May 31, 2013

MEMORANDUM

To: UF/IFAS Administrative Council

FROM: J.M. Payne

SUBJECT: Internal Management Memorandum 6C1-6.30-1-12 (Revised)
        IFAS: Disclosure of IFAS Outside Employment/Activity/Consulting for Faculty and Staff

Attached is the revised IMM 6C1-6.30-1-12 (Revised). If you have questions or concerns please feel free to contact my office.

JMP:gk
Attachment
IFAS Internal Management Memoranda

IFAS; Disclosure of IFAS Outside Employment/Activity/Consulting for faculty and staff

EFFECTIVE DATE: May 31, 2013

INTERNAL MANAGEMENT MEMORANDUM NUMBER: 6C1-6.30-1-12 (Revised)

SUBJECT: IFAS; Disclosure of IFAS Outside Employment/Activity/Consulting for Faculty and Staff

A. Policy

1. Purpose.

This IMM is intended to help those providing disclosure and seeking appropriate allowance for outside activities and for the processing of the necessary University and IFAS disclosure forms.

2. Land-Grant Mission and the Need for Separate IFAS Policy.

The IFAS policy found in this IMM is in concert with the University's policy and is codified in the Florida Administrative Code 6C1-6.015; this Code establishes specific requirements for faculty and staff beyond general University requirements. The reason for additional policy is based on the mission of the Florida Agricultural Experiment Station (FAES) and the Florida Cooperative Extension Service (FCES). Each of these units employ faculty, in a manner unique within the University, specifically to conduct research or extension education programs. Therefore, the potential for conflict of interest is greater than other areas of the University that do not pay faculty to conduct these activities. The purpose is not to encourage or discourage such activity. However, due to the land-grant mission, the state-wide focus of IFAS educational and research endeavors, and the twelve (12) month appointments of faculty and staff, there are some additional restrictions.


IFAS faculty and staff have professional duties, responsibilities, and obligations to IFAS' goals of teaching, research, extension, and service as manifested in the College of Agricultural and Life Sciences (CALS), FAES, and the FCES. Their primary professional and intellectual responsibilities are to the University. Appropriate time and energy is devoted to one’s University duties, responsibilities, and obligations to ensure they are met. However, upon disclosure and administrative review, faculty and staff may also engage in outside employment, consulting, and other similar activities. These disclosed activities may further the dissemination and use of the knowledge and expertise developed at the University and may also advance the professional competence and reputation of the faculty and staff members. Thus, participation in outside activities sometimes serves the mission of the University and IFAS in addition to benefiting the respective employees.

Such activities and the financial interests of employees are of concern to the University if they result or could result in conflict with one's duties, responsibilities, and obligations to the University. Therefore, disclosure of any outside activity or financial interest is required. Examples of outside activities include:

- business activity with a potential of financial gain
- serving on a policymaking board of directors
- consulting
- honoraria
• court appearances

There is a limit to the time that faculty and staff can spend in outside activities. The limit of time is one day (eight (8) hours) per seven (7) day week on average (see 5.).

In reviewing the disclosure, outside activities will be assessed for their potential conflict of interest and/or conflict of commitment. Faculty and staff may participate in such outside activities and hold financial interests as long as there is no conflict and they are fulfilling their duties, responsibilities, and obligations to the University.

The University's official statement is located at:
http://www.hr.ufl.edu/recruitment/policy/outside.asp

Related policies are substantially defined in the Florida Administrative Code (Rules). All are accessible on the web from the IFAS Personnel Affairs Website: http://personnel.ifas.ufl.edu/6C1-1.011, Disclosure and Regulation of Outside Activities and Financial Interests; 6C1-6.015, IFAS Outside Activity Guidelines;

4. Compromising of Future Research Funding.

Great care must be taken to ensure that outside consulting does not compromise future research funding. For example, companies employing faculty and staff as consultants may desire commercial access to inventions or discoveries made during the course of this business relationship. Future funding partners might refuse to fund IFAS research if they had been denied access to the knowledge gained from prior consulting contracts or agreements. These companies may also seek rights to future, yet-to-be-developed knowledge discovered at IFAS.

This situation is in direct conflict with the mission of IFAS to develop and disseminate nonproprietary knowledge and information to all the citizens of Florida.

