



Winter 2024 Virtual CLE Workshop · February 7 – 9, 2024

Employment Law

Is There a Lawyer in the Escape Room?

General Counsel Navigate the Labor and Employment Maze

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General Counsel: Employment Law Navigator

- People-related scandals make headlines!
- GC is valued for excellent judgment and ethical decision making
- Employment attorneys understand what is coming down the pike and can alert
- Familiarity with policies/procedures for diverse employees



Hot Topics for General Counsels

- Increasing unionization efforts
 - Graduate students
 - Faculty/staff
 - Collective Bargaining
 - Strikes/protest
- Flexible/remote work
 - Tax, insurance issues
 - Ensuring equity
 - Wage/hour issues



Relationships With Stakeholders

- Don't be the office of “no”
- Not “the President’s lawyer”
- Be solution-oriented
- Explain practice implications of the law
- Preventative not just a problem solver
- Convener of all the stakeholders



Employment Lawyers - Reputation

- Organized
- Well-connected
- People of Action
- Sober/Confidential
- Practical

Key Roles of Labor and Employment Attorneys

- Represent university in litigation/outside agencies
- Partner with HR, EEO offices, benefits specialists, senior administrators, managers, deans
- Act as strategic partner on major issues
- Address DEI issues

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Politics of Legal Representation

- Is specialized expertise, objectivity, or scalability required?
- Do internal employees need “cover?”
- Is there a conflict of interest in using internal employees?
- Is it a high stakes, “bet the college” matter?
- Does it involve a senior leader of the college/university?
- Is neutrality a central issue that must be established?



A Tangled Web

Provost Paula Prevención has worked at Do Right University for twenty-five years, for the last four years as Provost. During her tenure, she has served as a full professor, chair of a department, and dean of the School of Social Welfare. She is currently in the last year of her five-year term as Provost. She is Latina and an out lesbian, well-regarded by the faculty, loved by students, and a leader nationally on behavioral health and mental health issues in BIPOC, LGBTQi+ and urban communities.

A Tangled Web

You just had lunch with Irene Intel, a Title IX Office investigator. She told you that she just did an intake interview earlier that day with a MSW graduate student complainant, Sonya Smart, who said that she had been involved in a consensual relationship for almost a year with Dean Smarmy, head of the Social Work School. Sonya claims that she just ended things with the Dean about 6 weeks ago after his wife, Dr. Anne Annoyed, a faculty member in the business school, confronted her. Sonya maintains that Dr. Annoyed told her “you will be sorry for ever breaking up my family” and “this will be your last stop in higher education.” nt.

A Tangled Web

Sonya said that Dean Smarmy told her that he and his wife are polyamorous, so she was not aware that he was cheating on his wife, or she never would have dated him. Sonya claims that the day after her encounter with Dr. Annoyed, she told Dean Smarmy that she was ending things, but he begged her to stay. He kept insisting that his wife was lying, and told her that he “refuses to let her go.” He has sent flowers to her apartment on multiple occasions, stopped in on her discussion sections, and texted and dm’ed her several times a day, until she blocked him on social media and his phone number. Investigator Intel reminds you that this is the second Social Work Dean in the last decade who has been accused of sexual harassment.

A Tangled Web

After your lunch, you immediately tell the General Counsel that you are concerned that there may be a sexual violence/sexual harassment matter involving another Dean at the Social Work School. She thanks you for the information and you agree that you will give the Provost a “heads up” about the matter during your standing meeting.

A Tangled Web

The next day, you have your monthly check-in meeting with the Provost to discuss issues of sexual misconduct. You generally use that meeting to brief her at a high level on any high profile investigations, grievances/claims or litigation, especially anything involving sexual violence/sexual harassment. You mention that there is an investigation involving a dean on campus, and the Provost immediately responds “oh, that must be Dean Smarmy - I’m so glad that the grad student decided to come forward. I saw her in tears in the parking lot a few weeks ago.” She goes on to mention that she sat with the student in her car for 30 minutes, comforting her and “letting her vent.”

A Tangled Web

When Sonya told her that she had been duped into a polyamorous relationship with a Dean, the Provost encouraged Sonya to go to the Title IX office to file a complaint. When you gently asked the Provost if she had reported the matter to Title IX or any other campus office, she hedged, wouldn't answer the question, and then quickly ended the meeting.

A Tangled Web

A week later, a “Shame on Smarmy” campaign begins on social media, with alumni and current students coming forward to complain about the Dean’s “predatory behavior” with undergraduate and graduate women. They also claim that “Time’s Up” for the Provost, because she has known about his bad behavior for years. They allege that it was a known secret that Dean Smarmy had been “preying” on young women, but she did nothing to stop him, as a colleague, his chair or his dean, because she is longtime friends and colleagues with Dr. Annoyed and Dean Smarmy.

