

Resolution 2017-9. On the Proposal to Bar UNC Centers and Institutes from Engaging in Legal Actions

The Faculty Executive Committee resolves:

We respectfully urge members of the UNC Board of Governors to vote “no” on the proposed change to Section 400.7 of the UNC Policy Manual entitled “Involvement of Centers and Institutes in Legal Actions.”

Rationale

The proposed policy makes it harder for campuses within the system to pursue their mission, places arbitrary and unjustified constraints on how we train our students, harms our university’s reputation, threatens our accreditation, and complicates the work of Centers and Institutes in ways that cannot be foreseen.

The proposal has been erroneously characterized as a “litigation ban,” but it reaches far beyond litigation, to the outermost limits of the practice and study of law. Centers and Institutes, in addition to refraining from litigating or employing an outside lawyer to litigate, will be barred from “*act[ing] as legal counsel to any third party*” or “*employ[ing] or engag[ing], directly or indirectly, any individual to act as legal counsel to any third party.*” Lawyers “act as legal counsel” to clients in countless ways outside the context of litigation; they counsel, negotiate, draft legal instruments, provide legal opinions, mediate, investigate, and do many other things. This proposal, by its terms, bars all of it.

Currently, faculty members from many disciplines provide professional services through Centers and Institutes across the state. Physicians, nurses, and other medical professionals provide health care;¹ business and information technology professionals perform a wide array of professional services for clients in business and industry;² social workers provide direct clinical support to individuals and families;³ professionals in the field of ergonomics deliver various professional services to corporate and business clients.⁴ In all of these engagements, faculty members serve the public, enhance the education and training of students, and carry out research to create new knowledge.

The pending proposal singles out *legal* education and the delivery of *legal* services for a unique and debilitating disqualification. Lawyers, and lawyers alone, will be barred from serving the public, training students, and deepening their research through the provision of professional services in a Center or Institute. Law students, and law students alone, will be blocked from growing into their professional lives through work in a Center or Institute. If there is a justification for decreeing that a professor of engineering may evaluate the ergonomics of a small business’s workplace through a Center, but a professor of law may not assist that same business by drafting a contract, we do not perceive it.

And although the proposed policy is written in general terms, it disproportionately affects the Center for Civil Rights, a nationally renowned institution committed to protecting the

¹ Examples include the UNC Kidney Center and the Center for Maternal and Child Health at UNC Chapel Hill and the Pediatric Healthy Weight and Treatment Center at Eastern Carolina University.

² Examples include the Small Business and Technology Development Center at ECU and the Institute for Next Generation IT Systems and the NC Clean Energy Technology Center at NC State.

³ An example is the Strong Couples Strong Children program of the Jordan Institute for Families at UNC Chapel Hill.

⁴ This refers to the Ergonomics Center at NC State.

constitutional rights of American citizens, particularly people of color, the poor, and other potential beneficiaries of civil rights advances. We echo the comments of many who have said in recent weeks that this proposal would lead to the Center's termination, which would needlessly injure the university, the law school, the clients who have nowhere else to turn for legal representation, and the legacy of the Julius Chambers, the Center's founding director. The Center is an integral part not just of the scholarly and service work of its faculty leaders and the training of new lawyers, but also of the very identity of the law school and the university. People – faculty, students, staff, underserved communities, faculty at peer institutions, accreditors – will certainly notice this undermining of the university's mission to serve the people of North Carolina and the greater public good. The change in policy would hurt our reputation and the people of the state we are mission-bound to serve.

Beyond the public perceptions, we are also concerned about the effects this change in policy might have on our law school's accreditation.⁵ While it is appropriate for BOG to set general policies, matters of curriculum and student training should be left to faculty, who are in the best position to judge how to focus their efforts in these areas.

Finally, this proposal risks limiting or complicating the work of centers and institutes in many unanticipated ways. A center dedicated to supporting small businesses and university startups may not bring an attorney on staff – or hire an outside lawyer – to add a business law component to the professional advice it offers its clients. Even the simple act of referring a client to outside counsel might be characterized as “engaging ... indirectly ... an individual to act as legal counsel to [a] third party.” A medical center presumably may not provide or arrange for advice to patients about insurance coverage through its own lawyer or outside counsel. Neither may a Center secure a lawyer's guidance on intellectual property rights for the benefits of itself and its external partners or co-investigators.

For all these reasons, we respectfully ask BOG to reject the proposed change and to maintain the status quo.

⁵ “Could proposed litigation ban put UNC's accreditation at risk?” *The News and Observer*, May 23, 2017 (<http://www.newsobserver.com/news/local/education/article152245127.html>). “A message to UNC board: Don't micromanage and avoid undue political influence” *The News and Observer*, July 14, 2017 (<http://www.newsobserver.com/news/local/education/article161494878.html>).