

## **Clarification on Outside Employment During University Breaks and Summer and Intellectual Property**

**Q: The new campus policy on conflict of interest (404.0) states: “For all full-time faculty (both 9-month and 12-month) and non-classified staff, outside employment requires prior approval.” Assuming a faculty member expects to return in the fall, is prior approval required for summer outside employment when the faculty member will not be on UA appointment? What about employment during breaks (such as winter break) during the academic year?**

A: With regard to breaks during the academic year, because 9-month faculty are compensated for the entire period from the beginning of the appointment in August to the end of the appointment in May, including during breaks and holidays, prior approval is required for all outside employment during university breaks and holidays under Board of Trustees Policy 450.1.

If a 9-month faculty member seeks to undertake outside employment during the summer (when he or she is not on appointment) 1) that will involve or relate to “University Research” as defined in Board Policy 210.1(B)(2)<sup>1</sup> and which may involve or relate to any “Invention” as defined in Board Policy 210.1(B)(4)<sup>2</sup>, or 2) which may involve an actual or potential conflict of interest as defined in Fayetteville Policies and Procedures 404.0(1)<sup>3</sup>, then the faculty member must submit a conflict of interest disclosure form prior to undertaking the outside employment, and an approved conflict of interest management plan may be required in order to engage in the employment. Furthermore, an agreement with the University may be required regarding disclosure, ownership and licensing of any “Invention” conceived or reduced to practice during the outside employment.

**Q: Does the University have an ownership interest in intellectual property developed in the summer when the faculty member is not on University appointment -- for example, if the faculty member is consulting for a third party? Must such intellectual property be disclosed to the University? May such intellectual property be assigned by the faculty member to the third party, rather than to the University?**

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<sup>1</sup> “University Research” means any research or development activity which is directly related to the duties and responsibilities for which a person has been compensated by or through the University or for which facilities owned, operated, or controlled by the University are used.

<sup>2</sup> "Invention" refers to any material capable of legal protection arising out of University Research and includes any discovery, invention, process, know-how, design, model, computer software (if patentable), strain, variety, or culture of an organism, or portion, modification, translation, or extension of these items but excludes Works [protectable by copyright] as defined [in the Board Policy] which are not patentable.

<sup>3</sup> A conflict of interest is a situation in which a faculty or staff member may have the opportunity to influence University administrative, business, or academic decisions in ways that could lead to personal gain, give improper advantage to self or others, or interfere with objective preservation, generation, or public dissemination of knowledge.

A: Board Policy 210.1 requires that any invention by a faculty member must be timely disclosed to the University, regardless of whether it occurs at a time that the faculty member is not on University appointment, and regardless of any contrary contractual obligations imposed by a third party, unless a specific agreement to the contrary has been negotiated in advance with the University. If the University determines that the invention is unrelated to the activities for which the faculty member is employed by the University and it was not made or conceived under circumstances involving University facilities or personnel, then the University will make no claim to such invention.

Recall that Board Policy 210.1(D)(2) provides as follows: "Employees engaged in external consulting work or business are responsible for ensuring that agreements emanating from such work are not in conflict with this policy or with contractual commitments of the University. Such employees should provide affirmative notice to the other parties to such agreements, informing them of the obligations of the employees to the University and the possible applicability of this policy to such agreements."