

PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION

OFFICE OF INTERNAL AUDIT AND RISK ASSESSMENT
ADMINISTRATIVE DIRECTIVE 1991 -06.01

II. Definitions

Fraudulent or Irregular Activities

Fraudulent or irregular activities represent instances where a university or Office of the Chancellor employee intentionally uses or abuses their position to obtain or withhold property of the Commonwealth, the State System or an affiliated organization.

IV. Responsibility

University and Office of the Chancellor administrators are responsible for safeguarding State System resources by (1) establishing and maintaining sound business controls designed to deter and detect potential misuse; (2) taking action to minimize financial loss when misuse occurs; and (3) correcting abuses. Each administrator should be familiar

V. Notification (continued)

When sufficient facts and circumstances exist to create a reasonable suspicion that fraud or irregular activities have occurred, the University President shall direct the fiscal vice president to complete a detailed "Incident Report" (Exhibit A).

The report must identify applicable rules, regulations and procedures suspected of being violated. The University President shall have the ability to receive the report and conduct a local preliminary investigation, in accordance with campus policies and procedures.

Only in the most adverse circumstances should the matter be referred to the Office of the Chancellor for investigation. Instances when referral may be necessary include (1) a conflict of interest at the campus level; (2) the issue is of such magnitude or complexity it is beyond the capacity of local administration; or (3) the matter could bring reputational harm upon the entire State System. Any formal investigation conducted under the auspices of this directive, including those performed locally, shall be reported at the outset to the Chancellor, etc., as required by the "Incident Report." Personnel in the Office of the Chancellor, while assuring campus investigations remain confidential, are in a position to assess whether the issue is significant enough to merit State System intervention or advice.

If a University President or the Chancellor is the person alleged to have engaged in improper activity, he/she will be removed from the oversight process. In matters

VI. Initial Review and Determination (continued)

When appropriate, immediate action shall be taken to secure and protect from destruction or alteration all pertinent accounting and administrative records. The Chancellor or

VII. Internal Investigation Procedures (continued)

Office of the Chancellor Employee and Labor Relations

Employee and Labor Relations personnel will provide technical expertise concerning the various responsibilities and obligations applicable to each case under the pertinent collective bargaining agreements and as appropriate for management employees. In particular, this office will provide specific information regarding interactions with bargaining unit employees and their representatives, such as but not limited to, disciplinary matters.

University Public Safety

Campus police will assist in fraud investigations by utilizing their contacts with local authorities, other law enforcement agencies, and area merchants to gather pertinent information. Public Safety will provide suggested criminal investigation procedures and, when necessary, obtain assistance from external law enforcement agencies.

Outside Experts

Outside experts will be called upon to provide expertise and assistance in specific situations as necessary or required.

VIII. Investigation

Representatives of the investigative team shall treat all matters pertaining to known or suspected misuse of State System resources in strict confidence. Each ~~System~~ ~~employee~~ involved in the conduct of an investigation shall inform individuals contacted to keep all information regarding a suspected fraud or irregular activity confidential. Any employee questioned in an investigation shall be bound by this confidentiality.

Internal investigations should proceed as follows:

- A. The System's charging official (Chancellor or University President) shall define in writing the scope and nature of the allegations involved in the investigation. An initial meeting of the investigative team will then be held to review and discuss the suspected fraud or irregularities and define the specific roles of each team member.
- B. Periodic meetings shall be scheduled to discuss progress on the investigation. If the investigative team believes the scope needs to be broadened, they will request the appropriate charging official to formally redefine it.
- C. The investigative team shall have authority to (1) interview System employees, contractors and students; (2) inspect facilities and records; (3) request information they deem relevant and necessary to the completion of the investigation. Individuals who are interviewed by the investigative team, or a member thereof, shall have the opportunity to have an advisor present. The role of the advisor shall be to provide advice and counsel to the interviewee during the investigative meeting. The advisor shall not act as a representative or advocate for the interviewee, except where provided for under relevant collective bargaining agreements or law.
- D. Legal counsel will provide ongoing advice to investigators regarding the rights of employees, especially when individuals are at risk of self-harm.
- E. A draft report of the investigation's findings and recommendations shall be prepared and reviewed with the investigative team and other appropriate State System officials.
- F. The final report will be distributed to appropriate university and Office of the Chancellor officials, including chief legal counsel.

IX. Recommendations

A. External referral:

Upon completion of the investigation, the University President or Chancellor, in consultation with other System officials, will decide whether the review is conclusive and the findings warrant forwarding the matter to an appropriate law enforcement agency for further disposition. Chief legal counsel will make a recommendation through the Chancellor to the Board of Governors as to the appropriate referral entity and take the necessary steps to effect the referral.

B.

PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION
SUSPECTED FRAUDULENT OR IRREGULAR ACTIVITIES
INCIDENT REPORT

University _____ Office/Program _____

Prepared by _____ Title _____ Date _____

Description of incident and related parties:

Were parties outside the University/Office of the Chancellor involved?

