

# DEAN'S TASKFORCE ON OUTSIDE EMPLOYMENT

## Report

The task force has found this assignment very difficult to approach. Competing traditions, obligations, and interests conspire to make this a touchy subject, fraught with gray areas. More than one task force member spoke with administrators and faculty at other institutions; the general advice was to tread lightly and keep policies flexible.

One thing became very clear on reviewing University policies, past practices, and policies at other institutions: Directors and Deans have the final say about what happens. Almost every rule and policy can be waived by consent of the upper administration. However, existing CPVA policies lack an appeals process, which we will address below, in the category of "Communication."

This report tries to cover a number of areas in different sections:

- Overview of existing policies;
- Refining definitions;
- Policy implications for CPVA;
- Communication;
- Related issues.

The report concludes with a suggested draft policy that incorporates a boil-down of current University policies with possible additions and changes recommended by the Task Force.

### OVERVIEW OF EXISTING POLICIES

UNC has two sets of policy documents that include sections on outside employment: the Board of Trustees Policy Manual, and University Regulations.

Both state that the primary professional responsibility of a faculty member is to the University, and that no faculty member may undertake any outside service—whether paid or unpaid—that could interfere with or be in direct competition with University Service. University Regulations [3-3-401(1)(b)(V)] specify three areas that we think most likely apply to CPVA faculty members (other areas refer to sponsored programs and funded research):

- (1) outside employment or offers of outside employment involving assignments that might interfere with the employee's contractual agreement with the University or may place the employee or the University in a position of conflict of interest;
- (2) performing work for clients for pay when the work in question falls within the regular responsibilities or job assignment of the employee;
- (3) any outside activities that conflict with the teaching, research, service, and/or administrative responsibilities of the employee.

Despite the unequivocal tone of the documents, both recognize the importance of “a variety of professional development activities which serve to assist them in maintaining currency in their fields and permit them to apply their expertise to current problems.” Nevertheless, “appropriateness, relevance, and value of consulting, contractual commitments, other pay-for-service activities, or non-remunerated professional efforts outlined in this document must be approved by University officials.” [University Regulations 3-3-401(1)(a)]

The seeming contradiction between the prohibition of outside employment and the encouragement of “professional development activities” may stem from the separation between “outside employment” and “consulting” that is implied—but not clearly defined—in the documents. Although what constitutes either “outside employment” or “consulting” is explained nowhere in the documents, “consulting” is permitted, while “outside employment” seems not to be allowed.

Both documents indicate that the “opportunity for qualified staff members to accept occasional consulting engagements on a professional basis is a traditional privilege extended to faculty members.” Moreover, “such activities are recognized as desirable and constitute legitimate means by which faculty members may develop and maintain professional associations.” Faculty members are allowed to accept consulting opportunities after receiving written approval from the school director, who should also approve arrangements for a substitute teacher or class activity for any missed scheduled classes. The documents also state that institutional resources cannot be used “without prior written approval of the director,” and that if approval is given, “the University will assess an appropriate monetary charge” [University Regulations 3-3-401(1)(a) and (b)]

It is interesting to note that the documents address the teaching of classes for other State educational institutions within the section on consulting, rather than outside employment. This would seem to suggest that teaching for another state college or university is not, in and of itself, considered inappropriate. The precise wording is this: “Full-time exempt staff employees may not contract to teach for other State educational institutions during their University contract period without the prior written approval of the chair/director, dean, and CAO/vice president. In accordance with State Fiscal Rules (Chapter 2, Section 2.3), dual employment between State agencies also requires a written agreement signed by both employers” [University Regulations 3-3-401(1)(b)]

A main area of concern in the policy documents is for conflicts of interest. This is one of the few areas in which specific examples are given. The University Regulations include a set of guidelines, divided into activities that are clearly permissible, those that present the potential for conflict, and those that are very likely to present conflicts [University Regulations 3-3-402(c)]. Activities that are clearly permissible are:

- (1) the acceptance of royalties for published works and honoraria for papers and lectures;
- (2) service as a consultant to outside organizations; and
- (3) service on boards and committees of organizations, public or private.

