

FILED
STATE OF MISSISSIPPI
LAFAYETTE COUNTY
IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

2021 FEB -3 PM 2:40

PAUL J. CAFFERA

PLAINTIFF

VS.

CAUSE NO: 2020-573 W

THE UNIVERSITY OF MISSISSIPPI

DEFENDANT

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

COMES NOW, the plaintiff Paul J. Caffera (hereinafter "Caffera") by and through counsel, and files this response to the plaintiff's Motion to Dismiss, and would state unto the Court as follows:

I.

The University's Motion to Dismiss should be denied. In the alternative, the Court should convert its motion to a motion for summary judgment pursuant to Miss. R. Civ. P. 12(b) and permit discovery of the fact-based issues raised by the University.

II.

Like other great universities, and in accordance with the accreditation requirements of the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC)—the regional accrediting that accredits the University of Mississippi—the University of Mississippi operates on the principle of shared governance/multi-level governance (<https://sacscoc.org/app/uploads/2019/08/2018PrinciplesOfAccreditation.pdf>), in which the faculty plays a substantial role in governing the University's operation. After about a three-year process, originating with the Faculty Senate, the University opened the Office of Ombuds in July, 2015, "to provide dispute resolution and prevention services at the University of Mississippi with the overarching goals of protecting fairness and promoting respect for all employees." (Charter Agreement, Exh. A, I. Introduction). In a December 18, 2020 Statement

to the University of Mississippi community announcing the appointment of an Acting Ombuds, the current Chancellor, Glenn F. Boyce, stated that the Acting Ombuds “served on the Faculty Senate subcommittee that proposed the creation of the Office of University Ombuds. More specifically, he is passionate about the need for an independent, confidential office where faculty, staff and graduate students can seek assistance with campus-related concerns, problems, and disputes.” (Chancellor’s December 18, 2020 Statement, Exhibit B). Additionally, the Office of the Ombuds is mandated “to identify systemic concerns and provide feedback to the institution.” (Exh. A, II. Mandate). In practice, the Office of the Ombuds serves the faculty, staff and graduate students of the University of Mississippi for receipt of “complaints, concerns and inquiries regarding policies, formal and informal procedures, alleged acts or omissions, improprieties, and/or any alleged broader employment-related concerns.”¹ (Exh. A, III. Scope of Services).

¹ The University posted a job description for the Ombuds in 2016 that provides helpful context for the position within the University community and organizational structure. (Job Description, Exhibit C). Some important provisions are:

- "The function of this position is independent of existing administrative structures and reports to the Office of the Chancellor"
- "Provides impartial and confidential consultation to members of the college/university community who are aggrieved or concerned about an issue"
- "Serves as a campus resource for officials formulating or modifying policy and procedures, raising issues that may surface as the result of a gap between the stated goals of the institution and actual practice"
- "Conducts appropriate informal fact-finding in order to better understand an issue from all perspectives."
- "Acts as a liaison between individuals or groups and the campus administrative structure, serving as a communicator or informal facilitator, as appropriate."

III.

Caffera has been Ombuds at the University since 2017, and is the second and longest serving Ombuds in the history of the University. (Affidavit of Paul Caffera, Exhibit D). In that capacity, Caffera has communicated with over a thousand University faculty, staff and graduate students about all manner of issues that come up on a University campus. (Exh. D). Most of these issues are sensitive, and the persons who utilize Caffera's services uniformly wish to remain anonymous. (Exh. D).

IV.

Due to the nature of the job, confidentiality is the hallmark of the Office of Ombuds. The International Ombudsman Association ("IOA") Code of Ethics, to which the Office of Ombuds is required to adhere by its Charter (Exh. A, IV. Standards of Practice), requires the Ombuds to "hold[] all communications with those seeking assistance in strict confidence, and . . . not disclose confidential communications unless given permission to do so" except to prevent imminent risk of serious harm. (IOA Code of Ethics, Exhibit E). Chancellor Boyce emphasized the confidentiality and independence of the Ombuds Office in his December 18, 2020 statement, declaring that "the university values the Office of the University Ombuds, which provides faculty, staff and graduate students with a confidential, neutral, independent and informal place to seek assistance voluntarily in bringing forth and resolving campus-related concerns, problems or disputes. This office helps ensure that every voice at the University of Mississippi can be

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- "Functions as a sensor within the campus community to identify problems or trends that affect the entire campus community or significant parts of the campus community...."

(Exh. C).

heard, without fear of loss of privacy, retaliation or retribution. The University is committed to upholding these principles and maintaining this important function on our campus.” (Exh. B).

V.

The Charter Agreement is a contract that sets forth the terms on which the University committed itself to make Ombuds services available to the faculty, staff and graduate students. But it is also more than an agreement; it is also a University policy, implemented at the highest levels of the University’s leadership, embodying the purpose, practices and operation of the Office of Ombuds. Caffera closely adhered to this policy, and has taken his confidentiality obligations very seriously. (Exh. D). Further, visitors to the Office of Ombuds have a reasonable expectation of privacy as to the matters they discuss – and rely on the University to enforce the Charter Agreement to protect that confidentiality. (Exh. D). Caffera himself also relies on the University enforcing the Charter Agreement, and could not perform his job without an expectation that the University would comply with it. (Exh. D).

VI.

The Charter Agreement states that the Ombuds “shall not testify or provide records to be used in any other dispute resolution process, grievance process, or investigation, even if requested to do so by the visitor.” (Exh. A, IV. Standards of Practice, Confidentiality). The Ombuds “shall take reasonable steps to ensure confidentiality of the visitor’s identity and communications.” *Id.* “Visitor” is a term of art referring to those using the Office of Ombuds. (Exh. D).

VII.

The Charter Agreement provides that the Office of the Ombuds “shall have access to independent legal counsel when necessary in order to fulfill the functions of the position.” (Exh.

A, IV. Standards of Practice, Independence).

VIII.

Finally, the Charter Agreement provides that not only those using the Ombuds Office are protected from retaliation, but also the Ombuds “shall be protected from retaliation as a result of his/her role.” (Exh. A, V. Protection from Retaliation). This duty to protect the Ombuds and its users can only be the responsibility of the University.

IX.

On October 13, 2020, Caffera received an email from Gene W. Rowzee (hereinafter “Rowzee”), the Interim Director of Equal Opportunity and Regulatory Compliance (herein after “EO/RC”) at the University requesting to meet with Caffera concerning “a personnel investigation.” (Email chain, Exhibit F, p. 8).

X.

When Caffera responded in accordance with the Charter Agreement described above that he would not be able to participate in such an investigation, he was only then advised by Rowzee that he was in fact the subject or target of the investigation. (Exh. F, p. 6). Rowzee further advised that he would be “promulgating a personnel report that will include findings and recommendations which might affect [Caffera] as a University employee.” (Exh. F, p. 6).

XI.

