

**The 9th Annual National Leadership Conference
“Empowering Leadership to Enhance What Works”**

**“Take Reasonable Steps to *Prevent Litigation*”
*August 2, 2007 – Orlando, Florida***



***Bill & Mary Hill
Professor Peter Lake
Vice President and Dean Darby Dickerson***

“Take Reasonable Steps to *Prevent Litigation*”

Introduction of Program

Bill Hill

Proactive Prevention

Mary Hill

Litigation Occurs. Now What?

Darby Dickerson

Issues & Trends in Litigation

Peter Lake

Audience Participation

Panel: Peter, Darby &
Mary

Proactive Prevention

College and universities have an obligation to recognize environmental conditions that may negatively influence the safety of students and to propose interventions that neutralize such conditions (CAS standards 1986–present)

Same for Community Coalitions & Agencies

Should be proactive by:

- Identifying foreseeable risks
- Making reasonable efforts to reduce risks

Steps for Proactive Prevention

1. NIAAA & IOM Recommendations (2002–2003 Reports)
2. Review & Update Rules, Procedures & Policies for Universities, Community & State Agencies
3. Educate & Train on all Policies
4. Enforce & Adjudicate all Policies
5. Document all Action

NIAAA & IOM Recommendations

Evidence of Effectiveness

Proven Research for Effectiveness - Should Prevent Litigation

Alcohol Screening & Brief Motivational Enhancement

Evidence of Effectiveness Campus/Community

Proven research for effectiveness –Should prevent litigation

Enforce MIP/DUI laws & policies

Form campus and community coalitions

Responsible beverage service policies

Restrict alcohol retail density

Increased prices and excise taxes on alcoholic beverages

Steps to Revise & Update Policies

- Appoint a Policy Committee
- Review All Policies and Publications
- Use Factual Information in Creating Policy
 - “*Make policy clear and concise — eliminate loopholes*”
- Follow Local, State & Federal Mandates
- Describe Disciplinary Sanctions for Policy Violators
- Legal Counsel to Review & Revise

Why DFSCA - ADOV Policies?

- To support the mission of the institution and/or agency
- To state the values and standards of the specific campus and community
- To promote a safer environment & prevent disruption, damage, disorder, and death
- To manage liability and risk
- To comply with federal mandates

DFSCA Policy Components

- Standards of conduct – Comply with federal, state, and local laws
Minimum – prohibit unlawful possession, use, or distribution of illicit drugs and alcohol
- Legal sanctions
- Health risks
- Available support services
- Disciplinary sanctions

Content of the Written Policy

- a list of applicable legal sanctions for the unlawful possession or distribution of illicit drugs and alcohol;
- a description of the health risks associated with the abuse of alcohol and use of illicit drugs;
- a list of drug and alcohol programs; and
- a clear statement that institution or agency will impose disciplinary sanctions for violations.

Enforcement

- Administration
- All Law Enforcement Agents
- Resident Assistants on College Campuses

Other Policies to Change Environment on College Campuses

- Ban use of alcohol on campus
- Ban use of alcohol in residence halls
- Ban alcohol advertising on campus
- Require on-campus functions to be registered
- Require ID checks at on- and off-campus functions
- Parental notification of minors in possession
- Alcohol screening & motivational interviewing for all policy violators

Jeanne Clery Act

- Mandated by Federal Law (1990), known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, requiring all colleges receiving federal funds to report crime statistics.
- **Campus Security Authority** may be:
Campus Police, Dean of Student, Campus Administration & Residential Life/Resident Assistants

