



General Legal Issues

Office of Legal Counsel



WHO WE ARE...
WHAT WE DO

Our Attorneys and Staff

- Melanie Murry – University Counsel
- V. Latosha Dexter – Deputy University Counsel
- John Michael Ryall – Assistant University Counsel
- David E. Cooley – Assistant University Counsel
- Ingrid Powell – Legal Affairs Coordinator
- Mary Shepard – Legal Assistant



Advice and Counsel

It's really that simple!

OLC provides advice and counsel on legal matters involving or affecting the University.

And that sounds really simple but there are a couple of more things you need to know...



"I'd like to open the floor to questions, but my attorneys have advised me not to."



The University is our client

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

ABA Rule 1.13

- Our role is to always act in the best interests of the University and we pretty much never stop being University counsel
- So be careful what you tell us...and speaking of what you tell us...



Attorney-Client Privilege: What is it?

“When one of the constituents of an organizational client communicates with the organization’s lawyer in that person’s organizational capacity, the communication is protected by Rule 1.6.” ABA Rule 1.13, cmt. 2



Elements of Attorney-Client Privilege

- Privileged Person – OLC attorneys/staff and individuals acting on behalf of the University, typically with some authority to make decisions
- Confidential Communication – the information must be communicated in a confidential setting with the intent to be kept confidential and must be kept confidential
- Legal Advice – the communication must be to seek or receive legal advice



Litigation

- The Attorney General's Office represents the University when it is sued in federal or state court
 - The AG is responsible for all legal pleadings, all court appearances, etc.
- OLC's role is to assist the AG's office – scheduling, determining witnesses and the institutional representation, attending depositions and court hearings
- If served with a lawsuit that names the University notify OLC immediately.



Litigation holds

- Sent out whenever litigation is anticipated or initiated
- Notifies relevant individuals of their duty to preserve and protect from destruction all documents and data that may relate to a pending or potential legal action involving the University
- Sent to anyone who may possess material that is relevant or likely to be relevant to the matter
- Failure to preserve data could result in the University and any named University employees being sanctioned in court and disciplinary action!

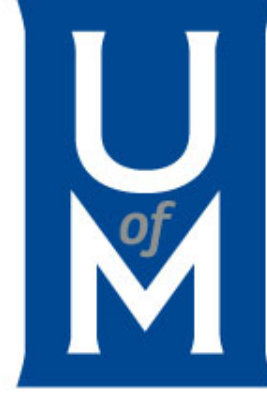


What if I'm named in a lawsuit?

The Attorney General can provide representation for employees subject to the following conditions:

1. The lawsuit must be based on acts or omissions within the scope of the employee's employment;
2. The acts or omissions cannot be willful, malicious or criminal; and
3. The acts or omissions were not done for personal gain.





SOME THINGS YOU NEED
TO KNOW...

Claims against the University

- Individuals who want to file a claim for property damage or personal injury must go through the Claims Commission
 - E.g. someone trips over a bollard; a student's clothes are burned by a faulty dryer
- Claims must be made within 1 year of the date of the incident
- The OLC website has a Claim for Damages form that should be completed and submitted to the noted address



Political Activity

- May not use your role as a University employee to interfere with an election or nomination for office.
- May not directly or indirectly attempt to intimidate, coerce or command any other employee to vote for or against any measure, party or person, or knowingly pay or accept payment from another state officer or employee for political purposes or election expenses.
- May not solicit, directly or indirectly, contributions for political purposes or campaign expense from any person who does business with the state or whose employment is funded by the state.
- May not promise state benefit(s), or deprive or threaten to deprive any person of state benefit(s) as a reward for political activity.



Political Activity

- May *only* engage in political activity while on leave, or during the hours of the day when employee is not conducting business of the state.



Political Activity – University Resources

- May not place *any* campaign materials (e.g., literature, banners, stickers, etc.) on the premises of any building or land owned by the state or use *any* of the facilities, including equipment and vehicles, for such purpose(s).
 - Exception: may display decal or bumper sticker on personal vehicle while parked on state property.
- May not use public buildings or facilities for meetings or preparation of campaign activity in support of any particular candidate or party, unless equal opportunity or reasonable access is provided for all sides.