By virtue of his position as Ombuds, over the years Caffera has developed deep concerns about the propriety of many EO/RC investigations at the University. (Exh. D). Therefore, Caffera requested that Rowzee provide him some minimal detail about the nature of the allegations and the person(s) bringing them. (Exh. D). Rowzee declined to do so. (Exh. F, pp. 1-6).

XII.

Caffera was also contacted by an investigator from the University Police Department (hereinafter “UPD”) named Kendall Brown looking to interview him, and his counsel was advised that the subject of the investigation was certain anonymous emails sent to persons in the Department of Journalism and New Media. (Exh. D). The UPD, which reports to Wilkin through one intermediate administrator (the Acting Vice Chancellor for Student Services, who also reports to Wilkin) has never identified any criminal statute that was allegedly violated by the emails in question. (Exh. D).

XIII.

On October 23, 2020, University Provost Dr. Noel Wilkin issued an Interoffice Memorandum in which he identified issues concerning “ongoing, persistent, and accusatory emails from an anonymous source” concerning University policies practices and standards concerning terminal degrees. (Interoffice Memorandum, Exhibit G). He further noted that a hostile work environment allegation and faculty grievance was filed against “individuals responsible for the anonymous communications” (as if the identity of these persons was known), and the EO/RC office was investigating the complaint. (Exh. G).

XIV.

In light of the University’s challenge to the confidentiality of the Ombuds Office, and attendant threats to take adverse employment action, Caffera secured representation of independent counsel, as guaranteed under the Ombuds Office Charter Agreement. (Exh. D).

XV.

Caffera and his counsel have twice met with Rowzee, and Caffera has fully cooperated with Rowzee’s investigation (and making himself available for subsequent questioning), while

adhering to his confidentiality obligations as Ombuds.

XVI.

On November 13, 2020, Caffera and his counsel participated in a Zoom meeting with Rowzee who stated that the EO/RC office was investigating “complaints and concerns from folks in the School of Journalism [concerning] a hostile work environment being created on the basis of race and national origin and just in general” (November 13, 2020 Meeting Transcript, Exhibit H, pp. 1-3). Rowzee never identified any behavior on the part of any person that meets the well-established legal standards for a hostile workplace environment. More importantly, Caffera was not named as the person responsible for engaging in the behavior that allegedly created the hostile work environment—regardless of whether the alleged behavior actually meets the hostile workplace environment standard.. Rowzee also advised that there were allegations against Caffera that “he may be using his public office to pursue a personal grudge for a friend or intimate.” (Exh. H, p. 2). Importantly, Caffera was not, and has never been, accused of violating any law or policy; and, at no time has the University identified any actions on the part of Caffera that created a hostile work environment anywhere. The University has also never provided any document, testimony, or other evidence, that the University contends allegedly constituted or pointed to a misuse of Caffera’s position. (Exh. D). Likewise, the University has never identified any authorities Caffera possesses that could conceivably be used adversely against any person affiliated with the University.

XVII.

While meeting with Rowzee, Rowzee advised that Caffera was not being compelled to answer questions, but that there may be adverse employment action taken against him if he does not provide such information. (Exh. H, pp. 4-5). However, he advised that any information

Caffera did provide might be forwarded to UPD for assistance in its criminal investigation. (Exh. H, p. 3). Caffera's counsel requested documents relevant to Rowzee's investigation, but Rowzee advised none would be provided. (Exh H, pp. 5-6).

XVIII.

Rowzee further advised that he was waiting from information from the University IT department, and that through his investigation he might access Caffera's official university email account which Caffera uses in conjunction with his position as Ombuds.

XIX.

Caffera answered questions from Rowzee in the second meeting. (November 22, 2020 Meeting Transcript, Exhibit I (in camera)). Caffera advised that he was not sending emails to the School of Journalism and New Media under a pseudonym or at all. (Exh. I, pp. 1-2). Despite unequivocally advising Rowzee that he could not disclose information obtained in conjunction with his position as Ombuds, he was still asked: "Do you have any idea who is posting under or sending emails [to the School of Journalism and New Media] under those pseudonyms?" (Exh. I, p. 5). Caffera responded that any information he would have on that subject would be both a violation of the confidentiality of the Ombuds Office and speculative.

XX.

Caffera and his counsel repeatedly asked for documentary evidence supporting the allegations that he was creating a hostile work environment at the School of Journalism and New Media, including the names of persons making the allegations, but none were given. (Exh. I, pp. 1-2).

XXI.

After filing the instant action on November 19, 2020, Caffera was placed on indefinite

administrative leave by the University, which has since has since appointed an Acting Ombuds. (Exh. B). Further, the University has removed any reference to Caffera even being employed by the University, which causes a stigma associated with Caffera's status with the University and damages his reputation and economic value in the marketplace. (Exh. D).

XXII.

Though Caffera was repeatedly advised that the EO/RC investigation would be complete around the first of December, as of this filing, no resolution has occurred and this situation drags on.

XXIII.

In the October 13, 2020 email exchange with Caffera, Rowzee explicitly advised him that he had a right to seek counsel in regard to the EO/RC investigation. (Exh. F). Indeed, the Charter Agreement provides that the Office of the Ombuds "shall have access to independent legal counsel when necessary in order to fulfill the functions of the position." (Exh. A, IV. Standards of Practice, Independence). In reliance on this provision, and in response to Rowzee's emails, Caffera emailed the Chancellor on October 13, 2020 requesting funding to retain counsel. (October 13, 2020 email, Exhibit J). In that email, he stated: "I also seek guidance as to the proper methods of [retaining counsel], which comply with any State laws or regulations. . . ." This email was ignored by the University. (Exh. D)

XXIV.

Again, on or about November 19, 2020, Caffera made a request to the Procurement Office of the University for funding to retain counsel. (Exh. D). This request was also ignored.

XXV.

With no other options, Caffera retained the undersigned counsel. (Exh. D).

XXVI.

Separation of powers does not prevent the Court from granting the relief sought by Caffera. The power to grant an injunction clearly lies within a chancery court's equity powers to prevent irreparable injury and to preserve the court's ability to render a meaningful decision on the merits. The standard of review by courts of actions by administrative agency decisions (and University administrative processes) is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. Here, Caffera embraces this standard of review and has clearly pled that the University's actions are arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law. Complaint, ¶¶ XXVIII-XXXI (stating the University's actions "are contrary to law, contract, equity and good conscience."). Again, a facial attack on subject matter jurisdiction looks only to the face of the complaint, and said allegations are accepted as true. Caffera has pled a claim within the subject matter jurisdiction of the Court.

XXVII.

The University does not appear to make a factual attack on jurisdiction because it does not attach affidavits or other factual information pertaining to jurisdiction. However, Caffera has shown a right to injunctive relief preventing the University from (1) compelling him to disclose confidential information obtained by and through his position as University Ombuds; (2) accessing his official email account in an effort to obtain such information; and (3) taking adverse employment action against him for refusing to provide such information, and for filing this action. Caffera has also shown a right to declaratory judgment as to the University's obligation to provide him counsel.