Activities with the potential for conflict of interest are relationships that might allow for influencing the University for personal gain or advantage for family members, as well as situations in which the time or creative energy devoted to them appear substantial enough to compromise the amount or quality of work for the University.

The only guideline for activities very likely to present unacceptable conflicts that might apply to CPVA faculty is “any activity that a faculty or staff member may wish to undertake on an individual basis that:

- (1) involves or appears to involve the University significantly through the use of its resources, facilities, or the participation of academic colleagues, students, and staff; or
- (2) involves the use of the University’s name or implied endorsement... .”

It should be noted that these guidelines for conflict of interest appear in a section of the University Regulations that deals specifically with Sponsored Programs, i.e. research projects typically funded by outside entities like the National Institutes of Health or the National Science Foundation, for which the University receives money for overhead costs. This may be why the disclosure and appeal procedures detailed in the document were completely unfamiliar to members of the taskforce. It is unlikely that any faculty member in CPVA will ever be involved in a sponsored program of this nature.

**REFINING DEFINITIONS**

To determine College policies on outside employment, it might be helpful to refine definitions. Because the Dean mentioned a similar policy development at Winthrop University, we went to their website and found a very helpful chart that helps identify an activity as either “consulting” or “outside employment,” the primary distinction being the type of work done and the degree of independence allowed in its implementation.

<b>Variable</b>	<b>Consulting</b>	<b>Outside Employment</b>
What is done/nature of work	Contribution to the organization is advisory in nature.	Contribution is in the primary area for which the organization exists.
Organization for whom work is done	Organization’s mission is general and multipurpose; the organization does not employ others with the faculty member’s professional background.	Organization’s mission is narrow and focused; the organization has regular employees with the professional background of the faculty member.
Nature of Supervision	Objectives are specified but details and methods are left to the consultant.	Right of control is maintained by the hiring organization; “supervisor” makes assignment, periodically inspects work, controls the details.
Time	Work is sporadic and time frame is generally defined by the length of the	Work assignment and compensation are generally associated with time, i.e. pay

	project rather than by hours, days, or months; If time is relevant, it is a relatively short-term commitment.	based on hours of work, regularly scheduled time or hours (for example, teaching class).
Motivation	Professional development and economic	Largely economic

If the College is to adhere to the implied University policy of prohibiting “outside employment,” but allowing—even encouraging—“consulting,” the definition of each activity is crucial.

It should be noted that a blanket prohibition on “outside employment” as defined above may result in the encouragement of faculty to withhold the reporting of any activity that might be construed as purely “outside employment.” There is general frustration concerning the low level of pay at the University, compared to our peer institutions, and faculty generally feel that they have a right to supplement their salary.

The Winthrop University policies also bring up an important distinction that the Task Force did not find in UNC’s policies: “The policy is not applicable during periods when faculty members are not under contract.” This distinction is crucial; although none of us are lawyers, it seems obvious to us that the University cannot dictate faculty activities during the summer, when faculty are not under contract.

#### POLICY IMPLICATIONS FOR CPVA

Because of the particular nature of the creative, performing, and teaching activities undertaken by CPVA faculty, some aspects of perceived University policy have a direct impact on pursuits that have traditionally been a part of careers in music, theater, and art. We have identified several areas of concern.

Use of studio/office and other University resources:

In many schools of music, it is common for performance teachers to give private lessons in their studios during hours they are not teaching students enrolled in such lessons. At first glance, this would seem not to be allowed; University Regulations state that employees cannot use institutional resources without written permission from the Director of the School, and if permitted, the employee should pay the University for their use. This would seem to apply as well to other activities beyond teaching: using a studio to create art; using a computer to write a textbook; etc. This seems absurd to the Task Force, both in concept and in practicality. So much of the activities undertaken by CPVA faculty members, whether compensated by outside parties or not, result in increased recognition for the College and the University, that it seems unreasonable to prohibit them or require reimbursement: the artwork for sale at an exhibition that was created in a faculty studio; the high school student receiving voice lessons on campus; the academic journal edited on a university computer—all result in increased exposure to the community and prospective students. It would be counterproductive to either prohibit this kind of activity, or to require faculty to pay the University for the use of their studios or computers.

