uvm.edu/policies/general_html/govreviews.pdf

- It is the practice of the University of Vermont to cooperate fully, appropriately, and effectively with all lawful inquiries, inspections, audits, investigations, unannounced visits and other information-gathering activities conducted, directly or indirectly, by federal, state, or local Government regulators.

- **If you are contacted by a Government Regulator:**
  1. Advise them of the University’s Government Reviews Protocol
  2. **Contact the VP for Executive Operations (x68937)**
  3. Wait for further direction from the VPEO.
Notice of Legal Action

Subpoenas and Other Legal Documents Policy
http://www.uvm.edu/policies/general_html/subpoenas.pdf

• The Office of the General Counsel, or persons at their request and direction, are the sole University officials and employees authorized to accept subpoenas, complaints, notices of class action, warrants, or other legal documents addressed to the University, institutional officers, and other persons named in their capacities as University officials or employees.

General Counsel
357 Waterman Building
(802) 656-8585
General.Counsel@uvm.edu
Hot Topic 3: Business Conduct, Contracts & Ethics
Conflicts of Interest and Commitment

- Faculty must disclose conflicts of interest and commitment as they arise to their department chairs or, in units with no chairs, to their deans.

  - A **conflict of interest** arises with respect to activities that compromise, or appear to compromise, an employee’s judgment in performing his or her University duties. These conflicts can arise when an employee, or a member of his/her family has an existing or potential personal, financial or other interest that: (a) impairs or may reasonably appear to impair his/her independence of judgment in the discharge of responsibilities to the University; or (b) may result in personal gain or advancement at the expense of the University.

  - A **conflict of commitment** occurs when external activities undertaken by a UVM employee will or reasonably can be expected to significantly interfere with his or her ability to perform obligations to University duties fully or effectively.
Contracting Authority

Contract Approval and Signatory Authority Policy
http://www.uvm.edu/policies/procure/contract.pdf

- Individuals have the authority to enter into negotiations, approve and/or sign contracts on behalf of the University only pursuant to:
  - (1) a resolution of the Board of Trustees;
  - (2) a valid delegation of authority from the President or the Board; or
  - (3) a purchase made in accordance with the University “Procurement or Lease of Goods and Services and Contract Approval and Signatory Authority for Procurement or Lease of Goods and Services” Policy.
Employees are encouraged to use the Help Line to address questions regarding compliance issues or anonymously to report incidents or situations that may involve violations of the University's Code of Business Conduct (http://www.uvm.edu/policies/general_html/businessconduct.pdf) or other policy standards or legal requirements.

**Non-Retaliation Statement**
- Neither the University nor its employees may retaliate against a whistleblower with the intent or effect of adversely affecting the terms or conditions of employment or enrollment (including but not limited to, threats of physical harm, loss of job or educational status, punitive work assignments, or impact on salary or wages).
Hot Topic 4:
FERPA
Family Educational Rights and Privacy Act of 1974 (FERPA)

FERPA Rights Disclosure Policy
http://www.uvm.edu/policies/student/ferpa.pdf

- FERPA grants current and former students the right to access their own educational records, while limiting, for privacy reasons, the release of those same records to anyone other than the student and/or their designee.

- *Student educational record*: those records, files, documents, and other materials that:
  - contain information directly related to a student, and
  - are maintained by the University of Vermont or by a person acting for the University of Vermont.
FERPA: Disclosure of Records

- School officials with a legitimate educational interest may access student records, and may discuss student issues internally without violating FERPA.

- Non-Directory information (as defined by UVM) must not be disclosed to anyone without prior written consent of the student unless the discloser falls under a FERPA exception.

- Parents have no inherent rights under FERPA to inspect a student’s education records. Records may be but are not required to be released to parents under the following circumstances:
  - with the written consent of the student;
  - in compliance with a judicial order or subpoena;
  - in connection with a health or safety emergency as determined by UVM; or
  - in the case of violation of the college’s drug/alcohol policy, if the student is a dependent on their parents’ most recent tax return.
FERPA: Campus Contacts

- Registrar Keith Williams
  Waterman 360
  Tel: (802) 656-2045
  Email: Keith.Williams@uvm.edu

- Office of the General Counsel
  Waterman 357
  Tel: (802) 656-8585
  Email: General.Counsel@uvm.edu
Hot Topic 5: Copyright & Fair Use
The Basics of Copyright Law

- **Copyright:**
  Pursuant to Federal law, for a limited period of time, the owner of a copyright has the exclusive right to reproduce a protected work; to prepare derivative works that only slightly change the protected work; to sell or lend copies of the protected work to the public; to perform protected works in public for profit; and to display copyrighted works publicly (including via the Web). The term "work" used in copyright law refers to any original creation of authorship produced in a tangible medium.
Permission to Use Copyrighted Works

- Individual faculty members are responsible for adhering to standard copyright laws and policies.