XXVIII.

The University basically asserts that any dispute it might have with Caffera is not ripe

because the University is still investigating the alleged wrongdoing at issue, and Caffera has not suffered adverse employment action. The primary way an action for injunctive relief can be unripe for adjudication is if there nothing more than an unfounded apprehension of injury. Here, Caffera most certainly has a well-founded apprehension of injury. He has been told that if he does not disclose confidential information, the University will take adverse employment action against him. In fact, it has already done so by placing him on administrative leave and scrubbing the University website of any mention that Caffera is still employed by the University, thus causing him reputational and resultant economic damage. Finally, actions for declaratory judgment under Miss. R. Civ. P. 57 are essentially exempt from a ripeness challenge because “[t]he purpose of Rule 57 is to create a procedure by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy, or in which the party entitled to such a remedy fails to sue for it.” Miss. R. Civ. P. 57 comment.

XXIX.

Mississippi courts have repeatedly reaffirmed that the “ancient bill of discovery” is alive and well in Mississippi practice. Since this is only the pleading stage, and the threshold to state a claim upon which relief can be granted is quite low, the Court should find that Caffera has clearly satisfied these pleading requirements in his complaint. *See* Complaint, ¶¶ XXXII - XXXV. The University would surely concede that elements 2) and 3) exist in this case. Everything else the University contends is infirm about this pleading is unsupported by the law or procedure.

XXX.

The plain language of the IHL policy does not support the University’s argument

concerning Caffera's alleged failure to follow policy. Further, the Charter Agreement makes no reference to any IHL "outside counsel" policy to which it may be subject. Finally, the University should be equitably estopped from attempting to enforce this IHL policy in this case. Caffera relied upon the Charter Agreement's grant of his right to "independent legal counsel when necessary in order to fulfill the functions of the position." At best, this issue raises numerous fact and policy questions subject to discovery. In particular, Caffera needs to conduct discovery as to:

- 1) the identity of any and all University policies that it contends Caffera has not followed or should follow in regard to his request for independent counsel;
- 2) the University's response to his email of October 13, 2020 requesting appointment of independent counsel;
- 3) the University's response to his request to procurement services requesting funding for independent counsel;
- 4) whether IHL Board Policy 1102.01 even applies to the situation at issue, including supporting examples of such application;
- 5) whether the University considers IHL Board Policy 1102.01 to be mandatory in light of its use of the word "may," and the basis for that contention;
- 6) communications within the University and/or the IHL concerning independent outside counsel for Caffera; and
- 7) the University's understanding and interpretation of the Charter Agreement stating that outside counsel "shall" be retained when necessary to fulfill the functions of the position (without reference to any superseding IHL policies).

Thus, the Court should deny the University's motion on this basis, and/or convert it to a motion for summary judgment for resolution after an opportunity to conduct discovery.

XXXI.

The University's final argument seeks dismissal of the declaratory judgment aspect of this action because it claims that actions seeking monetary relief from a governmental entity have to hop through the Mississippi Tort Claims Act ("MTCA") hoops. This is a misstatement

of the law. Merely because the relief sought for enforcement of a contract includes the possibility of the payment of monetary by the governmental entity does not place the action under the MTCA. Actions for declaratory judgment by definition seek a declaration of the “rights status, and other legal relations” under a “contract.” Miss. R. Civ. P. 57. Indeed, the Court may make such a declaration “either before or after there has been a breach” of the contract. Miss. R. Civ., P. 57(b)(2).

XXXII.

If the Court does not deny the University’s motion outright and considered any factual supporting information, it should convert the University’s motion to a motion for summary judgment and permit discovery pursuant to Miss. R. Civ. P. 2(b).

XXXIII.

The plaintiff incorporates the following exhibits herein:

- Exhibit A - Charter Agreement
- Exhibit B - December 18, 2020 Chancellor statement
- Exhibit C - Ombuds job description
- Exhibit D - Affidavit of Paul Caffera
- Exhibit E - IOA Code of Ethics
- Exhibit F - October 13, 2020 email string
- Exhibit G - October 23, 2020 Wilkin memorandum
- Exhibit H - Transcript of first EO/RC meeting
- Exhibit I - Transcript of second EO/RC meeting (in camera)
- Exhibit J - October 13 2020 email to Chancellor

WHEREFORE, PREMISES CONSIDERED, Caffera respectfully requests that the University's Motion to Dismiss be denied. In the alternative, Caffera requests that the University convert the motion to a motion for summary judgment pursuant to Miss. R. Civ. P. 12(b) and permit discovery. Caffera requests any further relief that the Court may find warranted in the premises.

RESPECTFULLY SUBMITTED,

PAUL J. CAFFERA

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Attorneys at Law
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Oxford, MS 38655-0668
(662) 234-4000 telephone
(662) 234-2000 facsimile
glewis@hickmanlaw.com

BY: _____


GOODLOE T. LEWIS, MSB # 9889

CERTIFICATE OF SERVICE

I, GOODLOE T. LEWIS, of Hickman, Goza & Spragins, PLLC, Attorneys at Law, Oxford, Mississippi, do hereby certify that I have this date mailed by United States Mail, postage prepaid, and/or electronically submitted via email, a true and correct copy of the above and foregoing to:

J. Cal Mayo, Jr.
J. Andrew Mauldin
Mayo Mallette, PLLC
P.O. Box 1456
Oxford, MS 38655
cmayo@mayomallette.com
dmauldin@mayomallette.com

THIS, the 3 day of February, 2021.



GOODLOE T. LEWIS



THE UNIVERSITY of MISSISSIPPI

OFFICE OF THE OMBUDSPERSON CHARTER AGREEMENT

I. Introduction

The University of Mississippi Office of the Ombudsperson was established in July 2015 to provide dispute resolution and prevention services at the University of Mississippi with the overarching goals of protecting fairness and promoting respect for all employees. In furtherance of these goals and principles, this Charter Agreement defines the responsibilities and privileges of the University of Mississippi Office of the Ombudsperson.

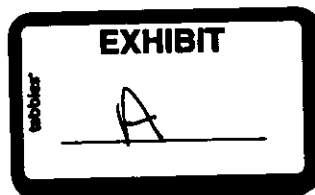
II. Mandate

The Office of the Ombudsperson serves as a confidential and independent resource available to University employees for University-related concerns. The Office offers a range of dispute resolution and prevention services, and additionally the Office serves to identify systemic concerns and provide feedback to the institution. Through these services, the Office promotes positive organizational change as well as fairness and respect in the workplace.

III. Scope of Services

The Office of the Ombudsperson is available for use by all faculty, staff, and graduate students at the University of Mississippi's Oxford campus, the UM-Tupelo campus, and the UM-Desoto campus. Additionally, faculty and staff employed directly by the University of Mississippi at the Grenada Center and Booneville Center may use the services of the Office. The Office does not serve the University of Mississippi Medical Center.

