

OFFICE OF GENERAL COUNSEL OFFICE RESPONSIBILITIES AND ROLE

History of Position

Prior to 1964, the legal affairs of the University were handled by the Michigan Attorney General as legal representative of the State Board of Education. In 1965, the newly formed Board of Trustees retained Byron P. Gallagher, a local attorney, as attorney for the University. The requests for legal advice grew over the years. In August of 1971, the office of University Counsel was created. In 2000, the title was changed to Office of General Counsel

Office Mission

Provides, or arranges for providing of, all legal services to Central Michigan University. Assists in preventing institutional and employee legal liability and in defending against claims.

General Responsibilities

- A. Chief legal officer for the institution; responsible for the legal concerns of the institution.
- B. Advises and alerts University officials regarding how the law may affect current and emerging policy and business decisions at the institution.
- C. Provides legal opinions, advice and assistance to all offices of the University. Obtains services from outside counsel when appropriate.
- D. Drafts or reviews drafts of institutional policies, rules and practices.
- E. Handles, or supervises the handling of, all litigation and administrative agency proceedings in which the institution is involved: court matters, Michigan Employment Security Commission, Michigan Public Service Commission, Michigan Department of Civil Rights, Equal Employment Opportunity Commission, and others. Excluded is workers' compensation and FCC legal work for Public Broadcasting. Decides when outside counsel is needed to represent the University, selects that counsel, negotiates the terms of the engagement and supervises their representation.

Areas of Legal Services Performed

Depending on the skills of the in-house staff and the workload, the General Counsel determines which of the following services are performed internally and when outside counsel will

be retained. As appropriate, General Counsel obtains legal consultation with outside counsel. Even when outside counsel performs the services, the General Counsel oversees the work and participates in strategic decisions.

1. Advises Board of Trustees on its bylaws and on governance matters.
2. Advises on constitutional issues, including First Amendment issues, constitutional autonomy, governmental immunity, and search and seizure.
3. Provides extensive consultation to academic division -- provost's staff and deans -- on various academic matters with legal implications. For example, reviews, drafts some language for, advises on affiliation agreements and internship agreements; advises on policies for handling admissions to clinical programs, criminal background checks, records retention, academic integrity, etc.; advises teacher education programs in formulating policies and applying them; advises on international exchange programs and reviews international agreements; advises on the handling of complaints and threatened lawsuits involving academic decisions about students, including grade grievances, allegations of academic dishonesty, complaints of discriminatory treatment in classes, admission to or dismissal from programs, etc.; represents an interest (usually hearing body) at hearings on academic decisions and retains attorneys to represent other interests of the University;
4. Advises on questions arising out of University's research efforts, including policies on human subject research, research integrity; drafts and reviews contracts for research and for providing services to non-University parties; drafts and reviews releases; assists in determining the respective interests of University, faculty, other employees, students, and non-University parties in research involving, for example, conflict of interest, copyright, patent; assists in filing copyright registration; retains and monitors work of attorney if patent is to be sought by University; advises on contracts for evaluation of possibly patentable discoveries; advises on compliance with federal and state laws, such as Export-Import Control Act.
5. Advises on issues of intellectual property and information technology; participates actively in drafting and re-drafting policies concerning these matters; obtains trademarks or service marks on behalf of University; obtains licenses for use of copyrighted materials by University.
6. Advises faculty and staff human relations offices and executive officers regarding conflict with and among employees, handling of employee discipline, application of employee handbook language, state and federal laws and regulations, handling of complaints by unsuccessful applicants for employment. Drafts or reviews settlement agreements and releases of liability in connection with release of employees. Advises personnel offices on a variety of legal issues, including review of employment forms; review of employee group handbooks; drafting and review of personnel policies; interpretations of personnel policies, state and federal laws and regulations. Advises on appropriate use of independent contractors. Assists in drafting and editing of benefit plan documents and interpretation of them.

7. Assists occasionally with preparation for collective bargaining. Upon request, reviews portions of collective bargaining agreements and drafts language for selected provisions of agreements; provides consultation regarding labor grievances and arbitrations; retains outside attorneys to represent the university in arbitration, unfair labor practice hearings, etc.

