TENx LEGISLATURE IMPROVES
LEGAL CLIMATE FOR EMPLOYMENT REFERENCES

The Texas Legislature enacted legislation (H.B. 341) authorizing employers to disclose information about a current or former employee’s job performance to a prospective employer. This law was enacted because many employers in Texas had become wary of giving references, even for excellent employees. Prior to the enactment of this law, an increasing number of employers refused to provide more than “name, rank, and serial number” information about current or former employees, expressing concern that they could be sued by the former employee. The new law should make it a little easier to give and receive references.

Obtaining References
Obtaining and carefully reviewing references is a crucial part of the hiring process for all positions at LSCS. In order to facilitate candid references, the LSCS application form requires each applicant to sign a statement authorizing the System to seek information about the applicant from previous employers. In the same statement, the employee also releases persons who provide information to the System from liability.

Appropriate Inquiries to Ask a Reference
As a general rule, a reference can be asked the same questions as could be asked of an applicant. Obviously, it is appropriate to ask about the individual's performance, growth in the job, and level of skill. It is important to ask the reference factual as well as opinion questions. The toughest, but potentially most important, questions relate to problems in the previous job:

1. Is the candidate eligible for rehire?
2. Was the candidate subject to disciplinary action; if so, for what?
3. Has the candidate been accused of misconduct, including sexual harassment, violation of civil rights, or other types of misconduct involving integrity of violation of policy?
4. How does the candidate deal with work related problems?
5. Does the candidate “work well with others?”

Inappropriate Inquiries to Ask a Reference
Following the same general rule, you may not ask a reference for any information that would be improper to seek directly from the applicant. None of the following information should be used to make a hiring decision, hence should not be solicited:

1. Information about the candidate’s marital status, family plans, religious or political point of view, age, ethnicity, or race.
2. Whether the person has filed a civil rights complaint or other form of grievance appeal.
3. Medical information, including questions about any workplace accommodations, use of medical insurance, or workers’ compensation claims.

Contacting Person Other Than References Listened by the Candidate
It is appropriate and important to seek information about the candidate from persons other than those designated by the candidate. For example, it is appropriate to contact a person who was a supervisor but it is not indicated as a reference or to contact an
individual in the same organization with whom you have good professional contacts. It is
not required that you advise the candidate. However, as a professional courtesy, inquire
whether the candidate has informed the current employer of the application. While it is
appropriate to delay making a contact with the present employer, no job offer should be
made until after securing a reference from a current supervisor.

Giving References
In most respects, the new law parallels the broad immunity laws that already protect
Texas community colleges and officials from wrongful conduct claims. The doctrine of
qualified immunity, which insulates public officials from lawsuits challenging their
professional judgment and opinions, and the State Tort Claims Act, which prevents the
System from being sued for wrongful or negligent acts including defamation and libel,
already offer a level of legal protection for official reference giving. The new statute is
simpler and requires much less interpretation.

System employees need to understand two important limitations on this legal protection.
First, the legal protection only extends to a person who is giving references as part of his
or her supervisory or administrative job responsibilities. It is important to remember that
none of these laws apply when personal references are given regarding a co-worker,
colleague, or other person who is not under your official supervision.

Second, the law does not protect a reference-giver who gives information that he or she
knew to be false or gives with malice or reckless disregard for its truth or falsity. It is
wise to observe the following:

1. Offer only observations and opinions that are your own; do not repeat stories
   you have heard.
2. Stick to work-related topics and do not speculate, particularly about
   experiences that do not involve your workplace.
3. Never lie to or mislead a reference seeker.