

LAW SCHOOL POLICY ON FACULTY CONFLICTS OF INTEREST AND CONFLICTS OF COMMITMENT

A. *Identification of Potential Conflicts of Interest and Commitment*

Potential conflicts of interest and commitment are inevitable where faculty are engaged, as they ought to be, with actors and institutions outside the University. These potential conflicts are not necessarily problematic. In fact, faculty are encouraged to engage in outside activities and relationships that enhance the University's mission. It is nevertheless important that faculty disclose any potential conflicts of interest or commitment as soon as they arise so that they can be evaluated and, if necessary, managed or eliminated.

A potential **conflict of interest** arises when external ties might bias or appear to bias a faculty member's judgment in performing his or her University obligations. A potential **conflict of commitment** arises when a faculty member engages in external activities or assumes external commitments that might compromise or appear to compromise his or her ability to fulfill the responsibilities of his or her University position. (See Standard Practice Guide (SPG) 201.65-1.)

1. Conflicts of Interest

A non-exhaustive list of situations that do (or do not) create conflicts of interest is presented below. If there is any question about whether a particular situation falls within a prohibition, disclosure is required under section B below. Disclosure is also required under section B on *every* occasion when a situation potentially raises a conflict of interest or could give rise to the perception that such a conflict exists – even if no express prohibition applies.

- Gifts. A faculty member should not accept a gift of substantial value (including gifts of services) or payment of any sort from a University student or staff member based on the employee's faculty position. The same prohibition (and exception) applies to gifts from people or institutions that contract with the University where the faculty member participates in decisions concerning that contract.
- Honoraria and speaker fees. Generally, a faculty member may accept honoraria and speaker fees. However, a potential conflict of commitment may arise, see *infra*; if so, permission to assume the commitment must be sought.
- Expenses. Generally, a faculty member may incur reasonable meal and travel expenses that are reimbursable either by the University or by external organizations. However, a faculty member should not accept reimbursements that amount to gifts of unreasonably large value from people or institutions that contract with the University where the faculty member participates in decisions concerning that contract.

- Faculty should not have direct dealings with students in the sale of books, instruments, lectures, notes or similar materials.
- A faculty member should not claim (orally or in writing) that the Law School or the University supports or endorses the mission of an external person, institution, or organization unless a formal decision to do so has been made by the relevant University body. There are circumstances in which a faculty member's experience is relevant to expression of an opinion to public authorities. In these cases (except where not appropriate, illegal, or when it misrepresents the faculty member's authority) a faculty member may indicate his or her affiliation with the University in written correspondence to public entities so long as the correspondence includes a statement indicating that he or she is not speaking on behalf of the University but as an individual.
- A faculty member should not participate in employment decisions (including hiring and promotion decisions) involving a family member or other intimate relation, whether faculty or staff. Under no circumstances will a faculty member have access to the personnel file and other confidential material regarding such a person.
- A faculty member should not participate in decisions involving the retention of the services of a business associated with a family member or other intimate relation, whether faculty or staff. Under no circumstances will a faculty member have access to confidential materials surrounding the decision.
- A full-time faculty member should neither establish nor participate in a business that competes with the University.

These requirements, unless otherwise limited, also apply to part-time faculty.

2. Conflicts of Commitment

The existence of a potential conflict of commitment will be evaluated in light of the minimum time and effort required of the faculty member in question.

All faculty, including visiting and clinical faculty, with at least half-time appointments in the Law School owe their primary professional commitment to the University. A commensurate commitment of those faculty members' time and intellectual energy must therefore be devoted to activities that further the University's mission. In general, faculty obligations are determined by the Dean. To meet minimum time and effort commitments within the Law School, permanent tenured and tenure-track faculty members are expected to teach a standard course load each year and engage in an active and productive research life. Clinical and legal practice faculty have comparable designated teaching obligations. All faculty must also fulfill their

administrative obligations. These include such matters as participation on assigned committees and involvement in the hiring and tenure processes; regular attendance at faculty meetings; and regular participation in student and faculty educational and collegial functions. Participation in personnel and tenure decisions includes the expectation that faculty should familiarize themselves with the candidate and his or her work to the extent necessary to justify a confident judgment as part of our collective decision-making process. It is particularly important that faculty participate in the hiring and promotion of candidates in fields of their expertise. Obligations of faculty who are governed by collective bargaining agreements are defined subject to those agreements.

