

The Bridge

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The Attorney-Client Privilege at the University of California

By Christopher Patti

The attorney-client privilege is a vital attribute of the relationship between a lawyer and his or her clients. The privilege shields written and oral communications from disclosure in litigation as well as from disclosure under the Public Records Act and similar laws. The purpose of the privilege is to permit clients to obtain confidential legal advice and to encourage candor between lawyers and clients. It facilitates compliance with the law by allowing clients to seek guidance on their legal obligations without fear that their communications with counsel will someday be used against them.

Communications must meet certain criteria to qualify for privileged status.

1. They must be **confidential**. This means that attorney-client communications should not be disclosed to third parties or even others within the University who do not need to be involved in providing legal advice, as doing so can waive the privilege. It is good practice to label confidential communications as “Confidential: Attorney-Client Privileged,” to maintain them in a secure place, and to consult with counsel before disclosing them to anyone, even internally.

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2. They must be between an **attorney** and a **client**. At the University, an “attorney” generally means a lawyer in the Office of the General Counsel (OGC) including the campus Office of Legal Affairs (OLA) or outside counsel retained by one of those offices. While there are attorneys in many other offices on campus, because they may not be authorized by University policy to provide legal advice, communications with them may be held not to be privileged. The privilege does, however, extend to communications that include non-lawyers, such as investigators or paralegals, who are facilitating the legal consultation. Although the University, not an individual employee, is considered the “client,” communication between University counsel and employees acting within the scope of their University duties can be privileged.

3. They must be for the purpose of seeking or providing **legal advice**. For that reason, copying an attorney on an email or having a lawyer in the room during a meeting does not necessarily establish the privilege. It is helpful when communicating with an attorney to include a specific request for legal advice to avoid later claims that the communication was not “legal.”

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The Attorney-Client Privilege at the University of California

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The privilege protects *communications* between attorney and client, not underlying information, so providing existing non-privileged information or documents to an attorney does not render them privileged.

The privilege is “held” by the client, which means that the client—that is the University—is free to waive it. An individual employee who has communicated with a University attorney does not have a personal right to invoke the privilege, and privileged communications between a University employee and University lawyer may be shared with other University employees with a need to know.

These are some of the basic rules governing the attorney-client privilege at UC. University employees can and should inquire about the privilege with University counsel when legal issues arise to be sure they are able to take



Personal Financial Interest Disqualification Rules

Under the California Political Reform Act, employees must disqualify themselves from any University decision that may affect their personal financial interests. This includes University decisions that may affect:

- Any business in which an employee or immediate family member is a director, officer, partner, trustee, employee, or manager;
- Any business in which an employee or immediate family member has an investment worth \$2,000 or more;
- Any real property in which an employee or immediate family member has an interest worth \$2,000 or more;
- Any source of income worth \$500 or more received or promised 12 months or less before the decision;
- Anyone who has given the employee or immediate family member \$440 or more in gifts 12 months or less before the decision is made.

Immediate family members include spouses, registered domestic partners, and dependent children.

Employees whose financial interests require them to disqualify themselves from making or participating in a University decision may not participate in any way in the decision, and may not influence any other person with respect to the decision.

This is a partial, simplified version of the University’s financial conflict of interest rules for employees. For the full policy, please go to <http://www.ucop.edu/general-counsel/legal-resources/conflict-of-interest-code.html>.

Principal Investigators are subject to additional conflict of interest rules. For an explanation of those additional rules, please go to <http://researchcoi.berkeley.edu/guidelines.html>.

If you have questions regarding conflict of interest rules, please contact Barbara VanCleave Smith, UC Berkeley’s Conflict of Interest Coordinator, at bvsmith@berkeley.edu. Details about other aspects of the California Political Reform Act and how it may affect you may be found at <http://compliance.berkeley.edu/conflict-of-interest>.



In the Spotlight

Planning for a Change — A New Year’s Resolution?

