

Consulting Management Committee
UCHC Request for Action #10

Date: February 5, 2009

Submitted by: Scott Wetstone, Director of the UCHC Faculty Consulting Office

Description of Issue

The current University policy on consulting applies to all employed faculty members regardless of the percentage effort. We are becoming aware that there are many part-time faculty who have not obtained approval for the work they perform in the time not assigned to the University. These faculty are potentially subject to sanctions for not having such approvals.

Completing consulting forms might seem a burden to faculty who only have a small percentage effort assigned to the University, which might make working for the University less attractive. For example, adjunct professors who teach a single course for a few thousand dollars might be required to go through the approval process for their primary employment (i.e. the time outside of teaching the single course). Another example are part-time clinical faculty, many of whom are employed 20% or less by the University. They would need permission to consult to conduct their primary work (their own clinical practice) or when they work for other entities such as providing educational presentations to regional hospitals and/or pharmaceutical companies. In another case, a faculty member employed by UCONN for 20%, has a primary position as a consultant to a wide range of companies, and would have to disclose his or her client list for approval for UCONN consulting.

My questions are:

- 1) Should all part-time faculty be required to comply with the University's consulting policy or should the scope of coverage of that policy be changed?
- 2) Should part-time faculty be given the option of participating in the University consulting system in order to obtain the benefits of the carve-out from the State Code of Ethics?

Previous Opinion(s) of the Office of State Ethics

The State Code of Ethics applies to all State employees regardless of the percentage time of employment.

Discussion

Clearly, the State's Code of Ethics applies to all employed faculty, regardless of percentage time of employment. For some if not most part-time faculty, time due the University and job duties are more clearly defined than for full-time faculty.

Participating in the faculty consulting system might seem overly burdensome to some part-time faculty, especially when the percentage of effort is small. One solution would be to change the

scope of the University's consulting policy to only apply to faculty who work a minimum amount of time for the State. While such a threshold level is debatable and potentially arbitrary, for other issues such as provision of health benefits, the level used is over 50% employment by the State. Effort greater than 50% appears to demonstrate the work for the University is the primary work activity of the faculty member. However, the threshold for being a member of the AAUP collective bargaining unit is 50% or more time. Since the State statute authorizing the carve-out specifically was intended for "faculty and members of a faculty bargaining unit", it could be argued that this would be the correct threshold to use.

If such a threshold were established, those with less time commitment would not need to get consulting approved in advance by the University. Instead, they would be subject to the interpretations of the Office of State Ethics. They would still need to comply with other University rules such as doing such consulting work on their own time, not using State resources, not representing themselves as agents of the State, not revealing the State's proprietary information, etc.

On the other hand, certain categories of part-time employees may be at risk of an unfavorable interpretation of the State Code of Ethics, if the Office of State Ethics retained final jurisdiction over them. For example, those who write prescriptions while acting as a State employee or those who work on research grants funded by commercial entities may be viewed in violation of the State's Code of Ethics as interpreted by the Office of State Ethics where as they might have received approval under the University's consulting system.

The legislative intent regarding the carve-out statute is to allow higher education units to implement the carve-out if the respective Board of Trustees creates a consulting policy and complies with a rigorous set of requirements. The Board may revise the policy on consulting from time to time.

The language in the enabling legislation (Public Act 07-166 Section12) refers to the carve-out as applying to "a consulting agreement", "such an agreement or project", and "such a consulting agreement or engages in such a research project". This demonstrates the ability of the Board to create policy that would allow faculty to opt in and opt out of the carve out on a case by case basis.. However, allowing faculty to opt in and opt out on an activity-by-activity basis would probably be difficult if not impossible to monitor, create confusion, and could wave a red flag in front of the members of the Oversight Committee or Legislature.

Recommendations:

The Consulting Management Committee should recommend to the Provost:

- 1) The University consulting policy be revised to indicate that only faculty with 50% or more time paid by the University are **required** to use the approval process within the policy. The University's consulting policy should specifically acknowledge the need for faculty working less than 50% to comply with all other standing University rules including but not limited to those related to time due to the University, inappropriate use of State resources, inappropriate use of the University's name or representing one's self as an agent of the University, or inappropriately disclosing the State's proprietary information and similar policies.

- 2) Those faculty who work less than 50% have the option to have all their consulting activities reviewed and approved under the University's consulting policy and thus be covered within the carve-out. This **all or none option** would be invoked by a faculty member by submitting a single request to consult using the standard consulting approval process. From that point forward, all future consulting activities would have to be approved under the existing consulting system.

CMC Response

On March 3, 2009, the Consulting Management Committee unanimously approved the recommendations as written above.