Use of the Office and participation in services is voluntary. The Office receives complaints, concerns, and inquiries regarding policies, formal and informal procedures, alleged acts or omissions, improprieties, and/or any alleged broader employment-related concerns. The Office does not participate in complaints involving grade appeals or academic decisions. The Office serves to listen, review matters, offer options and ideas for handling concerns, make referrals, make informal inquiries when authorized to do so by the visitor, and facilitate resolution



through mediation and other alternative dispute resolution methods. The Office also serves to identify broader systemic issues and provide upward feedback and informal recommendations for change while maintaining the confidentiality requirements of the office. The Office serves as a consultant for the University on dispute resolution topics and provides training and educational outreach on such topics.

The Office of the Ombudsperson supplements, but does not replace, formal grievance processes, investigative systems, and appeals processes available by the University. Use of the Office's services does not delay filing requirements of any other grievance or complaint procedure.

IV. Standards of Practice

The Office shall adhere to the International Ombuds Association (IOA) Code of Ethics and Standards of Practice. These standards require that the Office operate independently of the organization, maintain confidentiality, serve impartially without bias, and limit services to informal means of dispute resolution.

Confidentiality

The Office of the Ombudsperson is a confidential and "off-the-record" resource to the extent allowable by law. The Office of the Ombudsperson shall not keep any records on behalf of the University or accept notice for the University. All reporting shall be done in a manner that protects confidentiality.

The Ombudsperson shall not testify or provide records to be used in any other dispute resolution process, grievance process, or investigation, even if requested to do so by the visitor.

The Ombudsperson shall take reasonable steps to ensure confidentiality of the visitor's identity and communications, and will only make disclosures with the visitor's express permission unless the Ombudsperson believes that there is an imminent risk of serious harm or when disclosure is otherwise required by law.

Impartiality

The Ombudsperson shall at all times be neutral, impartial, and unbiased. He/she shall not take sides in any dispute or conflict. The Ombudsperson shall never serve as an advocate for a party but may advocate for fairness of process.

The Ombudsperson shall not serve in any additional role within the University that would compromise his/her impartiality. The Ombudsperson

shall not be aligned with other University groups or associations which would create actual or perceived conflicts of interest for the Ombudsperson.

Informality

The Office of the Ombudsperson shall operate only as an informal dispute resolution resource and shall not make binding decisions, issue any formal findings, or participate in any formal investigation or adjudication process. The Office shall make only informal recommendations. The Office shall not make, change, or overrule University policy or administrative decisions.

Independence

The Ombudsperson reports to the University's Chancellor and operates independently of ordinary structures. The Ombudsperson shall not be structurally affiliated with any compliance function and shall be independent from other University entities.

The Ombudsperson also operates independently in respect to case handling. The Ombudsperson may decline involvement if the Ombudsperson believes involvement would be improper for any reason, including matters not brought in good faith, conflicts of interest, or misuse of the Office's function.

In accordance with the IOA's Best Practices, the Office of the Ombudsperson shall have access to independent legal counsel when necessary in order to fulfill the functions of the position.

V. Protection from Retaliation

The University shall not tolerate retaliation against individuals for use of the Office of the Ombudsperson. Similarly, the Ombudsperson shall be protected from retaliation as a result of his/her role. The Ombudsperson shall serve a set and renewable term.

VI. References

1. "Standards of Practice." *The International Ombudsman Association*. <<http://www.ombudsassociation.org/about-us/mission-and-vision-and-values/loa-best-practices-standards-practices>>.
 2. "Code of Ethics." *The International Ombudsman Association*. <<http://www.ombudsassociation.org/about-us/code-ethics>>.
 3. "Best Practices." *The International Ombudsman Association*. <<http://www.ombudsassocaition.org/about-us/mission-and-vision-and-values/loa-best-practices-standards-practices>>.
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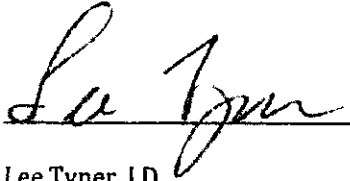
Accepted and Adopted by:



Dr. Morris Stocks
Interim Chancellor

12/16/15

Date



Lee Tyner, J.D.
General Counsel

12/16/15

Date

THE UNIVERSITY OF MISSISSIPPI

([HTTPS://OLEMISS.EDU/](https://olemiss.edu/))

Office of the Chancellor

Appointment of Acting Ombuds

📅 DECEMBER 18, 2020 ↩️ [STATEMENTS \(HTTPS://CHANCELLOR.OLEMISS.EDU/CATEGORY/STATEMENTS/\)](https://chancellor.olemiss.edu/category/statements/)

Dear faculty, staff and graduate students,

I am pleased to announce that William W. Berry III, Montague Professor of Law in the University of Mississippi School of Law, has agreed to serve as Acting University Ombudsman while continuing in his role on the faculty.

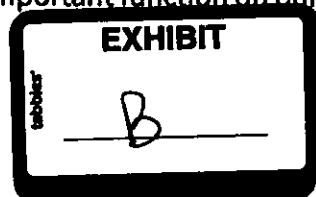
Dr. Berry served on the Faculty Senate subcommittee that proposed the creation of the Office of University Ombuds. More specifically, he is passionate about the need for an independent, confidential office where faculty, staff and graduate students can seek assistance with campus-related concerns, problems, and disputes.

Dr. Berry brings to this role extensive experience in dispute resolution. Prior to joining the university faculty, he practiced law in Washington, D.C. for the firm of Shea & Gardner (now Goodwin Procter). As a faculty member, he has served since 2016 as chair of the university's Academic Discipline Committee. One of his professional areas of expertise is labor and employment law, having taught a number of classes in those areas during his 13 years on the law school faculty.

I am grateful that we have a professional with the credentials, expertise and commitment to our community like Dr. Berry for this role at this time. His appointment is effective immediately.

As I mentioned in a letter earlier this week, the university values the Office of the University Ombuds, which provides faculty, staff and graduate students with a confidential, neutral, independent and informal place to seek assistance voluntarily in bringing forth and resolving campus-related concerns,

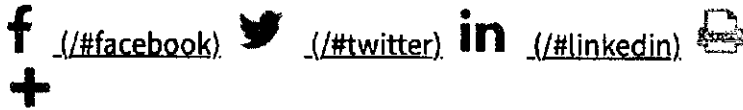
problems or disputes. This office helps ensure that every voice at the University of Mississippi can be heard, without fear of loss of privacy, retaliation or retribution. The University is committed to upholding these principles and maintaining this important function on our campus.