By Andreas Pinterits and Delia Clark

We all have heard that well-worn adage “Change is the only constant” – and never has this sentiment felt truer. While there are many reasons why we might object to certain changes, one common factor behind the apprehension of change is the loss of control many people associate with it. So how can we regain control over our work and put ourselves in the driver’s seat? What is your plan for change?

Recognizing the need for support, Operational Excellence (OE) leadership created a project team to serve as a resource for colleges, departments and administrative units to navigate organizational change successfully. Transformation Support Services (TSS) is a group of subject matter experts in Organizational Development and HR management who provide tailored consulting services and develop tools to help units implement these changes.

One of the tools Transformation Support Services created is a roadmap to help units plan for their Campus Shared Services (CSS) transition. As the largest OE project, CSS requires a level of change that goes beyond the tweaks that may have been undertaken in the past. It necessitates a new way of getting things done. As a consequence, units may have many questions:

- ✦ What will happen to the work that reassigned staff leave behind?
- ✦ Will our current processes need to be adjusted?
- ✦ How do we transfer knowledge between staff?
- ✦ How can the unit optimize its own operation?



The Transformation Support Services roadmap provides units with a five-month work plan that complements CSS implementation activities. Each of its phases includes a set of tasks for units need to address in preparation for their transition. They include clarifying current and emerging mission, goals and strategy, assessment of the unit’s current and future staffing, analysis of work processes affected by the change, and many other issues. Check out this roadmap at: <http://tss.berkeley.edu/sites/default/files/TSS-CSS-transition-roadmap.pdf>

Regaining a level of control over the changes you are facing is one of the first steps to manage change. Having a change strategy and using the tools developed by Transformation Support Services can help maximize positive outcomes for your unit. So why invent your own wheel? Plan ahead and leverage campus resources. Contact Transformation Support Services.

For additional information on TSS and its resources view <http://tss.berkeley.edu/>.

Do You Have It In Writing That You Can Sign That Contract?

A lot of employees – including faculty members and senior managers – believe their employment with the University entitles them to sign contracts on behalf of the University. Not so! In fact, the University severely restricts the number of employees who can sign contracts on its behalf. There are many reasons for this, including:



- Signing contracts on behalf of a public entity entails certain legal obligations – such as compliance with the California Political Reform Act of 1974 (Government Code Sections [81000](#) to 91015).
- Signing contracts on behalf of the University requires strict compliance with the University's conflict of interest policies.
- Employees without experience signing contracts may sign agreements that violate Regental policies.
- Employees without experience signing contracts may agree to terms that are highly disadvantageous to the University.

Authority to sign contracts is delegated by The Regents or by the University President on down, usually to the Chancellor, who in turn re-delegates to various campus employees. Unless you have an official delegation you can trace back to The Regents, the University President, or the Chancellor, you do not have authority to bind the University to a contract!

Unfortunately, Risk Services has seen some costly examples of ignoring this common-sense business practice. Several years ago one department signed a hotel contract that included a cancellation penalty of \$50,000 and an early confirmation date. The department had to cancel, but informed the hotel too late – and was stuck with a \$50,000 bill for no services! Another department did the same thing and, except for a stroke of luck, could have paid close to \$100,000 for nothing.

Aside from creating serious financial risks, you also run the personal risk of disciplinary action for exceeding your authority and violating policy – and potentially for violating state law.

Here is a list of offices that handle the most common campus contracts:

- Departmental Business Officers: Direct-to-Vendor Requisitions (low-value purchases)
 - Procurement: All Other Purchase Orders
 - Business Contracts Office: Business Contracts
 - Executive Vice Chancellor & Provost: Affiliation Agreements with Other Academic Institutions
 - Facilities Services: Construction Contracts
 - Sponsored Projects Office: Research Contracts with Government and Non-Profit Entities
 - Industry Alliances Office: Research Contracts with For-Profit Private Entities
 - Real Estate Services: Leases and Facility Use Permits
 - Risk Services: Travel and Entertainment Contracts
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Bridging the Gap of Hunger in our Community

For the past six years, Audit and Advisory Services (A&AS) staff have participated in various opportunities



to give back to the community as a department. In August, A&AS staff volunteered at the Alameda County Food bank in Oakland. As they sorted and bagged juicy nectarines, the team learned about how critical the food insecurity in Alameda County has become and that the demographic often includes two

working parents, seniors with inadequate and fixed incomes and children whose only daily meals are provided at school.

