

# Ethical Principles and Code of Conduct Opinion

Opinion Number: 1002-19

Issued: July 20, 2019

## Issue

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Whether or not it is a conflict of interest for a University of Kentucky (hereinafter University) employee, Ian McClure (hereinafter McClure), to serve on the Board of Directors of Commonwealth Center for Commercialization (hereinafter C3) an organization that may make grants to or contract with the University; whether or not it is a conflict of interest for McClure to serve on the C3 Board and to serve as the Principle Investigator (PI) of a grant awarded to the University by C3.

## Facts

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In the fall of 2018, a group of interested persons, including the former Secretary of the Kentucky Cabinet for Economic Development (CED) Terry Gill, formed C3, a nonprofit corporation that has a mission of creating technology-based economic development strategies to accelerate innovation, commercialization and the next generation of technology and technology companies in Kentucky. Discussions pursuant to the formation of C3 involved representatives of Kentucky higher education, CED cabinet officials and private citizens. C3 was formed to help entrepreneurs launch and grow high-growth technology companies and create high-paying jobs for the future.

Primarily due to his experience and expertise as Director of Technology Commercialization at the University, McClure was asked to serve on the C3 Board of Directors. McClure consulted with research officials, including the Vice President for Research, and an attorney in the Office of University General Counsel and received approval, prior to accepting appointment to the C3 Board. The Board's first meeting (and McClure's induction as a C3 Board member) was on February 28, 2019. At that meeting, the Board did not discuss and did not vote on the grant/contract that was awarded to the University. There was a second C3 Board meeting on June 17, 2019; there was no discussion or vote on the University grant/contract at that Board meeting.

At the June 17 C3 Board meeting, McClure was asked to serve on the C3 Investment Committee. He stated to the Board members that he would recuse himself from all investment matters that related in any way to the University, which was acceptable to the other C3 board members.

The grant subcontract, that is the subject of this opinion, was reviewed as any other research grant/contract would be reviewed at the University. McClure was not a part of that review, except to answer questions from the Office of Sponsored Projects Administration (OSPA), when they had any. The grant subcontract was executed and signed, on behalf of the University, by Kim Carter, Director of OSPA (hereinafter Carter). Carter reports to the Vice President for Research, works with McClure on some matters, but has no reporting line to McClure. Carter stated that McClure followed all of the protocols and abided by all rules and regulations as any other Principal Investigator (PI) in this matter. Carter reports that she treated this grant/contract as she does all other grant/contract.

McClure is the PI for the UK grant subcontract. Dr. Lisa Cassis, the Vice President for Research, has approved a ten percent (0.10 FTE) work load allocation of McClure's work load on this grant/contract. With appropriate administrative approval, numerous faculty and staff employees work, either as PIs or as other positions, on grants/contracts at the University.

# Applicable Regulations

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## Governing Regulation XIV Ethical Principles and Code of Conduct, GR XIV.B.10

### Conflict of Interest

“The public’s respect and confidence in the University of Kentucky must be preserved. Confidence in the University of Kentucky is put at risk when the conduct of University members does, or may reasonably appear to, involve a conflict between private interests and obligations to the University. All University members shall avoid conduct that might in any way lead members of the general public to conclude that he or she is using an official position to further professional or private interests or the interests of any members of his or her family. In conducting or participating in any transaction, full disclosure of any real or perceived conflict with personal interests and removal from further participation in such matters is required.

AR 7:2, Research Conflict of Interest and Financial Disclosure Policy, sets forth specific relationships and activities that pose a potential conflict of interest for faculty, staff, and students involved in research and related activities. The University recognizes that actual or potential conflicts of interest may occur in the normal conduct of research and other activities. A conflict of interest can also arise if an employee’s professional judgment is or may appear to be influenced by personal interests. It is essential that potential conflicts be disclosed and reviewed by the University. After disclosure, the University can make an informed judgment about a particular activity and require appropriate oversight, limitations, or prohibitions in accord with this policy. It is important to remember that each relationship is different, and many factors often will need to be considered to determine whether a conflict of interest exists.”

## Administrative Regulation 7:2 Research Conflict of Interest and Financial Disclosure Policy

### Introduction

“As a public land-grant institution, the University has an obligation to the citizens of the Commonwealth and the general public to conduct its activities transparently and with integrity. The University is committed to avoiding financial conflicts of interest that may compromise, or appear to compromise, the integrity and objectivity of research and the safety of human research subjects. Because the University encourages its members to engage in outside activities and relationships that enhance its missions, real or perceived conflicts of interest may arise.