Sincerely,
THE UNIVERSITY OF MISSISSIPPI

([HTTP://OLEMISS.EDU/](http://olemiss.edu/))
Chancellor

Office of the Chancellor



<https://www.addtoany.com/share?url=https%3A%2F%2Fchancellor.olemiss.edu%2Fappointment-of-acting-ombuds%2F&title=Appointment%20of%20Acting%20Ombuds>

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[UM Creed](https://www.olemiss.edu/info/creed.html)
(<https://www.olemiss.edu/info/creed.html>)

<http://www.outreach.olemiss.edu/grenada/>
<http://www.outreach.olemiss.edu/grenada/>
<http://www.outreach.olemiss.edu/grenada/>

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[\(https://diversity.olemiss.edu/\)](https://diversity.olemiss.edu/)
[\(https://diversity.olemiss.edu/\)](https://diversity.olemiss.edu/)

[Alumni](https://www.alumni.olemiss.edu/)
(<https://www.alumni.olemiss.edu/>)

Office of the Chancellor

University Ombudsperson

Position Information

Position Information

Position Title University Ombudsperson
Department Chancellor
Job Location Oxford
Job Type Full-Time

Job Description This professional position serves as a designated neutral or impartial dispute resolution practitioner providing confidential and informal assistance to constituents of the University community, to include graduate assistants, staff, and faculty. This position is neither an advocate for any individual, nor the organization, but rather, an advocate for fairness who acts as a source of information and referral, and aids in answering individual's questions, and assists in the resolution of concerns and critical situations. The function of this position is independent of existing administrative structures and reports to the Office of the Chancellor.

Job Responsibilities Provides impartial and confidential consultation to members of the college/university community who are aggrieved or concerned about an issue. Remains independent, neutral and impartial, and exercise good judgment.

Assists inquirers in interpreting college/university policies and procedures, clarifying issues, generating options for resolution, and facilitating assessment of the pros and cons of possible options. Conducts appropriate informal fact-finding in order to better understand an issue from all perspectives.

Consults with managers/faculty to develop cooperative strategies for complaint resolution. With the inquirer's permission, consults with all parties to clarify and analyze problems, focus discussions, and develop a mutually satisfactory process for resolution. Provides referrals to other resources, whenever possible and appropriate.

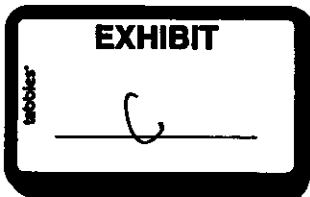
Facilitates group meetings, uses shuttle diplomacy, or negotiation skills to facilitate communication among parties in conflict. Encourages flexible administrative practices to maximize the institution's ability to meet the needs of all members of the campus community equitably.

Serves as a campus resource for officials in formulating or modifying policy and procedures, raising issues that may surface as a result of a gap between the stated goals of the institution and actual practice. Reviews periodically the patterns of grievances and makes appropriate recommendations for policies or practices that would reduce or eliminate recurring grievances.

Acts as a liaison between individuals or groups and the campus administrative structure, serving as a communicator or informal facilitator, as appropriate.

Functions as a sensor within the campus community to identify problems or trends that affect the entire campus or significant parts of the community, if appropriate, recommend creative ways to address concerns. Provides early warning of new areas of organizational concern, upward feedback, critical analysis of systemic need for improvement, and make systems change recommendations.

Develops communication mechanisms to provide education about the office's role to all potential inquirers as well as to university/college leadership. Designs and conducts training



programs for the campus community pertaining to topics of dispute/conflict resolution, negotiation skills and theory, civility, and related subjects.

Supervises office staff, as necessary. Ensures Integrity is maintained through independence, fair process, neutrality, impartiality, confidentiality and timely attention to the resolution of issues while treating people with dignity and respect.

Formulates, manages and monitors the overall goals, direction, programs, and budget of the University Ombuds Office.

Participates in relevant professional associations, such as The International Ombudsman Association, the Society of Professionals in Dispute Resolution.

Performs similar or related duties as assigned or required.

Essential Functions

These essential functions include, but are not limited to, the following. Additional essential functions may be identified and included by the hiring Department.

1. Provides dispute resolution, consultation and referral, whenever possible and appropriate.
2. Coordinates policy analysis and feedback.
3. Facilitates community outreach and education.
4. Establishes and maintains the University Ombuds Office.

Minimum Qualifications

Education:

At least a master's Degree from an accredited college or university a related field, or a Juris Doctorate Degree from a law school accredited by the American Bar Association.

AND

Experience:

Five (5) years of experience related to the above described duties.

Substitution Statement:

Related experience may be substituted on a basis set forth by the Department of Human Resources.

Special Instructions to applicants

Please check to see which documents (i.e., resume, CV, cover letter, list of references) are associated with this posting. Prior to applying for the position, prepare the electronic versions of these documents to upload or to "copy and paste" when prompted. You will not have the opportunity to attach them after you apply.

Applicants must meet the posted minimum qualifications for the position at the time of completing and submitting an application.

All positions will be open until an adequate applicant pool has been reached.

An official copy of your transcript is required upon hire for this position.

EEO Statement

The University of Mississippi provides equal opportunity in any employment practice, education program, or education activity to all qualified persons. The University complies with all applicable laws regarding equal opportunity and affirmative action and does not unlawfully discriminate against any employee or applicant for employment based upon race, color, gender, sex, sexual orientation, gender identity or expression, religion, national origin, age, disability, veteran status, or genetic information.

Background Check Statement

The University of Mississippi is committed to providing a safe campus community. UM conducts background investigations for applicants being considered for employment. Background investigations include a criminal history record check, and when appropriate, a financial (credit) report or driving history check.

Work Schedule

If part-time, specific number of hours per week

Published Salary \$76,669 - \$98,384 (Salary dependent upon department budget and candidate's qualifications.)

Exceptional Employment Benefits

Job Open Date 08/26/2016

Employee Category Executive

Employee Designation Regular Full-time (Benefits Eligible)

Posting Specific Questions

Required fields are indicated with an asterisk (*).

1. * How did you learn about this particular job opening?
 - o University of Mississippi website
 - o Print ad/newspaper
 - o Chronicle of Higher Education
 - o WIN Job Center/MDES Jobs Website
 - o Professional meeting or conference
 - o Professional journal and through a professional organization
 - o Professional list service
 - o Listed at historically black or predominately minority collage or university
 - o Predominately minority-targeted publication
 - o Other institution/laboratory/program
 - o Referred by a friend who is an employee of the University
 - o I am a current employee
2. * Do you have at least five years of related experience and at least a Master's Degree from an accredited college or university a related field, or a Juris Doctorate Degree from a law school accredited by the American Bar Association?
 - o Yes
 - o No
3. * After reviewing the examples of work and the essential functions of this position, please describe the related experience (a minimum of five years) that you possess.

(Open Ended Question)

Optional & Required Documents

Required Documents

None

Optional Documents

1. Resume / Vitae
2. Cover Letter

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

PAUL J. CAFFERA

PLAINTIFF

VS.