5. Limits on Time Away from University and Professional Scheduling.

The IFAS policy on professional scheduling addresses the need to balance compensated time (work or annual leave) and personal time during a workweek for faculty and staff employees only. Faculty and staff in IFAS have professional duties, responsibilities, and obligations to IFAS' goals of teaching, research, extension, and service. To fulfill these, they often have schedules that are outside the typical workweek and necessitate the use of professional scheduling. Such schedules are not amenable to strict time clock monitoring and analysis. However, the terms "hours", "days", etc., are used in the following guidelines for illustration.

a. Faculty and staff may be involved (upon administrative approval) for up to an average of one day (eight hours) per seven-day week in outside activities that have a financial interest. This equates to a maximum of 52 days in a fiscal year; these 52 days may be taken as annual leave, official time, weekends, or holidays. The employee must demonstrate that an outside activity does not create a conflict of interest. Outside activities with financial interests include continuing business activities, consulting, certain court appearances, and honoraria.

b. Official work time may be approved for an activity that is beyond the scope of duties but will benefit the University.

c. Other professional outside activities that do not involve financial interests must be disclosed as well to ensure that no conflict of interest or conflicting commitment of time
exists with University duties, responsibilities, and/or obligations. An example is serving on a policy-making board that impacts issues related to the IFAS mission.

B. Application of Policy

IFAS faculty and staff who propose to engage in any outside activity, as noted in this IMM, must seek and receive administrative review and authorization prior to initiating the employment/ activity. Disclosure (per C.) must be done each fiscal year (July 1- June 30) for ongoing activities. There is also a statement on each employee's annual contract that addresses the disclosure of outside activities.

C. Procedures for Requesting Authorization

Two forms (UF and IFAS) are required. The request must be signed by the Unit Leader, Dean(s), and Vice President before the faculty and staff engages in the outside activity. The forms should be submitted thirty (30) days in advance of the proposed outside activity. (See D. for instructions on form completion.)

1. The faculty and staff member completes both the UF and IFAS forms and submits them to the unit leader. If official time is to be used, a letter of justification from the employee to the unit leader with the unit leader's signed approval should be forwarded as well.

2. The unit leader makes the initial determination and is authorized to deny a request that does not meet with UF/IFAS policy.

3. If the unit leader supports the request, the forms are signed and forwarded, with any supporting information, to the Office of IFAS Personnel Affairs.

4. The Office of IFAS Personnel Affairs will check the forms for technical accuracy and forward to the appropriate Dean(s) for review and approval.

5. If the Dean(s) support the request, the forms are forwarded to the IFAS Vice President's office. Unsupported requests are communicated directly to the unit leaders in writing.

6. The Vice President reviews the request and makes the final determination and signs if appropriate. If intellectual property is involved, the signature of the Vice President of Research is required; if use of University facilities, equipment, or services are involved, the signature of the Vice President of Administrative Affairs is also required. Unsupported requests are returned to the respective Dean(s) who in turn respond to the unit leader in writing.

7. Authorized requests are returned to the Office of IFAS Personnel Affairs. Copies of the forms and any supporting material are maintained in the personnel file. Copies are also provided to the unit leader and the respective faculty and staff for their files.

D. Instructions for Completing Disclosure Forms

As noted in C., two forms are needed to request authorization of an outside activity. Instructions are as follows:

1. University of Florida Form 0AA-GA-L-267
   Both the form and detailed instructions are located online at: http://www.ca.ufl.edu/online-forms

2. IFAS Form 2627 (Revised 2002).
   Both the form and detailed instructions are located online at: http://hr.ifas.ufl.edu/resources_forms_current.shtml

E. Glossary of Terms and Related Policies

1. Board of Directors
   A board/board of directors is a group of persons having managerial, supervisory, investigatory, policymaking, or advisory powers. From time to time, faculty and staff may be asked to serve
on boards that have some direct interest in agriculture and/or natural resources issues. If the organization has a relationship with UF, the faculty and staff should recuse themselves from votes on issues with any connection to the University. If the faculty and staff receive a grant from an organization, they cannot serve on the board. Otherwise, an apparent conflict of interest would exist. (Concerns are further delineated under Consulting.)

2. Business Activity
A business activity is a private practice or private business activity such as serving on a board of directors of a business, management of a small business, or engagement in farming or other agricultural enterprises. A determining factor is that the employee has a financial interest in the activity. One must have advance authorization by the Vice President in order for the business entity to conduct business with the University in any way. It is important to carefully assess one's role in the business (on the board, owner, shareholder, etc.) and the business' relationship, if any, to the University (purchases, recommendations, contracts, grants, etc.). If such an interaction is not handled properly, a conflict of interest would result.

3. Conflict of Commitment (Duties, Responsibilities, Obligations (Time))
A conflict of commitment exists when one's duties, responsibilities, and obligations are not being met due to the distribution of effort between outside activities and University employment.