Media

- The President is the official spokesperson of the University of Memphis.
- No one should make a statement to the press, on behalf of the University, without the express permission of the President.
 - Personal statements to the media should be explicitly identified as a personal statement and not on behalf of the University.
- Any media requests should be referred to Marketing and Communications.

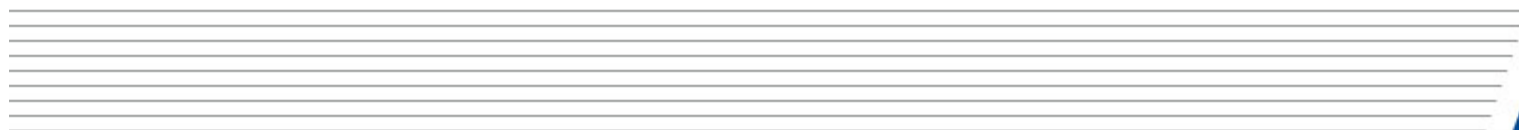




INDIVIDUALS EXTERNAL TO THE UNIVERSITY

University Volunteers

- All volunteers utilized in any University program must be registered with the Tennessee Board of Claims.
 - Protects University from liability arising out of volunteer's service.
 - Helps ensure volunteer and University reimbursed for defense costs.
- Volunteers may include, but are not limited to:
 - Members of the community serving on University committees;
 - Students who provide services for various departments or programs;
 - Student leaders (i.e., SGA president); or
 - Unpaid persons in athletics and other areas.



How to Register as a Volunteer

- Must complete both Statement of Understanding/Agreement and Board of Claims Volunteer Registration Form.
- **Statement of Understanding/Agreement:**
 - Completed and signed by the volunteer and the Administrative Supervisor of the Volunteer.
 - Approval of Statement of Understanding/Agreement must be approved and signed by the appropriate University designee which is usually the Provost, a VP or the Athletic Director or his/her designee.
- **Board of Claims Volunteer Registration Form:**
 - Completed by the coordinator of the volunteer activities.
- All forms are completed and returned to OLC for processing.



Minors on Campus

- University-sponsored Programs and Activities that involve minors (under 18) have specific procedures for volunteers.
- Activities involving minors must be approved by the division head – e.g., Provost, VP.
- Specific acknowledgment forms (found on OLC website) must be completed for activities involving minors and retained by the department.
- Volunteers must complete volunteer registration.
- Background checks and the TN Sex Offender Registry must be checked for all individuals working with minors.
- Insurance is required for third-party events that involve minors, even if faculty or staff procured the space for the third-party event.





SUBPOENAS AND OPEN RECORDS

Oh No – The Dreaded Subpoena!



Sooner or later you or your department will likely be served with a subpoena requesting records or for you to appear at a deposition or in court to give testimony.



What is a subpoena?



- A subpoena is a legal document which orders a person to:
 - Appear to give testimony at a deposition or at trial; or
 - Produce documents; or
 - Both





You have been served! Now what?

- If the legal matter involves the University, contact the Office of Legal Counsel.
- If the documents or testimony sought involves work you do in your capacity as a University employee, contact the Office of Legal Counsel.
- If the legal matter, documents or testimony involve your personal life, contact your personal lawyer.



I want your records!

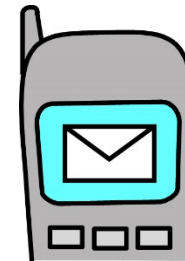
What is the law?

- T.C.A. § 10-7-503: All state records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

This includes, but is not limited to,:

- Employment records (excluding performance review); and
- University-related business conducted on your cell phone (e.g., text messages & emails) and on your personal computer.

If you receive an open records request forward to the Office of Legal Counsel immediately!





Conflicts of Interest

What is a Conflict of Interest?