CAUSE NO: 2020-573 W

THE UNIVERSITY OF MISSISSIPPI

DEFENDANT

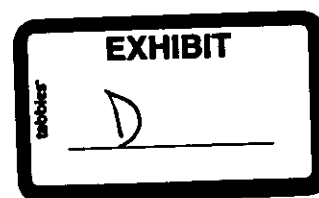
AFFIDAVIT OF PAUL J. CAFFERA

STATE OF Mississippi

COUNTY OF Lafayette

Personally came and appeared before me, the undersigned authority in and for the county and state aforesaid, the undersigned, who, having first been by me duly sworn, states on oath the following:

1. I am over the age of 21 and have personal knowledge of the matters contained herein.
2. In the words of the International Ombudsman Association, an Institutional Ombuds—the type of ombuds function created by the University of Mississippi (as distinguished from a Classical Ombuds or a Long-Term Care Advocate Ombuds)—functions to: “(1) to work with individuals and groups in an organization to explore and assist them in determining options to help resolve conflicts, problematic issues or concerns, and (2) to bring systemic concerns to the attention of the organization for resolution.”
3. Ombuds operate according to the principles of informal, neutral, confidential and independent service to their organizations. At the core of an ombuds’ practice is listening carefully to the concerns, issues, and experiences of “visitors,” a term of art for those who utilize an ombuds’ services, without judgment or attempting to decide who is right or wrong, in order to attempt to understand each visitor’s perspective in an effort to understand the issue from the perspective of the individual, with the goal of helping the visitor identify a range of options that might be available to the visitor in order to resolve their concern. Among a wide range of services, ombuds coach visitors, help deflate unrealistic expectations, help visitors see situations from the perspectives of others, sometimes mediate disputes or facilitate conversations, refer visitors to other offices or resources that might help address their concern, including formal resolution offices. Unlike these other “formal” offices, ombuds do not participate in any formal process, such as formal investigations, grievances, disciplinary processes, etc.
4. Ombuds also serve the important role of raising systemic issues to formal resolution channels. When an individual is unable or unwilling to surface a concern directly, the



ombuds can anonymize the concern and bring it forward to the appropriate decision-makers in the organization so that they can then determine how or even whether to address the issue. Because of an ombud's unique position in an organization—standing apart from ordinary reporting structures and taking no sides on the issues that come before them—ombuds receive information unavailable to any other person within their organization and can serve to provide organizations unfiltered information, which can be invaluable in identifying hidden problems and opportunities. Often the input provided by an institutional ombuds serves as an early warning of new issues and a source of suggestions of systemic change to improve existing processes.

5. In the August 2016 job posting, for the position I was selected to fill and currently hold, the University specified, *inter alia*, with respect to the Ombuds position:

- "The function of this position is independent of existing administrative structures and reports to the Office of the Chancellor"
- "Provides impartial and confidential consultation to members of the college/university community who are aggrieved or concerned about an issue"
- "Serves as a campus resource for officials formulating or modifying policy and procedures, raising issues that may surface as the result of a gap between the stated goals of the institution and actual practice"
- "Conducts appropriate informal fact-finding in order to better understand an issue from all perspectives."
- "Acts as a liaison between individuals or groups and the campus administrative structure, serving as a communicator or informal facilitator, as appropriate."
- "Functions as a sensor within the campus community to identify problems or trends that affect the entire campus community or significant parts of the campus community...."

6. Beyond assisting individual employees to navigate interpersonal or systemic workplace issues they confront on a daily basis, it is the job of an ombuds to listen carefully to the concerns of members of a given organization, to identify gaps between stated values and actual practices, to identify problematic policies and practices as well as opportunities for improvement and to bring these issues forward to the appropriate decision makers in order to provide them with information that will be useful to them as they adopt or modify a host of programs, policies, practices, or initiatives affecting employees. Ombuds have no power to make or change any institutional policy, or to impose discipline upon any employee (with the exception of any ombuds office employees a given ombuds may supervise, which at the University of Mississippi is none).

7. In short, through confidential conversations over time with a wide range of individuals within an organization ombuds learn what is and is not working in an organization, where the problems are, and often who appears to be causing those problems. The ombuds is then charged with the job of bringing forward these issues to leadership—serving, as some have described, as a skunk at a garden party—in order to ensure that leadership has the fullest and most-accurate assessment of the state of their organization. Whereas many people can survive and grow in an organization by hiding bad news from top leaders, an organizational ombuds’ job is to fearlessly bring forth those issues to leadership, which is why the protections conferred by an ombuds office charter agreement are essential for the protection of organizational ombuds.
8. I became the second Ombuds at the University in February of 2017, and I am the longest serving Ombuds in the history of the University. In that capacity, I have communicated with over a thousand University faculty, staff and graduate students about all manner of issues that come up on the campus. Most of these issues are sensitive and visitors wish to remain anonymous. I do not maintain an electronic calendar and do not require visitors to identify themselves to me. In most cases, I never learn the name of the visitor. I do not maintain any visitor record files. Although I may take notes, primarily to help myself listen, it is rare that the notes are not shredded the moment the meeting concludes. I avoid e-mail and other written communications as much as possible and conduct nearly all of my interactions face-to-face or telephonically. For telephonic communications, I encourage visitors to utilize the *67 function on their telephone to hide their telephone number even from me. Confidentiality is the hallmark of the Office of Ombuds. The International Ombudsman Association (“IOA”) Code of Ethics, to which the Office of Ombuds is required to adhere by its Charter, requires the Ombuds to “hold[] all communications with those seeking assistance in strict confidence, and . . . not disclose confidential communications unless given permission to do so” except to prevent imminent risk of serious harm.
9. The Office of Ombuds was created by a Charter Agreement in 2015. Though the name “Charter Agreement” suggests that it is a contract, it is in fact also a University policy embodying the purpose, practices and operation of the Office of Ombuds. I closely adhere to this policy, and take my confidentiality obligations very seriously. In my experience, visitors to the Office of Ombuds have a reasonable expectation of privacy as to the matters they discuss – and rely on the University to enforce the Charter Agreement to protect that confidentiality. I also rely on the University enforcing the Charter Agreement, and could not perform my job without an expectation that the University would comply with it. Indeed the Office of Ombuds would no longer function without the University complying with the confidentiality provisions of the Charter Agreement.
10. The Charter Agreement states that the Ombuds “shall not testify or provide records to be used in any other dispute resolution process, grievance process, or investigation, even if requested to do so by the visitor.” I am required to “take reasonable steps to ensure confidentiality of the visitor’s identity and communications.”
11. The Charter Agreement provides that the Office of the Ombuds “shall have access to

independent legal counsel when necessary in order to fulfill the functions of the position.”