Was there financial loss? Yes No If yes, estimated \$ _____

Are System funds involved? Yes No If not, specify _____

Are System employees involved? Yes No If not, specify _____

Rules, regulations and procedures violated

Parties notified at the University/Office of the Chancellor (other than those required below)

Required distribution:

Chancellor

University President

Chief Legal Counsel

System Director of the Office of Internal Audit and Risk Assessment

THE ROLE OF LEGAL COUNSEL
WITHIN THE PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION,
I.E., WHO IS THE CLIENT?

The purpose of this statement is to address several issues regarding access to and representation by Legal Counsel within the State System of Higher Education. The questions have arisen from an interest on the part of the fourteen university presidents in clarifying the role of the Office of Internal Audit and Risk Assessment and Legal Counsel in the conduct of internal investigations of university programs.

The role of Legal Counsel within the State System is largely governed by constitutional and statutory law. The Commonwealth Attorneys Act 71 P.S. 732-101 et seq, vests the authority to conduct legal affairs in the Office of General Counsel. The General Counsel appoints the Chief Legal Counsel, who administers legal affairs for the State System. State System attorneys and outside legal counsel are also appointed by the General Counsel, the advice of the Chief Legal Counsel.

The Office of Attorney General also plays a role in State System legal affairs. The Attorney General reviews and approves all university and State System contracts for amounts in excess of \$1,500. In addition, the Attorney General represents the State System in civil and criminal litigation, as well as various other legal matters. On occasion the Attorney General will delegate a case to the State System for representation by agency counsel.

The general response to the question, "Who is the Client?" is the entity. When an attorney represents a corporate body, the corporation is the client, regardless of whether the attorney happens to report to or work with a branch manager, vice president or the Board of Directors. When the interests of parts of the corporation conflict, the attorney owes his/her duty to the highest authority within the corporate structure. The duty of loyalty will permit nothing less.

Likewise, in the State System, the duty of the attorney is to represent the State System, which is one body corporate and politic, 24 P.S. -2001A. Regardless of the nature of the attorney's assignment, i.e., to represent a university or board, the attorney represents the entity, i.e., the State System. When a university and a higher authority have a conflict of interests or positions, the attorney must always provide legal advice, which presents the best interests of the State System.

It must be recognized that the duty to represent the entity may at times create tension or difficulty between the attorney and the officer or authority within the entity that the attorney represents. This is a wellknown problem for corporate lawyers and is, to some extent, unavoidable.

In the case of the State System, the university counsel is required to offer his/her best efforts to provide legal advice and representation to the client university and its president. When the Office of Internal Audit and Risk Assessment is tasked to investigate a university officer or program, the university attorney may continue to provide advice regarding official matters to the president and university officers so long as such is consistent with the attorney's duty to the State System and ultimately, the Commonwealth of Pennsylvania. In addition, the attorney cannot provide private advice or counsel to the president or university officials.

It is important that both attorney and client are candid with one another as they approach issues which may require an adjustment of their normal relationship. The university counsel should be alert to the possibility that a client could become a target of a State System or Commonwealth investigation. If the attorney identifies a situation where there may be a conflict between the interests of the State System and the official or employee, the attorney should, after consultation with Chief Legal Counsel, advise the official/employee of the potential conflict and of the

I. Civil Suits

Unintentional Conduct

The Commonwealth of Pennsylvania provides legal counsel to defend officers/employees who are sued for negligence or other unintentional conduct while acting within the scope of their authority. The Commonwealth also provides indemnification for judgments in the amount of \$250,000 per officer/employee. Amounts in excess of \$250,000 are absorbed by the State System.

Intentional Conduct

In cases where malicious or intentional conduct is alleged, other than Federal civil rights suits, the Office of Attorney General will provide representation if it is determined that an officer/employee acted in good faith and within the scope of his/her authority. In such cases, indemnification is provided for judgments in the amount of \$250,000 per officer/employee. Amounts in excess of \$250,000 are absorbed by the State System.

II. Criminal Prosecutions

The Commonwealth does not provide nor fund legal representation to defend officers/employees against criminal charges for alleged official misconduct. This would include alleged violations of the penal provisions of the *Ethics Act* or the *Adverse Interest Law*

III. Reimbursement of Fees When Representation Has Been Denied

When an officer/employee has been denied legal representation in civil or criminal cases and subsequently prevails in the ~~act~~, said individual may apply for reimbursement of reasonable amounts of counsel's fees. The term "prevail" in civil matters means an entry of final order of judgment against the other party and in favor of the officer/employee. In criminal cases it means an acquittal by means of a jury verdict or a judicial finding. Requests for reimbursement are to be directed to the Chief Legal Counsel who acts as a representative of the General Counsel in such matters.

It is the purpose of the Legal Office of the State System to offer legal advice, representation and support to the State System and its officers and employees. If you should have any questions or concerns regarding your rights, duties or obligations as a State System employee, please direct them to your university attorney or the Chief Legal Counsel.

Robert A. Mulle
Revised 12/10/97

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