The Alameda County Food Bank distributes more than 2 million pounds of food every month, which ultimately serves 1 out of 6 Alameda County residents who receive food assistance. 1 in 3 children in the county faces the threat of hunger, which can increase during the summer months when they no longer receive meals at school. For each of the vulnerable populations, the choices they often have to make are between food and other necessities, such as utilities and healthcare – which is not a choice. For further information about the Alameda County Food Bank, visit <http://www.accfb.org/>

In December, A&AS staff were again privileged to be able to support a UC Berkeley student and his family by providing much needed financial support to buy food. It has been noted in recent years that a growing number of students on campus worry about the source of their next meal. One way the campus is trying to help these students is through the Food Insecurity Committee. If you know of a student who is in this situation, please contact any of the following Tang Center representatives on the committee for further information: [Claudia Covello](#), [Karen Gee](#), or [Lisa Min](#).

FY 2014 A&AS' Service Plan

Thank you to the many members of the campus community who participated in the annual risk assessment. Audit and Advisory Services' FY 2014 Service Plan was approved by the Committee on Audit, Internal Control and Financial Accountability and The Regents. Audits planned for this current year are:

- CalPlanning and Budgeting
- Cal Student Central
- Campus Police Department
- Composite Fringe Benefit Rates
- Endowed Chairs and Professorships
- Fixed Asset Inventory - Special Collections
- Governance – Policy Development, Promulgation, and Maintenance
- Human Resources - Compensation and Classification
- Information Security - Mobile/Portable Devices
- Information Technology - Second Tier Applications
- NCAA Compliance
- Self-supporting Academic Programs
- Shared Services - Business and Financial Services
- Shared Services - Human Resources
- Shared Services - Research Administration
- Sponsored Projects - Facility and Administrative Cost Pools
- Sponsored Projects - Effort Reporting
- Sponsored Projects - Cost Transfers

For further details regarding the preliminary scope of these projects, please [click here](#).

AUDIT AND ADVISORY SERVICES RISK ASSESSMENT

Audit and Advisory Services' planning for our FY 2015 service plan has started and we are gathering information to help us assess current risks on campus through interviews with campus management and various groups. However, as one of our five campus operating principles states: *We are Accountable to Each Other*. Therefore, if you would like to provide information for our risk assessment, please contact Chief Audit Executive Wanda Lynn Riley at wriley@berkeley.edu or 642-8293.

Audit Cables: Authority, Access, and Accountability

To assure that the right people make the best informed decisions to accomplish the University's mission and goals while safeguarding its assets, authority, access, and accountability must be aligned.

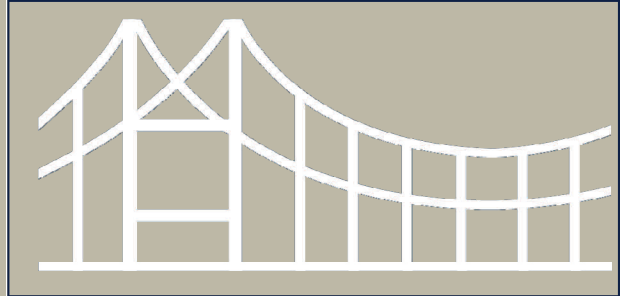
Authority within the University is often derived from policy and delegation from the President through the Chancellor granting individuals by name or position the right to obligate the University in a variety of ways. To name a few:

- Executing contracts
- Hiring employees
- Accepting gifts
- Procuring goods and services
- Naming facilities
- Setting fees
- Building new structures
- Launching academic programs

Delegations may not always align with conventional perceptions of apparent authority, particularly for managers new to UC Berkeley. To confirm delegated authority, contact the Office of Ethics, Risk, and Compliance Services at delegations@berkeley.edu.