12. Finally, the Charter Agreement provides that not only those using the Ombuds Office are protected from retaliation, but also the Ombuds “shall be protected from retaliation as a result of his/her role.”
13. On October 13, 2020, I received an email from Gene W. Rowzee (hereinafter “Rowzee”), the Interim Director of Equal Opportunity and Regulatory Compliance (herein after “EO/RC”) at the University requesting to meet with me concerning “a personnel investigation.” In the late spring or early summer of 2020, University Provost, Dr. Noel Wilkin named Rowzee to serve as EO/RC’s Interim Director. Rowzee reports directly to Wilkin and serves at Wilkin’s pleasure. Wilkin also is supposed to serve an impartial appellate role for persons challenging conclusions and recommendations contained in EO/RC reports. When I responded in accordance with the Charter Agreement described above that I would not be able to participate in such an investigation, I was only then advised by Rowzee that I was in fact one of the subjects or targets of the investigation.
14. Through my position as Ombuds, I have developed concerns about EO/RC investigations at the University. Also, the nature of my job often brings me to have frank and unvarnished conversations with the University administrators when I bring forward sensitive or uncomfortable subjects. Given the enmity shown towards me from certain administrators, I had reason to believe I was being retaliated against as a consequence of diligently performing the functions of my job, particularly when I discovered that Rowzee had attempted to deceive me into meeting with him. Therefore, I requested that Rowzee provide me some minimal detail about the nature of the allegations and the person(s) bringing them. Rowzee declined to do so.
15. I was also contacted by an investigator from the University Police Department (hereinafter “UPD”) named Kendall Brown looking to interview me concerning emails sent to the Department of Journalism and New Media. The UPD, which reports to Wilkin through one intermediate administrator (the Acting Vice Chancellor for Student Services, who also reports to Wilkin) has never identified any criminal statute that was allegedly violated by the emails in question despite being asked by my attorney to identify any applicable criminal statutes.
16. My counsel and I have twice met with Rowzee, and I have fully cooperated with Rowzee’s investigation (and made myself available for subsequent questioning), while adhering to my confidentiality obligations as Ombuds. At the meeting on November 22, 2020, I stated that I was not sending emails to the School of Journalism and New Media under a pseudonym or at all. Despite unequivocally advising Rowzee that I could not disclose information obtained in conjunction with his position as Ombuds, he nevertheless sought to have me violate my obligations under the Ombuds Charter and my professional ethical obligations by asking me: “Do you have any idea who is posting under or sending emails [to the School of Journalism and New Media] under those pseudonyms?” I responded that any information I would have on that subject would be

both a violation of the confidentiality of the Ombuds Office and speculative. My counsel and I repeatedly asked for documentary evidence supporting the baseless allegations that I was creating a hostile work environment at the School of Journalism and New Media, including the names of persons making the allegations, but none were given.

17. The allegation that I am abusing my office on behalf of a friend or intimate is false. This assertion is also based on faulty assumptions. The University Ombuds — and any organizational ombuds, for that matter — has no authority to take action against any individual, group, or entity. Ombuds can identify apparent issues, but they lack the authority to implement any response to those issues; such authority is vested in their organizations' leaders (here, the Chancellor, the Provost or any department head). If a leader receiving a report from the Ombuds believes that, for whatever reason (but wrongly in this case), the Ombuds is “pursuing a personal grudge on behalf of a friend or intimate,” then that leader is free to take no action on the Ombuds' report. In any case, there is absolutely no legal or procedural basis for the EO/RC to open up some kind of Title VII investigation for such reasons.
18. On December 1, 2020, the Chancellor placed me on administrative leave while waiting for EO/RC investigation to conclude. The University also removed any mention of my name from its website(s) – particularly that I continue to hold the position of Ombuds at the University. My unclear status at the University creates a stigma and damages my reputation and economic value in the marketplace. Anyone seeking information and background regarding my current employment is unable to do so through the University's official Ombuds website.
19. I was repeatedly told by Rowzee that the EO/RC investigation would be completed around the first of December, as of now, there has been no resolution, and I remain on leave with an unjustified cloud hanging over my reputation.
20. The Charter Agreement provides that the Office of the Ombuds “shall have access to independent legal counsel when necessary in order to fulfill the functions of the position.” Rowzee also told me that I have a right to counsel through this process. In reliance on the Charter Agreement, and in an effort to protect the independence of the Ombuds Office and to prevent retaliation against the Ombuds Office, I emailed the Chancellor on October 13, 2020 requesting funding to retain counsel. In that email, I stated: “I also seek guidance as to the proper methods of [retaining counsel], which comply with any State laws or regulations. . . .” This email was ignored by the University. Again, on or about November 19, 2020, I made a request to the Procurement Office of the University for funding to retain counsel. This request was also ignored.
21. The University has provided me absolutely no documentary support for (1) the allegations giving rise to the EO/RC investigation, (2) its refusal to hire counsel for me in accordance with the Charter Agreement. If the Court does not deny the University's Motion to Dismiss outright, I respectfully request that the Court allow me the opportunity to conduct discovery so that I may have a full opportunity to refute the University's contentions in this case. I have listed the information I am requesting in the

interrogatories and requests for production of documents I have propounded to the University in this case. This information is essential to my providing a full response to the University's motion.

Further affiant sayeth naught.


PAUL J. CAFFERA

SWORN TO AND SUBSCRIBED BEFORE ME, on this the 3 day of February,
2021.


NOTARY PUBLIC

My Commission Expires





INTERNATIONAL
OMBUDSMAN
ASSOCIATION

IOA CODE OF ETHICS

PREAMBLE

The IOA is dedicated to excellence in the practice of Ombudsman work. The IOA Code of Ethics provides a common set of professional ethical principles to which members adhere in their organizational Ombudsman practice.

Based on the traditions and values of Ombudsman practice, the Code of Ethics reflects a commitment to promote ethical conduct in the performance of the Ombudsman role and to maintain the integrity of the Ombudsman profession.

The Ombudsman shall be truthful and act with integrity, shall foster respect for all members of the organization he or she serves, and shall promote procedural fairness in the content and administration of those organizations' practices, processes, and policies.

ETHICAL PRINCIPLES

INDEPENDENCE

The Ombudsman is independent in structure, function, and appearance to the highest degree possible within the organization.

NEUTRALITY AND IMPARTIALITY

The Ombudsman, as a designated neutral, remains unaligned and impartial. The Ombudsman does not engage in any situation which could create a conflict of interest.

CONFIDENTIALITY

The Ombudsman holds all communications with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

INFORMALITY

The Ombudsman, as an informal resource, does not participate in any formal adjudicative or administrative procedure related to concerns brought to his/her attention.

www.ombudsassociation.org

EXHIBIT

tabbies

FE

Fw: EORC investigation

pcaffera@olemiss.edu <pcaffera@olemiss.edu>

Thu 10/15/2020 11:56 AM

To: pcaffera@ksu.edu <pcaffera@ksu.edu>

Paul J. Caffera

University Ombuds

University of Mississippi

P.O. Box 1848

318 Trent Lott Leadership Institute

25 Galtney Lott Plaza

University, MS 38677-1848 U.S.A.

+1-662-915-1537

pcaffera@olemiss.edu | www.olemiss.edu

The University Ombuds serves all faculty, staff, and graduate students at the University of Mississippi.