- The concepts of conflict of interest and conflict of commitment arise out of the fiduciary duty that an employee owes to his or her employer.
- **Conflict of Interest:** “Occurs when the personal interests, financial or otherwise, of a person who owes a duty to the University of Memphis actually or potentially diverge from the person’s professional obligations to, and from the best interests of, the University.” *GE2021 – Conflict of Interest*
- **Conflict of Commitment:** “Occurs when the personal or other non-University related activities of an employee of the University impair the ability of that employee to meet their commitments of time and energy to the University.” *GE2021 – Conflict of Interest*



Examples of Conflicts of Interest

- **Self Dealing:** Situations in which an employee can appear to influence or actually influence a University-related decision from which that person or a member of that person's family stands to realize a personal financial benefit, or other personal benefit.
 - Purchase of State-owned property by an employee absent fair and open bidding, where required.
 - Institutional purchases from businesses in which an employee or family member has a financial interest.
 - Requiring students to purchase educational materials in which you have a financial interest (note there is a way to “manage” this conflict by getting the proper approval for use of the materials).
 - Acceptance of gifts, gratuities, or favors.
 - Approval of University transactions involving yourself or a family member.



Examples of Conflicts of Interest

- **Inappropriate use of students and support staff:** Employees must make sure that the activities of students and support staff are not exploited for the benefit of any non-University related activity of the faculty or staff member.
- **Inappropriate use of state owned resources:** Employees may not make significant use of University owned facilities, equipment, materials or other resources, not otherwise available to the public, in the course of activities which are not related to the University, without prior disclosure and approval.
- **Failure to disclose intellectual property:** Persons affiliated with the University have a duty to disclose inventions or copyrightable works which may reasonably be expected to have commercial value and which have jointly or solely been developed or created during their affiliation with the University of Memphis.
- **Nepotism:** No employees of the University who are relatives shall be placed within the same direct line of supervision whereby one relative is responsible for supervising the job performance of another relative.



Conflict of Interest Disclosure

- If you believe that a conflict of interest may exist with respect to you or another person covered by these rules/policies, you must make a written disclosure of the facts and circumstances surrounding the situation.
- The disclosure form is attached to the Policy, GE2021. The form should be submitted to OLC, reviewed by Conflict Review Committee.
- Conflicts Review Committee:
 - Will review and issue a decision regarding conflict disclosure.
 - If conflict violation of law → sent to President to review along with OLC.
 - If not violation of law → decision made, e.g., plan to manage conflict, requirement to eliminate, determination no conflict.
- Appeals: Decisions made by the Conflict Review Committee may be appealed within five (5) days to the President of the University. Decisions of the President shall be final and binding.



Outside Employment

- Outside Employment can create a conflict of interest. *See Extra Compensation and Outside Employment (HR 5011).*
- Employees should not provide consulting services to an external organization when those services would conflict or be in competition with University Services.
- Employees must notify department head (verbally or in writing) of nature and time commitment of outside employment.
 - Exceptions: short-term professional services (speaking engagement, exhibition, etc.) or activities outside employment contract period or while on leave.
- Outside employment must not interfere with any University responsibilities.
- University property and facilities (e.g., offices, telephones, computers services, etc.) cannot be used in outside employment unless use has been approved in advance by the immediate supervisor/department head. If approved, compensation to the University may be required at rates established by the University.



Outside Employment

- Employee must make clear to any employer that the work to be performed has no official connections with the University.
- Outside employment that involves other TN agencies is subject to prior approval by the UofM, and the appropriate representative of the other agency.
- University employees may not employ through outside consulting or business activities with another university employee for whom they have direct supervision.





Waivers and Releases

Waivers and Releases – What are They?

- A waiver or release gives up a right, such as releasing one from his/her liability for harm or damage that may occur from performing under a contract, or participating in an activity.
- Form waivers and releases can be found on the Office of Legal Counsel Website.
- If you are not sure if your activity or event can be sufficiently covered by one of these forms, please contact our office for assistance.



Waivers and Releases – When to Use Them

- Waivers and releases are required when we have individuals participating in a University sponsored event.
 - This includes things like camps, field trips, etc.
- In any event where another party is hosting an event on campus, waiver language must be included in the contract to release the University from liability in the event of an accident or other damage causing event.



Waivers and Releases – Special Situations

- Media/Image Release

- Anytime you wish to take pictures of other persons for use in research, program or other University publications, you must obtain a media/image release from those individuals photographed
- This release does not release the University from liability, rather it is a grant of right by the individual to the University to use their likeness in materials without compensation





Contracting at the University

What is a Contract?

- An agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration.
- The vehicle that drives the vast majority of University dealings.
 - Software
 - Equipment
 - Events
 - Athletics
 - Housing
 - Food/Vending



What is a *University* Contract?