Temporary faculty, including adjunct faculty, owe the Law School time and effort commitments commensurate with their appointments. For these faculty members to meet minimum time and effort commitments within the Law School, they must teach an agreed upon number of hours each year and fulfill any specifically agreed-upon administrative obligations.

Even where obligations to the Law School are met, a faculty member should not engage in activities that compete with the University or that otherwise diminish or undermine the University's mission. It is inappropriate for faculty, without prior approval, to divert to other entities or institutions personal resources that would otherwise flow to the University; these resources include faculty research and teaching, as well as opportunities for professional service or for financial support that might otherwise go to the University. Pro bono services to the community and to the profession are consistent with service to the University and are ordinarily permitted and even encouraged if they do not interfere with fulfilling obligations to the University.

With these principles in mind, examples of potential conflicts of commitment and our general approach are listed below. This list is not exhaustive.

- Any work external to the Law School potentially raises a question of conflict of commitment. In general, however, any such work that contributes to the scholarly or educational goals of the Law School is permitted. The Dean should be informed of all external work in the faculty member's annual report. Moderate speaker fees and fees for writing tenure reviews need not be disclosed.
- For full-time faculty, professional work is generally permitted up to a total of 40 hours a month (calculated as an average over the academic year), if that other professional work does not interfere with the minimum expectations outlined above. "Professional work" is work related to the professional and scholarly interests of the faculty member; it includes such things as service to the legal profession, writing briefs and litigating cases for private clients, and advising outside organizations. If there is any question about whether a particular commitment falls within these categories, or if there is any potential for interfering with the minimum expectations above, the matter should be disclosed immediately as described in Section B of this policy, below.

- Non-professional work is ordinarily acceptable only when it does not interfere with faculty obligations or impair work as a teacher and scholar.
- A permanent faculty member must obtain the permission of the Dean before making any commitments to take a leave, even if it is not funded by the Law School, or to assume additional teaching obligations in another department of the University or at another institution.
- Faculty members cannot hold two or more active full-time salaried positions.
- Faculty members ordinarily should not devote effort to preparing course materials for use exclusively at another university or exclusively for use in “internet teaching” outside of the University unless the material is connected with a teaching position that has been approved by the Dean.
- A faculty member must not, for pay, give private instruction in any course offered by him or her in the University, nor, for pay, give private instruction in any other course that competes with the University, without approval of the Dean.
- Part-time faculty members need not disclose external commitments that do not restrict scholarly inquiry or otherwise interfere with the minimum expectations outlined above.

B. *Disclosure, Evaluation, and Management of Potential Conflicts of Interest and Commitment*

1. Disclosure of Potential Conflicts

Each faculty member must promptly disclose potential conflicts of interest or commitment to the Associate Dean for Faculty and Research in writing as they arise. E-mail will suffice, if written from the faculty member’s University e-mail account to the Associate Dean for Faculty and Research’s University e-mail account. Disclosure in this form generally need not be made for work that is *de minimis* and work that is consistent with the general approaches outlined above. However, disclosure should be made whenever there is any question whether the matter falls into that category.

All external work (other than moderate speaking fees and fees for writing tenure reviews) that is not *de minimis* should be disclosed in the annual report of each faculty member to the Dean.

2. Management of Potential Conflicts

Upon disclosure of a potential conflict of interest or commitment, the Associate Dean for Faculty and Research will evaluate the extent of the potential conflict to determine whether it is necessary to manage or eliminate it. The Associate Dean for Faculty and Research may ask the faculty member to provide additional information or documentation if necessary. The Associate Dean for Faculty and Research will consult with the Dean where necessary.

In some circumstances, evaluation of the potential conflict will require consultation with and processing by central administration offices. For example, centralized processing is necessary in the following circumstances:

- by the Office of the Vice President for Research, where the disclosure involves sponsored research or technology transfer;
- by the Provost's Office, where there may be a conflict between two academic units; and
- by Purchasing, where the disclosure involves a purchase of goods or services.