The keystone of an effective program for identifying and dealing with financial conflicts of interest is full disclosure of those financial interests that reasonably appear related to one’s institutional responsibilities. This regulation provides guidance and procedures for disclosure by Investigators of their relative significant financial interests. After the disclosure, the University can make an informed judgment about a particular activity and require appropriate oversight, limitations, or prohibitions in accordance with this policy.”

# Discussion, Opinion, and Recommendations

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Based on the facts and applicable University regulations, it is the opinion of University Ethics Committee (UEC) that there is no ethical or conflict of interest issues for this University employee, McClure, to serve on the Board of Directors of C3, a nonprofit corporation, and to serve as the PI of a grant awarded to the University by C3.

It is not unusual for employees of the University to be asked to serve on boards of nonprofit entities. Serving on boards, particularly boards of nonprofits, is consistent with and a part of the “service” mission of the University. University employees who serve on nonprofit boards are given service time for board meetings that occur during the employee’s regular work hours. Often, the University

employee is asked to serve on a board because of her/his job-related expertise. McClure is recognized as one of the leading experts of technology commercialization in Kentucky. It is also not unusual for a University employee to serve on a board of an organization that may make grants to the University. University employees are instructed to recuse themselves when serving on boards and University matters are decided.

McClure serves on the C3 Board as a volunteer, without pay. Thus, there is no personal, fiscal gain for McClure with this service time. Although it is not conceived by anyone that C3 would award a contract to any individual, McClure notes that he would recuse himself from any vote that could possibly involve him personally or any company/corporation in which he has ownership. Thus, there is no way for him to use his professional position on the board to further his personal interests.

The C3 subcontract with UK has not been subject to vote of the C3 Board. Thus, McClure has not used his professional position on the Board for further gain by his employer, the University. McClure notified the Board, when he accepted a position on the C3 Investment Committee, that he would not vote on any matter involving the University. McClure has notified the UEC that, if the subcontract with the University comes to a vote at the next C3 Board meeting, he will recuse himself from the vote on that contract and that he will recuse himself from all Board votes any time that the University is involved.

With research grants and contracts being an approximate \$400 million aspect of University business, University faculty and staff employees regularly serve as Principal Investigators (PIs) of grants and contracts. Upon approval of appropriate supervisory employees, University employees allocate a percentage of the time (distribution of effort) to serving as PIs. McClure sought appropriate approval of his supervisor, the Vice President for Research, to serve as the PI for this grant/subcontract. Per the approval, ten percent of McClure's work time is allocated to service as PI for this grant/subcontract. All the standard processes were followed and all of the necessary approvals were given for McClure to serve on the C3 Board. He receives no additional pay for this ten percent assignment.

The UEC notes that, prior to accepting the position with the C3 Board, McClure's position at the University was reviewed by officials in Human Resources, and the position was reclassified to a higher level. As with any higher reclassification, McClure received a salary increase. The reclassification to a higher level was based on additional responsibilities assumed by McClure before he was appointed to the C3 Board. The UEC also notes that McClure's annual pay increase was similar to the average pay increase and was based on his performance during the calendar year 2108, prior to his acceptance of the C3 Board appointment.

The UEC does not believe that any violation of Ethical Principles and Code of Conduct has occurred as a result of McClure serving on the C3 Board or serving as the PI on the grant from C3.

C: Dr. Eli Capilouto, President  
Dr. David Blackwell, Provost  
Dr. Lisa Cassis, Vice President for Research  
Mr. Joe Reed, Executive Director, Internal Audit

Members of the Ethics Committee:

Dr. Jeff Bieber, Professor, College of Education and University Senate Representative

Bessie Guarrant, Director of Research Assessment and Student Research Programs, Office of the Vice President for Research

Troy Martin, Human Resources Manager, Finance and Administration, Dean's Office, UK Libraries

Brett Short, Chief Compliance Officer, UK HealthCare

Jack Supplee, Director, Administrative & Fiscal Affairs, Office of the Vice President for Research, Associate Director & Secretary for UK Research Foundation

T. Lynn Williamson, Principal Deputy General Counsel

Kim Wilson, Vice President, and Chief Human Resources Officer