Two sources of information are helpful here. First, the policies online at Indiana University include a provision that makes infinite sense to us: “Where the resource usage is minimal and the cost difficult or impossible to calculate, such use of university resources shall not require reimbursement.”

Further, the Office of the Dean of CPVA addressed this issue in June of 2005 in a memo distributed to faculty. It stated that faculty were not allowed to teach in University facilities “those individuals who are eligible to enroll for private lessons through the university and the appropriate school.” Significantly, this policy did not apply to two situations:

- (1) teaching private lessons to primary and secondary school students, who are not eligible to enroll in private lessons through the university, as a means of recruiting students for the instructional program; and
- (2) teaching private lessons to students eligible to enroll for private lessons through the university during a period of time when such private lessons are not offered through the university (e.g. if private lessons are not offered during summer sessions).

These particular situations have more to do with the student than the place (which will be addressed below), but clearly the use of University resources was not proscribed.

Teaching at the faculty member’s home during the academic year and/or during the summer:

This also has much to do with who is being taught. If the student is not a university student who is eligible for private lessons through a CPVA program (for example, an adult community member or a high school student), and the lesson is not conducted on University property, the University should have no say in the matter. Nevertheless, maintaining a private studio should not interfere with University responsibilities.

During the summer, if the faculty member is not under contract with the university, there should be no limitations on what a faculty member does in his or her home. On the other hand, according to the 2005 CPVA memo, if lessons in the voice or instrument taught by the said faculty member are offered by the College during the summer, the student may not take such private lessons from the faculty member who is not under contract. Whether this should be prohibited for the faculty member or the student is not clear. University Regulations state that faculty members cannot perform “work for clients for pay when the work in question falls within the regular responsibilities or job assignment of the employee” [University Regulations 3-3-401(1)(a)]. Nevertheless, we feel that when the faculty member is not under contract, these provisions should not apply. If such a prohibition then falls on the student, we wonder how the College would be able to enforce it.

Teaching students who are eligible for private lessons through the College:

This situation is clearly outside the University Regulations and the CPVA policy in the 2005

memo. It would involve a faculty member performing work for pay that falls within his or her regular responsibilities, unless it occurs during the summer.

Nevertheless, this outright prohibition puts a tremendous strain on the School of Theatre and Dance, whose Musical Theatre majors receive far fewer hours of private voice lessons than in programs at other universities, because the School does not have enough faculty to cover lessons for more than the required two semesters of upper division private instruction. It is clear to the Task Force that this is a faculty load problem, but strict rules prohibiting students from studying for pay with other faculty, or with School of Music faculty, punishes the student, and puts the School of Theatre and Dance at a distinct disadvantage to programs at other universities. It seems reasonable to us to allow musical theatre students—if they so choose—to pay for lessons on their own, once they have exhausted their number of enrolled semesters, until the faculty staffing situation in the School of Theatre and Dance can be alleviated.

#### Absence from campus:

A number of our faculty are in demand as artists in far away places; faculty in the School of Theatre and Dance have been asked to work on Broadway and in Hollywood; faculty in the School of Music have had opportunities to tour as performers. In a number of cases, faculty members have had to turn down such opportunities because they would be required to be away from campus for an extended period. Music faculty who teach private lessons are faced with the prospect of making up numerous missed lessons, and theatre faculty cannot always be replaced by quality adjunct professors. Clearly, faculty have primary responsibilities in teaching at the University, but such professional opportunities can be extremely beneficial to the College and the students, as well as to faculty. The Task Force strongly recommends that the administration work to find creative ways to make it possible for faculty to advance the visibility of the college, as well as their own careers, by providing opportunities for them to take full advantage of such activities.

#### Difference between outside employment/consulting and scholarship/professional development:

It is apparent from the above discussion that the qualitative difference between outside employment/consulting and scholarship/professional development is often not great. Paid opportunities for faculty in performance, directing, design, editing, authorship, etc., are almost always beneficial to the College by bringing it to the notice of the professional, artistic, scholarly, and general communities. When faculty shine, so does the College. While such opportunities must be balanced with University obligations, it is important for the College to work to allow faculty to take advantage of these opportunities.