- Written consent from the copyright owner is required in order to use or serve copyrighted works. Documentation of consent must be kept in your records and made available to University officials upon request.
The Fair Use “Exception” to Consent

- Fair use is a subsection of U.S. copyright law that allows for the use of a portion of copyrighted material in a way that does not infringe the owner's rights without the need to obtain written consent from the copyright owner.

- Four factors must be considered when determining whether one's use is considered fair use:
  1) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
  2) The nature of the copyrighted work;
  3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
  4) The effect of the use upon the potential market for, or value of, the copyrighted work.
Further Information

UVM Copyright Policy
http://www.uvm.edu/policies/general_html/copyright.pdf

• Bailey Howe Library
  ○ 538 Main Street
  ○ (802) 656-2023

• Office of the General Counsel
  ○ (802) 656-8585
  ○ General.Counsel@uvm.edu
Hot Topic 6: Intellectual Property
Ownership of Intellectual Property

**Intellectual Property Policy**

- Adherence to the University’s Intellectual Property Policy is considered a condition of, and in consideration of, employment, for all faculty, staff and students whom the University employs.

- **Intellectual Property developed by faculty, staff and students in the course of, or directly related to, such individual’s participation or involvement in a program, project or other relationship between the University and a third party including, but not limited to, such relationships as sponsored research, joint studies, cooperative or collaborative agreements, clinical trials and the like, shall be assigned to the University and considered “University-Owned”**.
Campus Contacts

• Policy Questions:
  o Vice President for Research, Richard Galbraith
    ▪ 330 Waterman
    ▪ Tel: 656-2918
    ▪ Email: Richard.Galbraith@uvm.edu

• Invention Disclosures and IP Administration:
  o Office of Technology Commercialization
    ▪ Given Bldg E201
    ▪ Tel: 656-8780
    ▪ Email: Corine.Farewell@uvm.edu
Hot Topic 7: Discrimination & Harassment
Discrimination and Harassment

The University prohibits discrimination, including harassment, on the basis of unlawful criteria such as race, color, religion, ancestry, national origin, place of birth, sex, sexual orientation, gender identity or expression, marital status, disability, age, positive HIV-related blood test results, genetic information, or status as a disabled veteran, recently separated veteran, other protected veteran or Armed Forces service medal veteran, as these terms are defined under applicable law, or any other factor or characteristic protected by law.

Complaints should be addressed to:

Affirmative Action & Equal Opportunity Office
428 Waterman Building
(802) 656-3368
http://www.uvm.edu/~aaeo/
Sexual Misconduct

- Sexual misconduct includes, but is not limited to, sexual assault, and domestic violence, dating violence, and stalking where the conduct is based on the sex/gender of the victim. All of these are serious crimes that can occur to men and women, whether gay, straight, transgender or bisexual.

- If you learn that an incident of sexual misconduct involving a member or members of the University community may have occurred, you **MUST** share that information with the following offices in accordance with the University’s Policy on Sexual Harassment and Misconduct (http://www.uvm.edu/policies/general_html/sexharass.pdf):
  - Title IX Coordinator/Director of AAEO (TitleIX@uvm.edu)
  - Campus Victim’s Advocate (TitleIX@uvm.edu)
  - UVM Police Services via CSA Information Portal (www.uvm.edu/police/csa)

- You **CANNOT** promise confidentiality when someone discloses an incident of sexual misconduct.
Non-Retaliation

- The University **prohibits** retaliation against individuals who make complaints of discrimination, serve as witnesses, or otherwise cooperate with investigations, regardless of the outcome of the complaint.

- Persons determined to have engaged in retaliatory conduct are subject to disciplinary action, including, but not limited to, separation from the University.
Additional Policies of Note

- **Equal Employment Opportunity/Affirmative Action**
  - [http://www.uvm.edu/policies/general_html/affirm.pdf](http://www.uvm.edu/policies/general_html/affirm.pdf)

- **Equal Opportunity in Educational Programs and Non-Harassment**
  - [http://www.uvm.edu/policies/student/equaledu.pdf](http://www.uvm.edu/policies/student/equaledu.pdf)

- **Harassment**
  - [http://www.uvm.edu/policies/student/studentharas.pdf](http://www.uvm.edu/policies/student/studentharas.pdf)

- **Sexual Harassment and Misconduct - Interim**
  - [http://www.uvm.edu/policies/general_html/sexharass.pdf](http://www.uvm.edu/policies/general_html/sexharass.pdf)
Hot Topic 8: Americans with Disabilities Act (ADA)
The ADA at UVM

Disability Accommodation for Employees & Applicants
http://www.uvm.edu/policies/hr/disabilityemployee.pdf

Disability Certification and Support – Students

• The University of Vermont does not discriminate against qualified individuals with disabilities in any aspect of employment or educational programming.
Certification Process for Employees

- Employees who require a reasonable accommodation for a disability in order to perform the essential functions of their job should contact the ADA Liaison in Human Resource Services for initial certification of a disability.