In many cases, consultation with central administration offices, even when processing by those offices is not required, may help determine how to respond to a given disclosure.

In response to disclosure of a potential conflict, the Associate Dean for Faculty and Research may, after consulting with the faculty member, determine that no action is necessary. In other cases, the Associate Dean for Faculty and Research may decide that it is sufficient to document the disclosure, as well as his or her determination that no further management is required. However, if the Associate Dean for Faculty and Research determines that management of the potential conflict is necessary, he or she will develop a conflict management plan in consultation with the faculty member. That plan may include, but is not limited to:

- Disclosing the potential conflict to appropriate sources inside and outside the University;
- In consultation with the Dean, modifying or limiting the faculty member's duties within the School in order to minimize or eliminate the potential conflict;
- In consultation with the Dean, reducing the faculty member's appointment to accommodate the outside interest or activity;
- Securing the faculty member's agreement to modify or suspend outside activity, use of University resources, or other activities that create the potential conflict; or
- Prohibiting certain outside activity as inconsistent with the faculty member's obligations to the University.

3. Record-Keeping and Issues of Confidentiality and Privacy

The Associate Dean for Faculty and Research will keep a record of action on disclosures made under this policy, in part to help develop a consistent practice of treating like cases alike. Personal identifying information need not be part of this record. The record may be as simple as identifying the disclosure and, when no further action was required, including a notation to that effect. Appropriate records may also be kept in the individual faculty member's personnel file. Except where University record retention policies require a longer period, the documentation related to a disclosure will be purged three years after the potential conflict no longer exists.

The Associate Dean for Faculty and Research will make all reasonable efforts to preserve the privacy and confidentiality of personal information revealed as part of this process; to that end, the Associate Dean for Faculty and Research will keep all records that include personal information about named individuals in a secure file accessible only to the Associate Dean for Faculty and Research and the Dean. Where any other University faculty or staff member has a legitimate educational or University business reason to access the documentation, then either the Associate Dean for Faculty and Research or the Dean may authorize access to the file and provide either copies and/or information, as may be required for the stated educational or business purpose. If the Associate Dean for Faculty and Research or the Dean provides copies of information in the files to a faculty or staff member, he or she must also ask that individual to maintain at least the same level of confidentiality.

In some circumstances, the University is required to disclose potential conflicts to people within or outside the University. For example, if a potential conflict exists within the context of a federally sponsored project, the University *is required* both to disclose the existence of that conflict (without providing identifying information) to the federal government and to indicate whether it has managed that conflict. Also, the University may be legally required to disclose information in response to requests made under the Michigan Freedom of Information Act (FOIA). Should any other individual have a legitimate reason to access the confidential records, whether in the context of a federally sponsored project, a FOIA request, or otherwise, the Associate Dean for Faculty and Research or the Dean may authorize access to the file, provide copies, or provide oral or written summaries. Where possible, the individual to whom the Associate Dean for Faculty and Research or Dean authorizes disclosure will be required to maintain at least the same level of confidentiality as applicable to the original information or documents.

Any faculty or staff member who becomes aware that the Associate Dean for Faculty and Research or Dean has provided or may have provided unwarranted access to conflict documentation or information, as defined in this policy, should inform the relevant superior for appropriate action.

C. *Dispute Resolution*

A faculty member may appeal to the Dean any decision made by the Associate Dean for Faculty and Research in response to the disclosure or non-disclosure of a potential conflict of interest or commitment.

If the faculty member is dissatisfied with the Dean's decision, he or she may dispute any action or decision under this policy in accordance with applicable University procedures. Sponsored research/tech transfer must be handled in accordance with processes adopted by the OVPR Conflict of Interest Review Committee. Other disputes between a faculty member and the Dean should be resolved through the normal grievance procedures. Disputes involving faculty who are subject to collective bargaining agreements will be resolved under the terms of those agreements.

D. *Education and Training*

This policy will be provided to new faculty at the time they are hired, and when they begin work at the University. At the beginning of employment, the Dean or Associate Dean for Faculty and Research will discuss the policy with the faculty member to ensure that it is fully understood.

