



**NACUA**  
**Webinar**

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# **Campus on Trial: Litigation Management for Busy College Counsel**

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# Agenda

- Introduction to Litigation Management & Current Landscape
- Before Getting Sued
- Investigations & After-Incident Reviews
- Relationships
- When the Complaint is Filed
- Discovery & Pretrial
- Mediation & Settlement
- Tips & Tricks to Stay Organized & Manage Client Expectations
- Audience Q&A and Closing Remarks

The background of the slide is a photograph of a cluttered desk. In the foreground, there are several red plastic folders or dividers. Behind them, a large stack of papers is visible, many of which have yellow sticky notes attached. The papers and folders are slightly out of focus, creating a sense of depth. The overall lighting is somewhat dim, with a warm, slightly muted color palette.

# **Introduction to Litigation Management & Current Landscape**

# Introduction to Litigation Management



Today's Focus: In-House Management of Litigation



Focus on pretrial stages



Assumes use of outside counsel

# Current Landscape


- Federal agencies are already litigating less
  - EEOC right to sue letters
  - Reduced OCR workforce
  - But...more and new pressure levers
- Potential closure of the Department of Education



# Current Landscape

- Litigation is more common and accessible
  - More aggrieved parties will turn to courts for relief
  - Increase in protests and focus on antisemitism
- Increase in reverse discrimination, religious discrimination, and anti-DEI claims
- People generally more likely to go to lawyer these days as a primary course of action rather than last resort (demand letters, etc.)





# Before Getting Sued

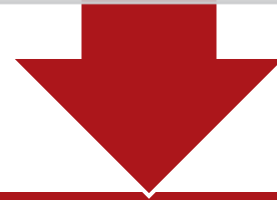
# Awareness Mindset for Potential Litigation

How Do You Spot Risk for Potential Litigation  
when Advising Your Client?

Administrators

President

Board



Communication is Key

# Awareness Mindset for Potential Litigation



- Know your Capabilities
- Proactive Litigation Holds and Duty to Preserve Evidence
  - Identifying People, Places, Sources of Evidence
    - Don't forget cell phones!
  - Updating Litigation Holds
  - Employee vs. Students

# Awareness Mindset for Potential Litigation

Have you received a report of a Clery crime through an atypical channel?



Are there other facts or circumstances that could be mandatory report triggers?

The background of the slide is a photograph of a cluttered desk. In the foreground, there is a red folder or binder. Behind it, a stack of papers is visible, with several yellow and orange sticky notes attached. The papers appear to be from a notebook or a set of documents. The overall scene suggests a workspace where investigation or review is taking place.

# Investigations & After-Incident Reviews

# Selection of Investigator



What are the factors that go into selecting the appropriate investigator?