#### COMMUNICATION

Clearly, communication between the Directors, Dean, and faculty is important to prevent problematic situations. Some type of reporting mechanism should be set up so that the administration knows about faculty activities and any possible conflicts of interest.

Consideration should also be given to whether faculty activity in consulting and outside employment is occasional or continuous.

#### Reporting:

The Task Force recommends the use of a single form to be filled out by each faculty member at the beginning of the year. Such a form should cover activities already scheduled, as well as those anticipated, and should cover a variety of activities; multiple forms run the risk of being misplaced and encourage non-compliance. On the other hand, there should be some trigger mechanism to determine when a faculty member needs to request permission for a specific activity.

We also recommend the continued use of the CPVA Request for Approval of Travel form as it is currently implemented, since it has a specific function that may or may not relate to faculty consulting or outside employment.

#### Appeals Process:

Because the current University policies apparently give directors and the dean tremendous leeway in granting or denying permission for faculty to engage in consulting and other outside activities, it is important for an appeals process to be in place for faculty who feel they have been unfairly treated. University policies currently outline a model for a university-wide Conflict Review Committee, but these rules primarily apply to conflict of interest problems in sponsored programs [University Regulations 3-3-402(1)(e)].

An appeals process for the outside activities of CPVA faculty should begin in the College with the establishment of a Conflict Review Committee. The Task Force recommends that it should consist of an equal number of faculty from each School. Further suggestions for the appeals process are included in the attached Suggested Draft Policy.

#### RELATED ISSUES

Task Force discussions often came back to issues that are related to our purpose, but are beyond the scope of our action. We would like to address them here, because they influence faculty activities and attitudes in a direct way.

##### Contractual overloads:

Faculty in various departments in all three Schools have been asked frequently and repeatedly to carry an overload without any change in their contract or remuneration. This has a long history in the college, and it puts a tremendous strain on faculty, not to mention its effect on students. Faculty not only come to resent the added burden, but these overloads often prevent faculty from pursuing any outside activity for their own professional development and recognition for

the college. For example, the large number of productions scheduled to accommodate the music theatre and acting students puts a tremendous strain on the technical and design staff. At minimum, faculty should be compensated for carrying an overload, perhaps through the use of Personal Service Agreements.

**Music Theatre staffing:**

As noted above, music theatre students are at a disadvantage compared to other institutions because of the under-staffing of the music theatre faculty. This has led directly to conflicts over teaching UNC students privately.

**Make-up lessons:**

Music performance faculty who are in demand as performers face the daunting prospect of making up missed lessons. It may be that some kind of standard policy should be drawn up that would help faculty stay active as performers, while minimizing the impact on their students.

## SUGGESTED DRAFT POLICY

### I. DEFINITIONS

Consulting and outside employment are not to be considered as the same. Consulting includes those professional activities related to the faculty member's discipline or field for which remuneration is received or where a fee-for-service or equivalent relationship with a third party exists. In some cases, the commitment of time is the primary consideration, regardless of remuneration. Outside employment is more narrowly defined as working outside the faculty member's discipline or field as a regular employee for an organization, corporation, or institution other than the University of Northern Colorado.

*Professional Standards:* The potential magnitude of outside professional activity, particularly when it entails consulting or outside employment, is such that orderly procedures must be followed to avoid ethical and legal conflicts of interest and to ensure that such activity does not conflict with the proper discharge of university responsibilities. Personal responsibility, integrity, and high ethical standards are the principal factors in avoiding conflicts of interest. The university expects that all faculty members will conduct their outside activities in a manner that reflects credit on themselves, their profession, and the university without need for specific criteria or rules of conduct. The principal safeguards against abuse include the standards required by professional colleagues and the rigorous processes by which the university evaluates and selects individuals for appointment, tenure, and promotion.