Enforce Policies

1. Educate about all policies and sanctions
2. Train to enforce and adjudicate policies

Document All Action

Lack of documentation is the most common mistake on college campuses

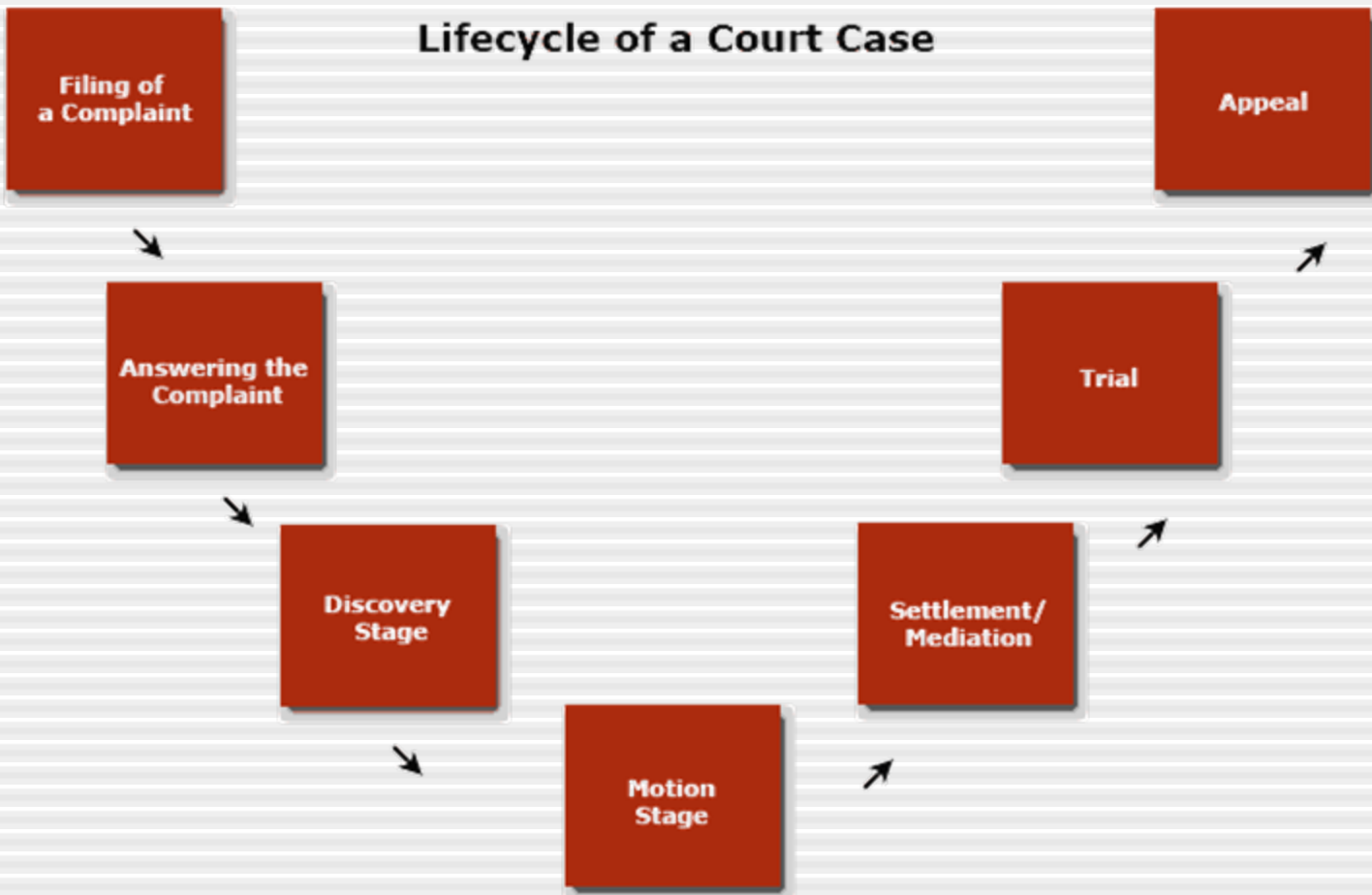
- **Keep minutes of all task force, coalition and/or committee meetings**
- **Accurate incident reports**
- **Accurate judicial reports**
- **Accurate appeal process**
- **Copies of all prevention programs**
- **Miscellaneous correspondence**

“Following policies and documentation are the keys to defending a case”

Litigation Happens. Now What?

- Prompt notifications
 - Check internal policies regarding service of process and subpoenas
 - Your supervisor
 - Counsel
 - Insurance carrier
 - Any named defendants associated with the university
- Retaining counsel/conflict checks
 - University's indemnification policy
 - Budget
 - Tips for working with counsel
 - Billing
 - Asking questions
 - Collaboration
 - Remain engaged and attentive
- Working with affected individuals within the university
 - Expectations
 - Preparation
 - Attorney-client privilege and work-product doctrine
 - Avoid the rumor mill

Litigation Process



Case Strategy

- Fact gathering (witness identification, document gathering, chronologies, etc.)
- Legal research
- Litigation response/defenses
- Timelines
- Participating in discovery
- Expert witnesses and outside assistance
- Alternative dispute resolution
- The Human Factor
- Internal and external communication strategies

Additional Resources

- Robert D. Bickel & Peter F. Lake, *Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life?* (Carolina Academic Press 1999).
- Oren Griffin, “How You Can Help When Your College Is Sued,” *Chron. Higher Educ.* (May 27, 2005).

Issues & Trends of Current Litigation

- Comments from Peter F. Lake, Charles A. Dana Chair and Director, Center for Excellence in Higher Education Law and Policy, Stetson University College of Law

Questions & Answers Regarding Potential Litigation

*Facilitated by Bill Hill, Underage Drinking
Enforcement Training Center*

Panel:

Peter Lake, Professor

*Darby Dickerson, Vice President & Dean,
Stetson University College of Law University*

Mary Hill, Former Senior Administrator

Resources to Help

- *NIAAA www.college drinkingprevention.gov*
- *NAS www.nap.edu*
- *Clery Act www.securityoncampus.org*
- *Underage Drinking Enforcement Training Center at PIRE www.udetc.org*
- *Illinois Higher Education Center www.illinoishec.org*
- *National HighwayTraffic www.nhtsa.dot.gov*
- *Office of Safe and Drug-Free Schools www.ed.gov/about/offices/list/list/osdfs/index/html*
- *The Higher Education Center for Alcohol and Other Drug Prevention www.higheredcenter.org*
- *SAMHSA www.DrugAbuseStatistics.samhsa.gov*
- *Center on Alcohol Marketing & Youth www.camy.org*

Speaker Contacts

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