Policy and legal obligation considerations

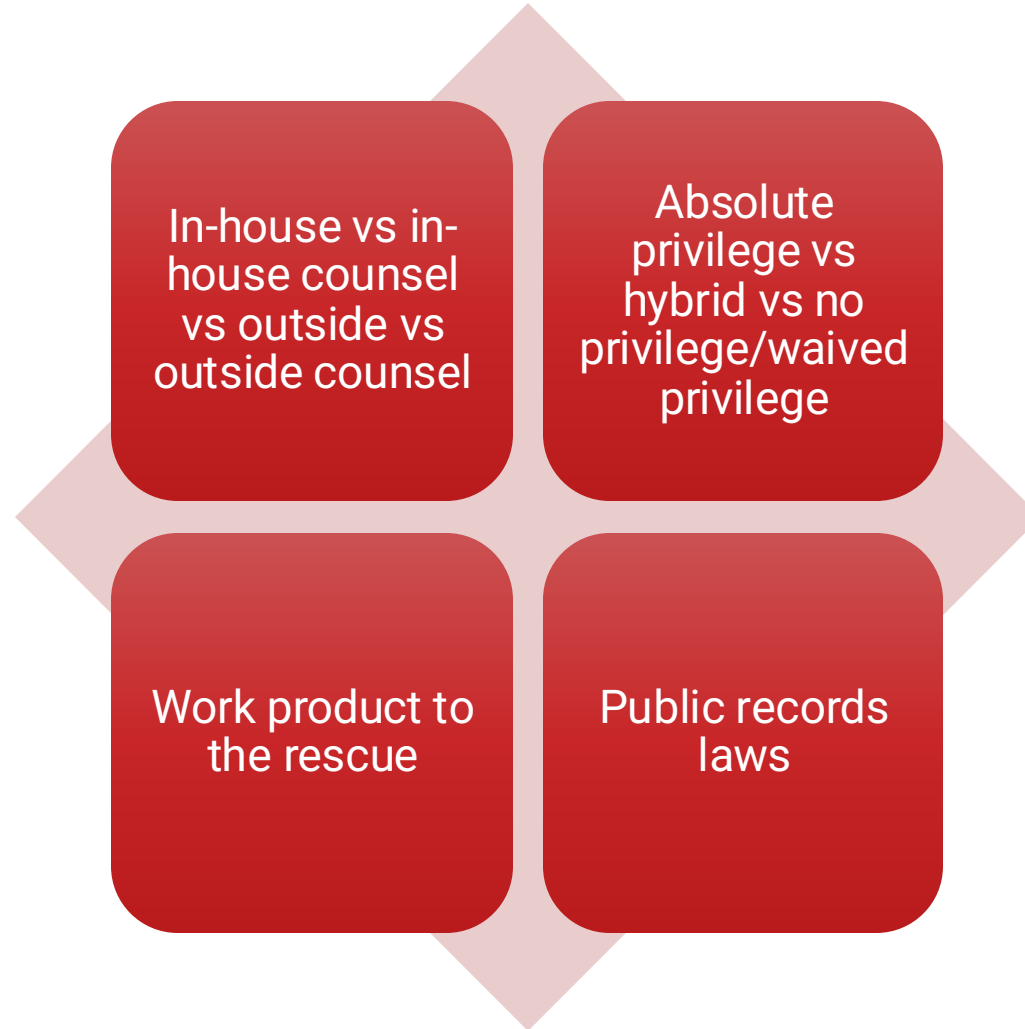


Directing investigation style (people first, prosecutorial, collaborative)



Scope of investigation and projected budget

# Privilege Issues



# Reports

- Bifurcated report (findings of fact, conclusions of law)
- Written report vs. executive summary vs oral briefing
- Drafts and edits of reports
- Who to share report with or brief on results



# Interviews & Witnesses

Accused interviewed  
early vs late

Keeping witnesses  
from colluding to  
undermine  
investigations

Reminding witnesses  
of employee  
assistance and  
non-retaliation

# Interim Actions Post-Fact Gathering

- Interim administrative leave for employee/suspension of student
- Media holding statements
  - Don't forget the privilege issues!
- Other after-action steps





# Relationships

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**With client  
representatives**

**With stable of  
outside  
litigators**

**Implications of  
advice of in-  
house counsel**

**Local  
prosecutors**

**Leveraging  
supervisors**

# Outside Counsel

Pre-Suit work with outside counsel

Finding new counsel in your jurisdiction/outside your jurisdiction

- Referrals (NACUA and others)
- Reported cases
- Internet searches
- Carrier assignment/suggestions/preferences

Right counsel style for the case

Putting carrier on notice

Getting pre-suit counsel and investigation costs covered

# Your Clients & Adversaries

## Your Clients

- Putting client representatives on notice
  - Deciding who to include
  - Deciding who to exclude (conflicts, impair investigation/defense)
- Getting witness statements/positions locked down (basics, timeline, indemnification analysis)

## Your Adversaries

- Pre-suit mediation and tolling agreements
- Pro-se nuisance claims—pay for it and go quickly





# When the Complaint is Filed

# Internal Communications

Notifying client  
(administrator,  
president, board?)

Sharing protocols  
for what to do  
when served

Advising those  
named and Upjohn

Insurance  
coverage (defense  
costs, liability) for  
others named

Explaining which  
process and how it  
works

Explain what  
everyone's roles  
are, what to say

Reactive Litigation  
Hold

Any operations  
that need to be  
modified because  
of filing



# External Communications: Former Employees



# External Communications: Public Statements

- Protocol for public statements and media responses
  - Protocol for drafting and circulating
  - Public relations vs. legal strategy considerations
  - What you CAN say without violating FERPA





# Discovery & Pretrial

# Discovery & Pretrial

## Budgets and Strategies

- Determine up front

## Witness Protocols

- For talking to employees
- For meeting with employees
- For scheduling with former employees

## Deposition Prep

- Who conducts
- Who attends depositions

## Protocol for review of motions, affidavits, declarations

- By in-house counsel
- By client

# Discovery & Pretrial

- Hearings
  - Scheduling considerations
    - Client representative vs. in house counsel attending
    - Telephonic attendance
    - Media/social media considerations
    - Client post-hearing briefing
- Sharing the court's decisions
- Use of trial consultants





# Mediation & Settlement

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Communicating  
directly to  
opposing party

Mediator  
selection

Format of  
mediation

Court ordered  
vs voluntary

Confidentiality

Client  
representative

# Obtaining Settlement Authority



From both client and insurer:

