

# GENERAL ADVICE

*from General Counsel*

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## Dealing with Litigation Threats

Almost everyone who works at NMSU very long eventually runs into an unhappy constituent (often a student, parent, or employee) who becomes so frustrated, or is simply a bully, and makes a litigation threat. The most important – and perhaps most difficult thing to remember – is to respond calmly and intelligently. If you let your emotions run away, you are much more likely to make a misstep that escalates the situation or makes it difficult or impossible to for NMSU to defend what you said or did in the heat of the moment.

### ■ Initial Responses

#### **Option A - When you think a reasonable resolution is still possible:**

“You always have the right to seek legal counsel (or to file a lawsuit) if you choose. If that is your decision on how to resolve this situation [problem], then I have no further ability to help you, and you should have your lawyer contact the university attorney who will represent me. This conversation will be over. But I think we still have some options to consider. Would you like to see if we can work through this?”

#### **Option B – When you think your decision is final or have done everything reasonably possible to resolve, but want an opportunity to talk through with General Counsel or another advisor:**

“You always have the right to seek legal counsel (or to file a lawsuit) if you choose. If that is your decision on how to resolve this situation [problem], then I have no further ability to help you, and you should have your lawyer contact the university attorney who will represent me. If you would like, however, I am willing to consult with (my dean, the university attorney, other person with relevant knowledge or authority) to see if [he/she shares my assessment of this issue] or [there is a further appeal available to you] or [to see if there are any other options here that I have not recognized]. Can I get back to you [tomorrow – or on specific date]?”

### ■ Allegations of Discrimination or Other Misconduct

**Where the individual alleges sexual misconduct, harassment or discrimination of any type, you have a reporting obligation.**

If the controversy includes any allegation that there has been discrimination or other forms of misconduct you must report that allegation to the Office of Institutional Equity. Don't investigate it yourself, don't respond to it, just simply state: “I will report your allegation of discrimination [or misconduct] to the appropriate university officials. Please provide me with [or please confirm the] contact information where you can be reached if there is an investigation. You may also choose to report this yourself at [equity@nmsu.edu](mailto:equity@nmsu.edu), or by calling 646-3635 or by dropping by the O’Laughlin House on University Avenue.”

Then, no matter how the student responds, follow through with your own report.

#### **Additional Related Information**

GAGC – Liability

GAGC – Due Process