One's University position is considered his/her primary employment. Therefore, the time involved in any outside activity must be of a limited nature. Outside activities will not be allowed for faculty and staff who are not fulfilling their University employment responsibilities. (Examples follow)

Example - a faculty member conducts a private business activity while on annual leave and/or during non-work hours. Although individual schedules may differ, University work hours generally occur Monday through Friday. The business activity gets particularly busy and the faculty member's availability to students or his/her support staff suffers.

Example - a faculty member's productivity has suffered due to his/her involvement in an outside business.

4. Conflict of Interest
A conflict of interest occurs in:

- situations in which a person has actually neglected or breached a duty to one entity to the benefit of another,

- situations in which a person has used his or her position with one entity to advance personal gain or the gain of another entity, and

- situations in which there is a potential or appearance for breaching a duty to one entity. Therefore, a conflict of interest occurs in any situation in which a person serves or represents two distinct entities (or persons), or must choose between two conflicting interests. Such situations could include financial or other personal considerations that may compromise, may involve the potential for compromising, or may have the appearance of compromising one's objectivity in meeting University duties, responsibilities, and obligations. (Examples follow)

Example - a faculty member owns a business outside the University and he/she encourages his/her students to frequent the business. In this situation,
the faculty member is in a conflict of interest because the interests of the
students could be overshadowed by the personal business interests of the
faculty member.
Example - a faculty member is asked to serve on a county/city board in the
county in which they work. Issues that affect the extension office will likely be
raised on this board. Therefore, this should be disclosed and one should
abstain from voting on any matters in which a conflict of interest would exist.
Example - a faculty member owns a business that directly relates to his/her
subject matter expertise. This could become a conflict of interest if the focus
on the business duplicates or overshadows the responsibility to the
University. If there is an overlap of the same duties and responsibilities that
the faculty member is evaluated on annually, a conflict of interest exists.

5. Consulting
Consulting is when one provides professional or expert advice or services beyond his/her
professional responsibilities at the University. Typically, one receives compensation and/or
expenses for these services.
IFAS' state-wide mission includes teaching, research, and extension educational programs.
Therefore, avoiding conflict of interest when consulting within the state is difficult. As a result,
consulting in the state of Florida on matters related to one's position is strictly limited. The
following points should be considered:

- The proposed employment/activity should not be in competition or conflict with private consulting
  services operating within the state of Florida.
- Consulting for any business or agency that provides goods or services or in any way has a
  business or contractual relationship with Florida's public universities or their components is not
  allowed.
- Residents of the state have public access to those services or non-formal (Extension) education
delivery normally provided by IFAS faculty irrespective of an individual faculty assignment.
- For liability purposes, when engaging in consulting, the employee does NOT represent the
  University of Florida or any of its components nor is the employee protected by the State of
  Florida or the University for liability. Consideration of malpractice insurance is suggested.
Example - a faculty member in the School of Forest Resources and Conservation is hired by a
large forestry company to assess the reforestation practices for their lands in Washington State.
This is beyond the faculty member's assigned responsibilities at the University and should be
disclosed.

6. Compensation
Compensation is defined as income, assets, or capital, either realized or having the potential to
become realized.

7. Court Appearances (Witness Requests and Subpoenas)
Because of the expertise and work of IFAS personnel within the IFAS extension and research
missions, IFAS faculty and staff employees may be asked by individuals and industry (and their
counsel) to serve as fact and/or consultants/expert witnesses in legal matters. The IFAS
mission is to impartially serve all of its broad and varied clientele in the State of Florida. Thus,
IFAS personnel are expected to avoid providing, or appearing to provide, services to one or more of the persons or entities served to the detriment of others. As a result, please be aware of the following:

. Fact Witness Requests

IFAS faculty and staff may be asked to serve as a fact witness in a legal case involving a matter in which he/she was involved in the course and scope of IFAS employment. For example, an extension faculty member may have observed and tested certain plants on a farm in order to advise the farm owner. The providing of these services is part of the extension faculty's employment. The results of the tests may become relevant to a lawsuit filed for or against the farm involved, and the extension faculty member may be able to testify as to these facts.

In order to serve as a fact witness in such a case, the faculty and staff must be served with a valid subpoena. A subpoena is a command to appear at a certain time and place to give testimony and may also require that the person or entity subpoenaed provide certain documents.