In this age of technology at your fingertips, authority is often exercised through assigned access in the campus' multitude of enterprise systems such as BearBuy and the Human Capital Management System. It is common to assign proxy access to enterprise systems with approval from authority holders secured offline. The risk is that commitments and transactions are made absent authority. When an employee changes responsibilities, leaves the department, or separates from the University, are these changes reflected in his or her access to enterprise systems? Trusted campus stewards may re-delegate authority to the extent permitted by the source of their authority. However, accountability for the decisions and actions under one's authority may never be delegated. To foster excellence in stewardship, assure that authority holders are knowledgeable and participate in decisions and transactions at an appropriate level. Decisions and actions should be transparent, documented, and reconciled with actual outcomes.

Appropriate alignment of authority, access, and accountability is fundamental to a strong system of governance, risk management, and control, which in turn provides a framework for innovation — the cornerstone of UC Berkeley's preeminence as the institution of choice.



BRIDGING THE GAP

Revenue Generation: Thinking BIG!
Wednesday, February 12, 2014
150 University Hall
3:00pm - 4:30pm

As part of the campus focus on building a sustainable financial model, UC Berkeley is considering new and varied revenue streams that can supplement traditional sources to sustain the University's excellence. Vice Chancellor John Wilton expanded the scope of the OE Program Office to help cultivate unit-level revenue generation on campus. The OE Program Office is approaching this challenge by applying much of the same methodology, process design, governance, and rigorous project management discipline that delivered successful results for the OE Program portfolio of efficiency projects. Please join us to learn more about this exciting new initiative.

Speakers:

Peggy Huston, Director, OE Program Office
 Bill Reichle, Business Relations Manager, OE Program Office.

Space for our session is limited so please register using the UC Learning Center available in the "Self Service" section of the Blu portal. For additional information please visit our website at <http://audit.berkeley.edu/resources/bridging-the-gap>, email us at audit@berkeley.edu, or call us at 510-642-8292

Announcements

THE OFFICE OF RISK SERVICES HAS MOVED!

Visit us at 2130 Center Street, Suite 200 MC: 4208. Please also make a note that we also have a new fax number! Faxes sent after 10/10/2013 to our old number should be resent to 510-643-0281 .

RISK SERVICES OFFICE HOURS

The Office of Risk Services is pleased to offer office hours every Friday from 2:00 pm to 3:00 pm at the LEAD Center (102 Hearst Gym) for students and Student Affairs staff needing help with risk related issues. No appointment necessary!

AUDIT AND ADVISORY SERVICES WELCOMES NEW AUDITORS

Please join Audit and Advisory Services in welcoming:

Ian Roberts-Clarke, Senior Auditor, has over 9 years of auditing experience in government and private industry. He received an MBA from Howard University.

Dorothy Lipari, Principal Auditor, has over 13 years of auditing experience most recently in the health care industry. She received her bachelor's in Business Administration from San Francisco State University. She is also a Certified Public Accountant and a Certified Internal Auditor.

SEE Something, SAY Something Campaign

The Office of Risk Services has launched a new SEE something, SAY something campaign geared towards raising campus awareness in the areas of Distracted Driving, Alcohol Misuse and Safety of Minors on campus. The purpose is to emphasize the importance of reporting suspicious activity to the proper local law enforcement authorities. To download the PDF version of a poster, please click on the image below.



Contact Information

Audit and Advisory Services
611 University Hall MC 1170
Berkeley, CA 94720-1170
Phone: 510-642-8292
E-mail: audit@berkeley.edu
<http://audit.berkeley.edu/>

Reporting Improper Governmental Activity

UC Whistleblower Website:
<http://www.ucop.edu/uc-whistleblower/>

Universitywide Independent Hotline:
(800) 403-4744 or
<http://universityofcalifornia.edu/hotline>

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