This policy will be circulated each fall to all returning faculty members, including visiting, clinical, and adjunct faculty. Faculty will be reminded of the policy and its requirements at the first faculty meeting of the year.

Whenever there is a reason to think it necessary, the Associate Dean for Faculty and Research will remind the faculty as a whole, or individual faculty members, of the requirements of the policy.

E. *Violations*

Any failure to comply with SPG 201.65-1, its procedures, or this implementing policy may lead to disciplinary action, up to and including, in egregious cases, termination of appointment in accordance with applicable disciplinary procedures. Possible violations that may lead to disciplinary action include, but are not limited to, the following: failure to disclose fully a potential conflict; failure to comply fully with a required conflict management plan; failure to maintain the confidentiality of conflict documentation and information; and failure to complete any required training or education regarding the policy. Existing Law School and University procedures governing faculty misconduct will apply.

F. *Policy Review and Revision*

The Associate Dean for Faculty and Research will annually review all actions taken under this policy and make recommendations to the Dean regarding any needed revisions to the policy or any need for increased education. Any revisions in policy or

practices will be discussed with the faculty. If the Dean determines that any of the changes he or she would like to adopt will materially change the policy, the modification will be adopted by the same procedures that were followed in adopting the original policy. In particular, the Dean will submit any materially revised policy to the Office of the Provost and Executive Vice President for Academic Affairs for further review and approval and to the President for final adoption. A current version of this policy should be on file with the Provost's Office at all times.

This policy applies to all faculty of the Law School, including both full- and part-time faculty, whether classified as regular instructional, clinical, adjunct, or visiting faculty.

G. *Governing Policies*

This policy implements Standard Practice Guide ("SPG") 201.65-1, *Conflicts of Interest and Conflicts of Commitment*, and incorporates SPG 201.65-1 in its entirety. Implementation of SPG 201.65-1 within the Law School should conform to other University policies and procedures, including all Regents' Bylaws and SPGs, as well as with any relevant external rules of professional conduct and applicable law. Relevant policies, procedures, rules, and law include (but are not limited to) the following:

- Regents' Bylaw [2.16](#), regarding gifts to University employees;
- Regents' Bylaw [5.12](#), regarding outside employment of University faculty;
- Regents' Bylaw [5.13](#), regarding governmental elected or appointed service;
- Regents' Bylaw [5.14](#), regarding leaves of absence;
- SPG [201.23](#), regarding appointment of individuals with close personal or external business relationships;
- SPG [201.65](#), regarding employment outside the University;
- SPG [201.85](#), regarding special stipends for work performed for other University units, the payment of honoraria, and the payment of travel expenses;
- SPG [500.01](#), [601.03-2](#), and [601.11](#), in particular to the extent that they address copyright and other appropriate use of University resources, such as the libraries, office space, computers, secretarial and administrative support staff, and supplies;
- Office of Vice President for Research (OVPR) [Policy on Conflict of Interest in Sponsored Research and Technology Transfer Agreements](#); and
- Michigan Compiled Laws [§ 15.321](#) et seq., regarding contracts of public employees with their employers.
- American Bar Association Standards and Association of American Law Schools Executive Committee Regulations and Statements of Good Practices.
- Where applicable, the relevant collective bargaining agreement.

In the event of any inconsistency between this policy and other University or external requirements, those other requirements will prevail. In interpreting this policy the Dean and the Associate Dean for Faculty and Research should be attentive to preserve

the principle of academic freedom of speech and thought. In addition, policy administrators will make every reasonable effort to preserve confidentiality and protect the privacy of all parties in the course of investigating and managing a potential conflict of interest or commitment.

**Conflicts of Interest and Conflicts of Commitment
Policies for Faculty Certification Statement**

I acknowledge that I have been given of a copy of the Law School's Conflicts of Interest and Conflicts of Commitment Policies for Faculty. I understand that if I engage in an activity, which presents, or may appear to present, a conflict of interest or conflict of commitment, that I will promptly disclose it, in writing, to the Associate Dean for Faculty and Research.

Signature _____ Date _____

Name (printed) _____