*Full-time Service:* Consulting and outside employment policies and procedures apply during the time in which faculty members are under contract with the university. (For most faculty members, this period will begin in August and end in May.) The policy is not applicable during periods when faculty members are not under contract. (For the purposes of this policy, a faculty member teaching a summer school course is not considered under contract with the university.)

*Consulting vs. Outside Employment:* Several characteristics offer guidance in making a decision on whether an activity is considered consulting or an employment relationship. The primary distinction is in the type of work done and the degree of independence allowed in its implementation.

<b>Variable</b>	<b>Consulting</b>	<b>Outside Employment</b>
What is done/nature of work	Contribution to the organization is advisory in nature.	Contribution is in the primary area for which the organization exists.
Organization for whom work is done	Organization's mission is general and multipurpose; the organization does not employ others with the faculty member's professional background.	Organization's mission is narrow and focused; the organization has regular employees with the professional background of the faculty member.
Nature of Supervision	Objectives are specified but details and methods are left to the consultant.	Right of control is maintained by the hiring organization; "supervisor" makes assignment, periodically inspects work, controls the details.
Time	Work is sporadic and time frame is	Work assignment and compensation are

	generally defined by the length of the project rather than by hours, days, or months; If time is relevant, it is a relatively short-term commitment.	generally associated with time, i.e. pay based on hours of work, regularly scheduled time or hours (for example, teaching class).
Motivation	Professional development and economic	Largely economic

Any outside employment or consulting by a full-time University employee on a continuing basis shall be approved in writing by the individual's school director and dean.

[Adapted from policies of Winthrop University and CSU]

## II. UNC EXISTING POLICIES: BOARD OF TRUSTEES AND UNIVERSITY RULES AND REGULATIONS

### OUTSIDE EMPLOYMENT

The primary professional responsibility of a faculty member is to the University. A faculty member is under obligation to render to the University the most effective service of which s/he is capable. No outside service should be undertaken, with or without pay, that might interfere or that might be in direct competition with University service. As employees of the State, special attention must be devoted to avoiding unfair competitive practices that might threaten the livelihood of other citizens to the State, and must not be open to valid criticism by the public as being detrimental to the best interests of the public.

[University Regulations 3-3-401(1)(b)(V)]

Employees are discouraged from owning/operating a business/practice whenever such activities interfere with the paramount obligation to the University. Employees who own/operate such a business are required to complete a disclosure statement listing affiliations that have the potential for conflict of interest. Examples of situations that have a potential for conflict of interest include, but are not limited to:

- (1) outside employment or offers of outside employment involving assignments that might interfere with the employee's contractual agreement with the University or may place the employee or the University in a position of conflict of interest;
- (2) performing work for clients for pay when the work in question falls within the regular responsibilities or job assignment of the employee;
- (3) any outside activities that conflict with the teaching, research, service, and/or administrative responsibilities of the employee.

[University Regulations 3-3-401(1)(a)]

The University encourages its employees to be involved in a variety of professional development activities which serve to assist them in maintaining currency in their fields and permit them to apply their expertise to current problems. The appropriateness, relevance, and value of consulting, contractual commitments, other pay-for-service activities, or non-remunerated professional efforts outlined in this document must be approved by University officials through

the process outlined in this document.

[Adapted from CSU policies]

## CONSULTING

The opportunity for qualified staff members to accept occasional consulting engagements on a professional basis is a traditional privilege extended to faculty members of the University. Such activities are recognized as desirable and constitute legitimate means by which faculty members may develop and maintain professional associations. When offered such an opportunity, the faculty member may accept after requesting, and receiving, written approval from his/her school director in the case that the director is in the same discipline as the faculty member. In the case the director is not in the same discipline, the director shall designate someone from the relevant program area. Consulting engagements may not interfere with or detract from the staff member's fulfillment of his/her responsibilities to the University and s/he may retain personally any associated fee or honorarium.

The employee's department chair/division director should approve arrangements for a substitute instructor or class activity for any missed scheduled classes. Furthermore, the employee's department chair/division director must approve, in advance, an absence for consulting or related professional activity.

A University employee who accepts a consulting assignment shall not use institutional resources without prior written approval of the chair/director. When institutional resources are required, the University will assess an appropriate monetary charge consistent with institutional overhead assessed to external grants.