- How far in advance
- Who attends mediation
- Documenting authority
- Timing of payments
- Plan for more authority

# Mechanics of Getting to a Settlement

**Circulate draft of settlement at mediation**

**Mediation statements (confidential vs shared)**

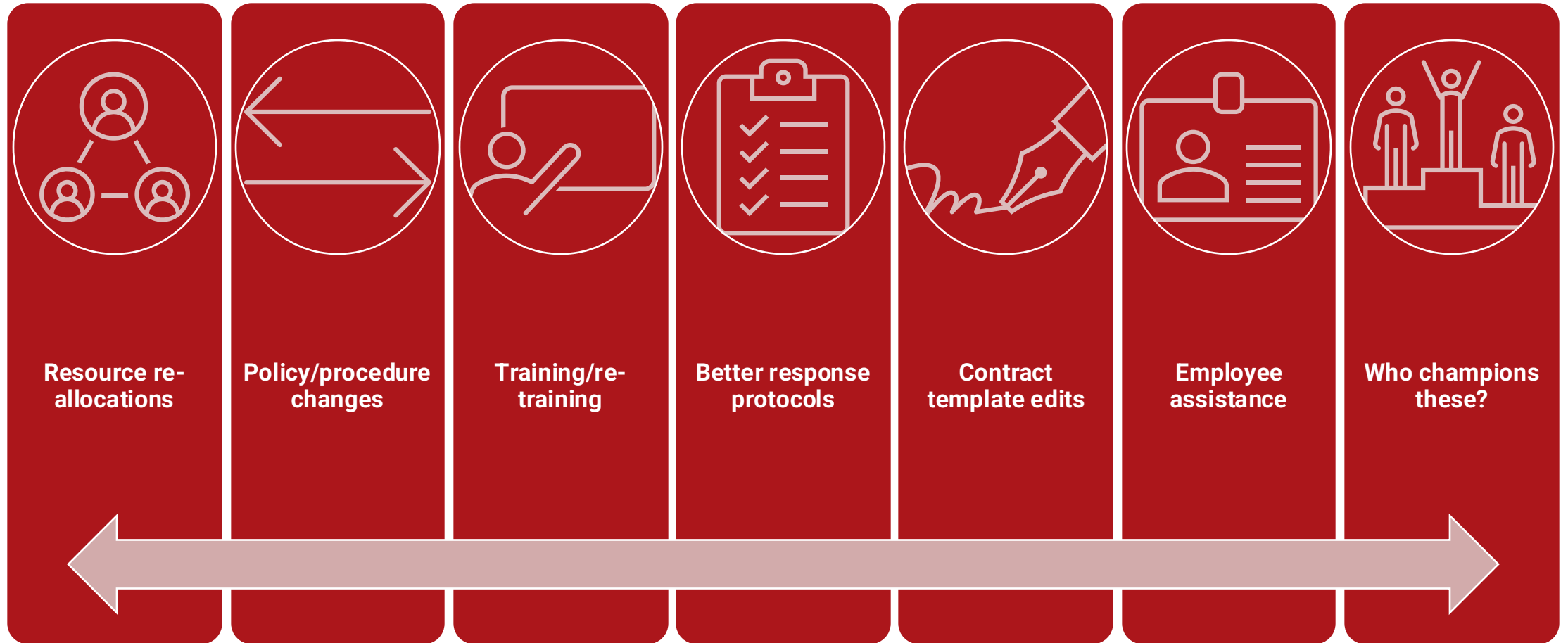
**Approach with mediator**

**Impasse and subsequent rounds**

**Documenting settlement partially vs completely**

**Non-disclosure, non-disparagement and confidentiality clauses**

# Post-Settlement Assessment on Lessons Learned





# Tips & Tricks to Stay Organized & Manage Clients

# David's Tips and Tricks

- Management of multiple cases
  - Spreadsheets vs matter management software
  - Off-the-shelf vs custom
  - Tracking retention/deductible limits
- Technology Considerations
  - Data storage for complex cases/investigations
  - Internal search engines beyond Outlook
  - Virtual attendance at depositions and hearings

# Leslie's Tips and Tricks

- You are the translator in both directions
- Be nice to the people, protect the institution
- Know what you want from outside counsel before you hire

# Lauren's Tips and Tricks

- Front end costs of litigation vs. settlement
  - Video record depositions
  - E-discovery tools
  - Reputation before tribunals
- Communication is critical
  - Temperature of decision makers
  - Former employees
  - Risk assessment beyond legal



# Questions?

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