A Tangled Web

To make things worse, the student newspaper just published a story that has been picked up nationally about a leaked plagiarism investigation report involving the Provost. Three years ago, the vice president for research convened a faculty panel to investigate a research misconduct allegation about the Provost's then recently published book. After a "very serious" inquiry, the panel determined that while there were some unattributed quotes in the book, they related to peripheral issues, and those errors did not rise to the level of research misconduct.

A Tangled Web

The Provost issued a statement apologizing for her “inadvertent errors of attribution, resulting from research documentation mistakes,” but vehemently defended her publication record and questioned the motives of the person who had leaked the report, calling it akin to a “witch hunt” or an “academic lynching.”

A Tangled Web

MALDEF and the NAACP have expressed concerns that the Provost is being unfairly targeted and have written “letters of encouragement” on X (formerly Twitter).

A prominent legislator and a higher education reform activist also are on social media demanding that the Provost be removed. In addition, you just received a copy of a letter that has been circulating among some of the faculty calling for a “vote of no confidence” in the Provost at next month’s academic senate meeting, demanding that both she and Dean Smarmy be removed from their administrative positions.

A Tangled Web

Two days ago, a group of undergraduate students began a sit-in at the President's office, claiming that the attack against Provost Preveción is racist and homophobic, and demanding that the University back the Provost against these attacks. The Graduate and PostDoc Pride Alliance also issued a statement expressing their strong support of the Provost. Word has it that there will be a huge protest at the entrances to the homecoming football game next week. National news outlets have arrived on campus, and there is talk of a class action lawsuit being drafted by a leading women's rights activist.

A Tangled Web

You also just received a notice from the graduate student union that they are filing a grievance alleging that the University's leadership violated its Policy on Sexual and Gender Based Harassment. Moreover, your labor relations director informed you that the graduate student union (possibly joined by other unions) plans to join the students in picketing the University's "unfair labor practices" at the homecoming game protest. He is concerned that outside unions may refuse to cross a picket line, including those delivering supplies to the stadium.

A Tangled Web

The Board of Trustees and president of the Alumni Association have demanded a meeting with the President to discuss the unrest on campus.

The General Counsel and the President have scheduled an emergency meeting to discuss the situation. You have been invited to attend, because of your subject matter expertise and involvement.

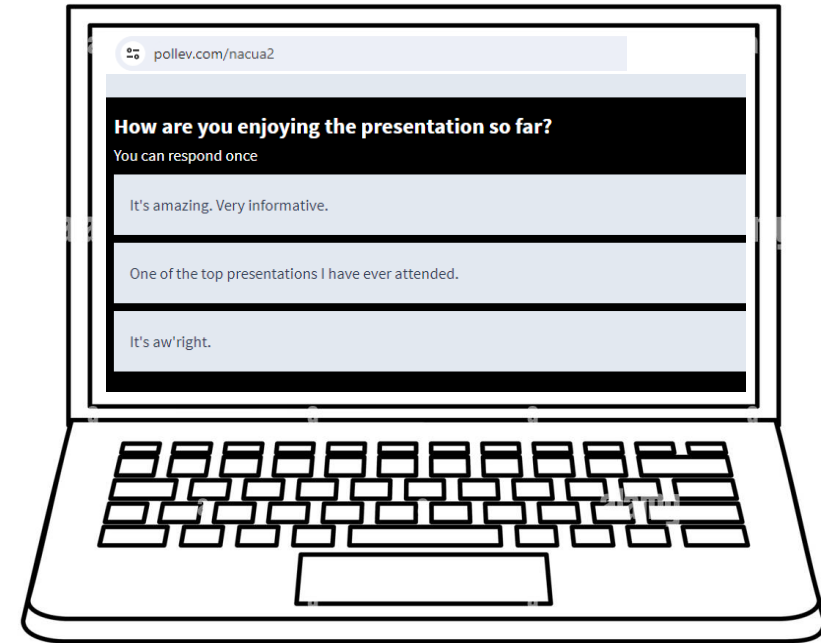
How To Respond to the Poll

QR Code



Scan the code with your phone camera and open the link to submit your response.

Browser



pollev.com/nacua2

POLLING QUESTIONS

1. Would you suggest an internal or external investigation for the claims against the Dean?
 - A) Internal
 - B) External
2. Would you suggest an internal or external investigation for the Provost?
 - A) Internal
 - B) External
3. Do you advise the Provost and Dean to secure their own counsel?
 - A) Yes
 - B) No

POLLING QUESTIONS

1. Do you continue talking to the Provost about this matter after this initial conversation?
 - A) Yes
 - B) No

2. Who does the University need to communicate with from a communications perspective?
 - A) Faculty
 - B) Students
 - C) Alumni
 - D) Board
 - E) Legislators
 - F) Media
 - G) All of the above



Questions?

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