Where the resource usage is minimal and the cost difficult or impossible to calculate, such use of university resources shall not require reimbursement. [adapted from Indiana University guidelines]

Full-time exempt staff employees may not contract to teach for other State educational institutions during their University contract period without the prior written approval of the chair/director, dean, and CAO/vice president. In accordance with State Fiscal Rules (Chapter 2, Section 2.3), dual employment between State agencies also requires a written agreement signed by both employers.

[Board of Trustees 2-3-410(2)]

[University Regulations 3-3-401(1)(b)(I)]

## CONFLICT OF INTEREST

A University employee shall disclose to his/her immediate supervisor all facts and circumstances related to any University transactions, activities, contracts or other dealings which might directly or indirectly involve him/her in a duality or conflict of interest. Such disclosure shall be made in writing as soon as is reasonable after the conflict or potential conflict comes to the knowledge of

the employee. A duality or conflict of interest shall be deemed to exist at any time when an interest held by the employee, or relationship maintained, prohibits or inhibits, or potentially prohibits or inhibits, the employee from exercising independent judgment in the best interests of the University.

[University Regulations 3-3-402(c)]

The following list of examples serves as a set of guidelines for identifying potential conflicts of interest and commitment. It is not intended as a comprehensive list of all potential situations that could present faculty or staff members and the University with difficulty.

(I) Activities that are clearly permissible

- (A) Acceptance of royalties for published works and patents, or of honoraria for commissioned papers and lectures.
- (B) Service as a consultant to outside organizations provided that the time commitment does not exceed the then existing University policy, and that the arrangement in no way alters the faculty or staff member's commitments incurred in the University's execution of a sponsored agreement on the faculty member's behalf.
- (C) Service on boards and committees of organizations, public or private, that does not distract unduly from the faculty or staff member's obligations to the University or that does not interfere or appear to interfere with a faculty or staff member's ability to conduct work under [university] sponsored agreements objectively.

(II) Activities that present the potential for conflict

- (A) Relationships that might enable a faculty or staff member to influence the University's dealings with an outside organization in ways leading to personal gain or improper advantage for the faculty member, or his/her association or family members.
- (B) Situations in which the time or creative energy a faculty or staff member may devote to external activities appear substantial enough so as to compromise the amount or quality of his/her participation in the instructional, scholarly, or administrative work in the University.

(III) Activities that are very likely to present unacceptable conflicts.

- (A) Any activity that a faculty or staff member may wish to undertake on an individual basis that:
  - (i) involves or appears to involve the University significantly through the

use of its resources, facilities, or the participation of academic colleagues, students, and staff;

- (ii) involves the use of the University's name or implied endorsement; or
- (iii) violates any of the principles set forth in the University Research and Projects Policy

University Regulations, 3-3-402(1)(a)

### III. USE OF UNIVERSITY RESOURCES

Faculty may use studios, offices, and university resources for activities that pertain to recruitment, professional development, and enhance the image and reputation of the college and university. Where the resource usage is minimal and the cost difficult or impossible to calculate, such use of university resources shall not require reimbursement.

The creation and dissemination of creative and scholarly works is encouraged by the College.

### IV. REPORTING

Any outside employment or consulting by a full-time University employee on a continuing basis shall be approved by the individual's school director and dean.

### V. APPEALS PROCESS

A Conflict Review Committee will be established to review information relating to a faculty member who is appealing a decision of the CPVA administration regarding consulting and other outside employment.

The committee shall consist of one faculty member from each School in the College of Performing and Visual Arts.

In reviewing the information, the committee shall be guided by the following policies and practices, and apply them as necessary:

- (1) assure adherence to relevant University and College policies;
- (2) give special consideration to the terms and conditions that may complicate the given situation;
- (3) consult with, and obtain additional information from the faculty member that the faculty member feels may be helpful in resolving the conflict; and
- (4) act in a timely manner so as not to unduly delay the conduct of the activity under consideration.

The Conflict Review Committee shall make a recommendation to the dean for resolution of the conflict.