- Form contracts for the University can be found on Procurement's Website
 - Forms should always be used when we are able. This will greatly reduce the turnaround time for agreements.
 - The subject of using a form University contract should be broached with vendors *before* selecting them.
 - If you are deciding between two vendors who can offer roughly the same services at roughly the same price, go with the one that will use the our form contract.
- The University cannot agree to just any contract term, including several "industry standard" terms.
- Any purchase of a good or service must be routed through Procurement for proper review.
 - Free or at cost.



Who can Sign University Contracts?

- University signatory authority is found in University Policy BF4008 – Contracts and Signatory Authority
 - All business officers and those in charge of ordering or approval for your department should know this policy
- The President has delegated authority to individuals to sign contracts on behalf of the University.
 - The Director of Procurement will sign agreements for any purchase of goods and services less than \$250,000.00.
 - The VP for Sponsored Programs has unlimited authority to sign agreements that fall within its purview.
 - The Provost can sign agreements such as faculty employment contracts, exchange agreements and study abroad agreements.



I Have a Contract – Where do I Send It?

- Any contract for the purchase of goods and services should go directly to Procurement, and they will assist in the processing of the contract.
 - These contracts should not come to legal first. Procurement will determine if the contract requires legal review.
- Other “non-procurement” agreements should come directly to legal for review and processing for signature. This includes:
 - Memorandums of Understanding
 - Study Abroad Agreements
 - Exchange Agreements

*Make sure agreements are vetted and approved within Division prior to sending for signature and/or legal review, **especially for business terms.***





UNIVERSITY RESOURCES

Policies

- Policies apply to faculty, staff, students, and visitors of the University.
- Intent – provide guidance in assisting with compliance of state and federal laws and regulations and provide expectations for conducting University business.
- PolicyTech
 - Policies can be searched by subject matter, department, or document owner, or you can do a custom search
 - Board of Trustees: BT1000
 - General: GE2000
 - Academic: AA3000
 - <https://memphis.policytech.com/?public=true&siteid=1>



OLC Website

- About Us – our staff and what we do
- Contracts – explains contract review process
- Immigration – contact OLC for information on non-immigrant visas needed for faculty and professionals for employment
- Forms – forms for University use, including Minors on Campus
- Open Records – how to make open records requests
- Resources – Frequently Asked Questions and other legal resources
- Training – OLC provides a range of trainings and certain trainings may be requested
- <http://www.memphis.edu/legal/>



Offices for Specific Issues

- Disability Resources for Students (DRS)
 - Arranges, coordinates, and provides academic accommodations and support for qualified students with disabilities
 - Students must be registered with DRS to be eligible to receive accommodations
- Office for Institutional Equity (OIE)
 - Provides institutional leadership in promoting and furthering the University's commitment to equal opportunity and nondiscrimination for all members of its community
 - Supports compliance efforts in the areas of equal opportunity, affirmative action, harassment prevention, nondiscrimination, and Title IX



Offices for Specific Issues

- Office of Student Accountability, Outreach, & Support (SAOS)
 - Advocates for student rights by enforcing the Student Code of Rights and handling violations of the Code
 - Helps students navigate issues such as unexpected life events, personal crises, mental health struggles, and academic difficulties
- Procurement and Contract Services
 - Handles the daily responsibilities of purchasing services, contracting services, purchasing card management, and disposal of surplus property
- Office of Sponsored Programs (OSP)
 - Serves faculty and staff pursuing research or other sponsored projects funded by federal, state, or private agencies and organizations
 - Helps in identifying funding opportunities, preparing grant proposals, securing institutional approval for proposals, submitting proposals for funding, and ensuring compliance with federal, state, and Institutional regulations



Offices for Specific Issues

- Counseling Center

- Provides counseling, wellness and psychiatric services for UofM students
- Most services are available free of charge for currently enrolled students

- Police Services

- Responsible for providing all police/law enforcements services to the University community
- Usually limit activities to the campus and “Enforcement Area,” but officers have enforcement powers anywhere in the City of Memphis
- Resources: daily incident log; silent witness report; reporting sex crimes; personal safety reports
 - App: “LiveSafe”



Contact Information

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legalcounsel@memphis.edu



Questions?