  ADA Liaison – Courtney Cioffredi  
  428 Waterman Building  
  (802) 656-0945  
  www.uvm.edu/hrs/disability

- Once an employee is certified by the ADA Liaison as having a disability, the University and employee will engage in an interactive process to determine whether a reasonable accommodation is available.
Certification Process for Students

- Students who wish to be considered for a reasonable accommodation for a disability must contact the ACCESS Office. Faculty or staff approached by a student asserting the need for an accommodation must refer the student to the ACCESS Office for initial certification of whether the student has a disability and for appropriate process to determine potential reasonable accommodations.

ACCESS
A-170 Living Learning Center
(802) 656-7753
http://www.uvm.edu/access/
Hot Topic 9:
Crime on Campus

UVM Police Services
Emergency: 911
656-FIRE (x63473)
Personal Safety & Security

Personal Safety & Security Policy

http://www.uvm.edu/policies/general_html/personalsafety.pdf

- In a possible or actual emergency situation, administrators, faculty, and staff **must** report threats or acts of violence **immediately** to UVM Police Services.

- In a non-emergency situation, employees should contact their immediate supervisor or department head (or the next-senior University official in the event that the immediate supervisor or department head is the source of the perceived threat).
Clery Act Compliance

Campus Safety and Security: Clery Act Policy
http://www.uvm.edu/policies/riskmgm/clery.pdf

Campus Security Authority UOP
http://www.uvm.edu/policies/riskmgm/campussecurity.pdf

• Under the Clery Act, certain individuals designated as Campus Security Authorities (CSAs) are required to promptly report Clery qualifying crimes that occur on or near University property to UVM Police Services for inclusion in the University’s Annual Report.

• It is the joint responsibility of the Director of Administrative and Facilities Services Auxiliary Services and the Vice Provost for Student Affairs (CSA Coordinators) to annually identify who, as a result of their job duties at the University, constitutes a CSA. An annual notice will then be distributed to all CSAs informing them of their responsibilities under the Clery Act and University policy.

• The University *strongly encourages* all CSAs to complete a training program to familiarize themselves with their legal obligations under the Clery Act on an annual basis.
Reporting Suspected Child Abuse or Neglect

• **UVM requires** any employee who has reasonable cause to believe that a minor participating in a program or activity at the University has been sexually abused or neglected to report the concern promptly to the Vermont Department for Children and Families (DCF).

• Vermont law further requires that certain professionals make those reports to DCF **within 24 hours** by calling the **Child Abuse Hotline** at 1-800-649-5285.

• The professionals who have a legally mandated reporting obligation are:
  - Physicians, surgeons, osteopaths, chiropractors, physician’s assistants, hospital administrators, nurses, medical examiners, dentists, psychologists, or other health-care providers;
  - School superintendents, teachers, school librarians, child care workers, school principals, school guidance counselors;
  - Mental health professionals social workers;
  - Employees, contractors, and grantees of the agency of human services who have contact with clients;
  - Probation officers and police officers;
  - Camp owners, camp administrators or counselors;
  - Members of the clergy
Hot Topic 10:
Off Campus Programming
Internships, Field Trips, Research, etc.

- Are you interested in leading students off-campus for educational endeavors? If so, remember that in addition to receiving advance approval from your Department Chair and/or Dean, as applicable, you must work with the following offices:

  - **Risk Management & Safety** (insurance, activity guidelines, etc.)
    - 284 East Avenue -- (802) 656-3242 -- [http://www.uvm.edu/~riskmgmt/](http://www.uvm.edu/~riskmgmt/)

  - **General Counsel** (creation/review of contracts and agreements)
    - 357 Waterman Building -- (802) 656-8585 -- General.Counsel@uvm.edu

  - **Office of International Education** (if international)
    - Living/Learning Center, B-162 – (802) 656-4296 -- [http://www.uvm.edu/oie/](http://www.uvm.edu/oie/)
Spotlight on Available Resources

- **Domestic Travel/Field Trip Guidelines**

- **International Travel/Study Abroad Guidelines**

- **Global Health & Safety Information**
  - [http://www.uvm.edu/oie/?Page=info.html](http://www.uvm.edu/oie/?Page=info.html)

- **Motor Vehicle Use Policy**
  - [http://www.uvm.edu/policies/riskmgm/driversafety.pdf](http://www.uvm.edu/policies/riskmgm/driversafety.pdf)

- **Travel Accident Insurance Information**
Questions?

OFFICE OF THE GENERAL COUNSEL
357 WATERMAN
656-8585

UNIVERSITY POLICIES AND OPERATING PROCEDURES
HTTP://WWW.UVM.EDU/POLICIES/