8. Assists University offices with legal issues, including review and analysis of documents with which they have to work, applicability of state or federal statutes to their work; advises on and drafts releases and waivers of liability; interprets contracts and other legal language with which the offices must deal; advises on the handling of problems with legal ramifications.

9. Advises Affirmative Action Office on handling of complaints, legal developments, and legal issues arising in that office. Works with the Affirmative Action Office in developing affirmative action policies. Provides advice on interpretation and application of civil rights laws.

10. Receives all lawsuits filed against the University. Decides on general legal defense, selects attorney to represent University, decides if there is potential conflict in defense of University and any individual employee defendants, interfaces with insurer if defense is insured, oversees work of defense attorney, participates in setting defense plan and making key decisions, recommends settlement if and when appropriate.

11. Investigates and determines facts regarding issues referred to the office, including threatened law suits. Gathers information, witness statements, documents, etc, and drafts responses to interrogatories and requests for production of documents for outside counsel in litigation matters.

12. Represents University when persons file civil rights complaints with administrative agencies, e.g., Michigan Department of Civil Rights, U.S. Equal Employment Opportunity Commission, U.S. Department of Labor, Office of Federal Contract Compliance, etc. Represents University in other administrative proceedings, e.g., Wage and Hour, environmental agency complaints, prevailing wages disputes, financial aid audits, audits of grants, contracts and special programs, state and federal tax and withholding audits. Coordinates information gathering, develops and presents legal position of University, negotiates resolution where appropriate.

13. Decides, in consultation with executive officers, when University should file suit against others; selects attorney, identifies witnesses and documents to support University's case, oversees work of University's attorney, participates in setting litigation strategy, recommends settlement if and when appropriate. Brings and handles eviction suits. Decides when University should opt out of, or remain in, class action lawsuits; coordinates University's participation; recommends whether to accept settlements negotiated. Reviews requests that the University become amicus (friend of court) in appeals of court decisions; develops summary of issues; makes recommendation to president and vice president regarding whether the University should become amicus; monitors University's participation if decision is made to become amicus.

14. Advises Freedom of Information Officers concerning replies to Freedom of Information requests; reviews complex responses; gathers documents and responds to very complex

and/or legally sensitive requests. Provides up-to-date advice on current status of the law on the disclosure of records and how to separate disclosable from non-disclosable records.

15. Provides advice on current federal regulations and court interpretations of the federal law on the release of student educational records. Advises University offices concerning replies to requests for educational records of students; gathers documents and responds to complex and/or legally sensitive requests.

16. Receives subpoenas for University records; gathers documents; informs persons that their records will be released; negotiates extensions and modifications of subpoenas; replies to subpoenas. Trains employees on handling of subpoenas.

17. Files Proofs of Claim for bankruptcies where University is creditor. Responds to pleadings where required, e.g., adversarial proceedings to attempt to discharge student loan debts.

18. Represents University at unemployment compensation referee hearings and at appeals, where issue is primarily a legal one, where claimant will be represented by an attorney, or where there are complicating factors.

19. Works with Risk Management and M.U.S.I.C. (self insurer) in handling claims made by persons alleging that they or their property were injured because of some fault of the University. Advises on government immunity defense, probable liability of University, and possible settlement of some claims. Coordinates sharing of information and compliance by defense attorneys with reporting requirements of M.U.S.I.C.

20. Reviews contracts or selected provisions of contracts (especially liability, indemnification, warranty provisions). Drafts form contracts; occasionally assists with negotiations for contracts; drafts and revises contract review process; provides training for University employees in contract law and use of the contract review process. Negotiates and advises on application of music copyright agreements. Provides advice to assure University's interests in intellectual property developed under contracts are adequately protected. Evaluates the University's position in contract disputes and assists in developing approach to resolving these disputes; occasionally assists in negotiating resolution. Advises on bidding procedures, disagreements with contractors, mechanics' liens, interpretation of specifications in situations where controversy arises, advises on University's rights under contracts, drafts and interprets warranty and indemnification clauses

21. Works closely with Facilities Management on construction, regulatory, zoning, environmental, and statutory compliance issues. Actively participates in setting strategy and conducting negotiations, mediation, arbitration, and litigation of construction disputes.