If a faculty and staff member is served with a subpoena he/she should follow the steps outlined in the section entitled "Subpoenas." Because the faculty and staff will be acting in the course and scope of his/her employment when serving as a fact witness, it is not necessary to take annual leave.

a. Expert Witness/Consulting Requests

An expert witness has no first-hand knowledge of the facts relevant to a particular lawsuit. An expert witness is retained by one of the parties to a lawsuit to give expert opinions on the facts. Thus, any expert witness service, like other forms of consulting, is an outside activity and not within the course and scope of employment. In rare cases, a subpoena may be served that requires faculty and staff services as an expert witness in his/her area of expertise within IFAS. Any such subpoena should be reported immediately, as noted below, as a legal challenge to the subpoena may be appropriate.

To avoid the appearance of "taking sides," IFAS policy is that its faculty and staff may not act as consultants or expert witnesses in legal matters in the State of Florida. Because the concern about "taking sides" is not as great, employment as a consultant/expert witness on a legal matter outside of the State of Florida may be permitted as long as there is no likely adverse impact on IFAS operations and mission and such service is allowed under University rules and the Florida Code of Ethics for Public Employees.

When determining whether IFAS' personnel will be permitted to serve as consultants/expert witnesses, the principles discussed in the law and rules will be considered. [A reference to the University website is on Page 3.] One of the potential conflicts noted in this brochure is especially pertinent here—that is, faculty and staff, by serving as an expert witness, may cause his/her own unpublished research data and that of university colleagues and students to be revealed in the course of a lawsuit, thereby compromising the ability of not only the faculty and staff, but also of
colleagues and students, to publish their research results. In such a case, the conflict between university obligations and service as an expert witness would preclude approval of the outside activity.

If faculty and staff have been asked to serve as a consultant/expert witness and he/she does not think the activity will create any conflicts, he/she must complete the "Disclosure of Outside Activities and Financial Interests" form and secure all necessary approvals before providing the services.

Finally, official time may not be used for serving as an expert witness or consultant (except in certain rare cases involving a subpoena as described above) in a legal case: annual leave must be taken. In addition, please remember faculty and staff are not representing IFAS when providing these services and, thus, are in no way protected by his/her status as a university employee; rather he/she, in their individual capacity, are contracting to provide the services as an independent contractor.

b. Other Witness Requests Should one receive a subpoena to serve as a fact witness in a legal case outside of the course and scope of his/her employment, it is considered a personal matter; for example, one may be a witness to a car accident or a neighbor's divorce outside of work time. Annual leave must be taken for these appearances. For more information, please refer to University of Florida Rule 6C1-1.201.

c. Subpoenas IFAS faculty and staff who have been subpoenaed because of work done in the course and scope of employment must consider the following:

1. upon receipt of a subpoena, the faculty and staff should (i) record all of the circumstances of receipt: time, date, how (mail, personal services, etc.) and who received it and (ii) notify his/her supervisor and one of the Deans or the Vice President's office.

2. testimony should not be offered or questions answered about a case except under oath and after the valid execution of a subpoena. This is typically at a deposition or trial where both parties are present and have the opportunity to ask questions under oath. The Office of the General Counsel is available to answer any questions faculty and staff may have. They will also appear as counsel for him/her if, after consultation they deem it appropriate or if the University's legal interests are at issue.

8. Honoraria
An honorarium is a limited amount of money designated to show appreciation for one's time and effort. Formal disclosure of honoraria is required only for amounts of $1000 or greater.

9. Official Time (work time)
This is the term used to describe time for which the University is paying and for which one is not on paid leave. With appropriate authorization, official time can be used for work outside the scope of one's assigned responsibilities that would still benefit the University. Annual leave or a combination of both may be used depending on the nature of the outside activity and its relationship to the mission of IFAS. Annual leave should be taken for work that is beyond the scope of one's official duties. If an activity can be viewed as part of one's official duties and would benefit the University, then official time should be requested.

10. Outside Activity
An outside activity is defined as employment or engaging in private business activity beyond the scope of one's University position and its duties, responsibilities, and obligations. Examples include: business activity, court appearances, some honoraria, consulting, candidacy for public office, etc. Some outside activities could relate closely to one's professional responsibility; such activities are disclosed when compensation such as honoraria and expense reimbursement are involved. Outside activities are done while, as a general rule, on annual leave or during non-University paid time (typically weekends and evenings).

Example - An animal scientist owns an animal farm.
Example - An entomologist owns a local clothing store.
Example - A family and consumer science agent sells cosmetic products on a part-time basis.
Example - A horticultural sciences faculty member is asked to teach a "Home Horticulture" class at the local community college.