22. Advises and assists University with questions concerning taxes, including employee withholding, sales and use taxes, taxes on University activities out-of-state, property taxes. Advises on issues affecting University's tax exempt status.

23. Advises on real estate issues. Drafts or reviews easements and documents transferring ownership of real property to and from the University; drafts or reviews long term leases to and from the University (ex: Extended Learning and Public Broadcasting). Advises University, or obtains outside counsel to advise, on property matters: acquisition and disposition of property, including title opinions, conservation easements, review of purchase and sale agreements, review of closing statements. Assures that real property acquired by University is removed from tax rolls.

24. Advises on handling of complaints by persons rejected for admission, and about housing, financial aid, athletics, and other services and programs.

25. Presents University's position and negotiates, if appropriate, with attorneys retained by students in connection with student complaints.

26. Monitors legal developments regarding due process in student discipline, and advises Office of Student Life when changes in discipline procedures are appropriate; advises on revisions of Code of Student Conduct; advises Proceedings Officer when student involved in discipline case is advised by attorney; provides advice, or secures attorney, for hearing panels, appeals boards, president and board of trustees in disciplinary proceedings.

27. Advises on University's interest concerning CMU Foundation, CMURC and other separate entities. Drafts and advises on agreements between University and these entities, including lease of space and equipment, status of employees, ownership of intellectual property.

28. Provides legal advice and oversight of CART issues, including restrictive covenants, policies, sale or lease of land, leases of buildings, easements, resolution of disputes with tenants.

29. Maintains Board of Trustees Policy Manual and administrative Manual of Policies, Procedures and Guidelines.

30. Interprets conflict of interest laws and University policy; advises on specific questions about possible conflict of interest; assists in modifications of conflict of interest policy; serves as member of conflict of interest advisory group.

31. Monitors and reviews new legislation and regulations affecting programs of University; advises offices on application to University and interpretations of regulations and compliance problems (ex: institutional review boards, environmental regulations; safety regulations; appeals procedures re: financial aid, veterans programs). Analyzes proposed legislation and advises on its effect on the institution; occasionally provides in-depth assistance in evaluating impact of proposed legislation, drafting legislation or alternative wording, and preparing information and arguments to support or oppose proposed legislation.

32. Works on major projects with other offices, such as writing new policy statements, developing legal documentation for new initiatives (ex: flexible benefits plan documents, retirement incentive plans and agreements, supplemental retirement option documents, HIPAA compliance,

weapons on campus, search procedures, drug testing).

33. Conducts workshops and training sessions for University employees on variety of legal subjects (ex: copyright law; music licensing requirements; contract law; privacy of records; investigations; research on human subjects; use of independent contractors; serving as notary public).

34. Provides legal advice to Charter Schools Office, and collaborates with outside counsel in recommending policies, handling complaints, drafting contracts to charter, researching legal issues affecting charter schools, drafting resolutions for CMU Board, responding to lawsuits and agency complaints, guiding process of addressing breaches of contract (or possible breaches) by academies authorized by University.

35. Advises Development Office concerning policies on acceptance of gifts and bequests; reviews University's interest in estates; sometimes acts as contact for counsel whose clients wish to give gifts to the University; advises on whether certain gifts should be accepted by the University and, if so, what preliminary reviews are necessary or recommended. Coordinates with outside counsel who prepare, or review on behalf of University, legal instruments such as pooled income trusts, annuity trusts and uni-trusts, where University is beneficiary of gift instrument.

36. Provides advice regarding University Public Broadcasting operations (except FCC licensing issues), including filing of financing statements, fundraising, real and personal property questions.

37. Monitors and updates traffic ordinance and traffic control orders.

38. Serves as Chief Privacy Officer for HIPAA compliance.

May 8, 2008