The University Ombuds' Office values the confidentiality of its communications with those who contact the Ombuds. Please do not use e-mail to send confidential information to the Ombuds' Office, as e-mail can create a permanent record and thereby undermine confidentiality. If you would like to speak with the Ombuds, please call (662) 915-1537 to schedule an appointment. To protect your confidentiality, please do not leave any confidential information in voicemail.

PLEASE NOTE THAT, due to the confidential, impartial, informal, and independent function of the University Ombuds, communication with either the University Ombuds or the University Ombuds' Office does not constitute legal notice to the University of Mississippi.

From: gwrowzee <gwrowzee@olemiss.edu>

Sent: Tuesday, October 13, 2020 4:45 PM

To: pcaffera@olemiss.edu <pcaffera@olemiss.edu>

Cc: Glenn Boyce <gboyce@olemiss.edu>

Subject: RE: EORC investigation



Paul, our office conducts meetings to discuss allegations, we don't share them over email and rarely over the phone. Then, a person with whom an allegations is shared might decide whether to continue the meeting, or postpone, or seek counsel, whatever, and that's fine. We give people multiple opportunities to share information with us, it's not just the one bite at the apple. But we don't share it over email and it would be unfair to make an exception for you.

If you would like to meet so we can discuss the allegations, it is entirely up to you, just let me know. Then you can decide to continue, postpone, seek counsel, whatever you'd like. If you don't wish to meet for me to share the allegations, we will continue our investigation without your involvement.

Paul, please take a day to consider the above, then let me know.

Dr. Boyce, I apologize for continuing to include you in this email string, but Mr. Caffera cc'd you and I did not feel right excluding you if it was his wish that you be included.

Gene W. Rowzee, Jr.
Equal Opportunity/Regulatory Compliance
The University of Mississippi
P.O. Box 1848
120 Lester Hall
University, MS 38677-1848
1-662-915-7735
1-662-915-1229 (fax)
gwrowzee@olemiss.edu

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From: pcaffera@olemiss.edu
Sent: Tuesday, October 13, 2020 3:44 PM
To: gwrowzee <gwrowzee@olemiss.edu>
Cc: Glenn Boyce <gboyce@olemiss.edu>
Subject: Re: EORC investigation

Gene,

If I am facing anything remotely resembling an adverse action against me, fairness demands that you not reach any "findings" about me or the Ombuds Office or issue any "recommendations" concerning me or the Ombuds Office without me, as an individual, and the Ombuds Office, as a Department, having an opportunity to know what is alleged and to rebut, what I have every confidence is, an unfounded allegation. I reiterate, the Ombuds Office Charter envisions situations when the Ombuds and the Ombuds Office might face situations requiring independent legal counsel. Given your reluctance, thus far, to share with me the nature of the allegation(s), it seems reasonable to conclude that this might well be one of those situations.

All the best,

Paul

From: gwrowzee <gwrowzee@olemiss.edu>
Sent: Tuesday, October 13, 2020 2:46 PM
To: pcaffera@olemiss.edu <pcaffera@olemiss.edu>
Cc: Glenn Boyce <gboyce@olemiss.edu>
Subject: RE: EORC investigation

Paul,

Again, thank you for your response. I will consider your comments and contact you again if necessary.

Gene W. Rowzee, Jr.
Equal Opportunity/Regulatory Compliance
The University of Mississippi
P.O. Box 1848
120 Lester Hall
University, MS 38677-1848
1-662-915-7735
1-662-915-1229 (fax)
gwwrowzee@olemiss.edu

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From: pcaffera@olemiss.edu
Sent: Tuesday, October 13, 2020 2:32 PM
To: [gwwrowzee](mailto:gwwrowzee@olemiss.edu) <gwwrowzee@olemiss.edu>
Cc: Glenn Boyce <gboyce@olemiss.edu>
Subject: Re: EORC investigation

Gene,

I will be happy to meet at the appropriate time once I have had an opportunity to discuss the situation with the appropriate leadership. Also, fairness dictates that I have notice, with a reasonable degree of specificity, of the scope and detail of the allegation(s) prior to being placed in a position of responding to what, I have no doubt whatsoever, is a baseless allegation.

Inasmuch as the Office of the Ombuds and the University Ombuds are one and the same, I have reason to believe any spurious complaint against me is as much an attack against the Ombuds Office. I have no intention to be at all difficult; however, I am aware that there are people on campus who have had wrongdoing exposed via the intervention of the Ombuds Office. It is not hard to envision someone attempting to neutralize the Ombuds Office effectiveness by lodging a baseless complaint against me. The Ombuds Office Charter has a provision for obtaining independent legal counsel for the purpose of fulfilling the functions of the University Ombuds. Working through the process of identifying independent legal counsel in support of the Ombuds Office and then engaging them will take time. As such, meeting before the end of this week seems unlikely.

I observe that the investigation into the Biology Chair has been going on for over a month. As such, there seems no reasonable basis for a rush to meet this week. I also note that, in that case, the Biology Chair was also appraised of the allegations against him. I have yet to be afforded anything similar. We

receive agendas in advance of going into a meeting of a Chancellor's Standing Committee; what you sprung on me today is of significantly greater import than a routine committee meeting. Asking to receive the information necessary to be able to be prepared for a meeting of such importance is not unreasonable.

In order that I may understand the allegations, and prepare for any upcoming meeting, I believe it is appropriate for you to reveal to me what I have been accused of doing or failing to do. Fairness requires this.

All the best,

Paul

From: gwrowzee <gwrowzee@olemiss.edu>
Sent: Tuesday, October 13, 2020 2:01 PM
To: pcaffera@olemiss.edu <pcaffera@olemiss.edu>
Cc: Glenn Boyce <gboyce@olemiss.edu>
Subject: RE: EORC investigation

Paul, thank you for your response. I will consider your comments and contact you again if necessary. For now I will understand your below response to be a "no," that you will not be available to meet Thursday or Friday of this week.

Good luck and have a great day!

Gene W. Rowzee, Jr.
Equal Opportunity/Regulatory Compliance
The University of Mississippi
P.O. Box 1848
120 Lester Hall
University, MS 38677-1848
1-662-915-7735
1-662-915-1229 (fax)
gwrowzee@olemiss.edu

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From: pcaffera@olemiss.edu
Sent: Tuesday, October 13, 2020 12:49 PM

To: gwrowzee <gwrowzee@olemiss.edu>
Cc: Glenn Boyce <gboyce@olemiss.edu>
Subject: Re: EORC investigation

Gene,

Gene, while I understand that you must conduct investigations concerning allegations that come to your office, I am, quite frankly shocked to learn that anyone has lodged a complaint against me. Ombuds always face the danger that someone, especially ones who might be displeased with issues an ombuds brings forward, might make baseless claims against them.

I am going to need to know the specifics of the allegations, and then consult with counsel for myself as well as for the Office of the Ombuds, as the Ombuds Office Charter specifies that, "[i]n accordance with the IOA's Best Practices, the Office of the Ombudsperson shall have access to independent legal counsel when necessary in order to fulfill the functions of the position." This will take time.

Inasmuch as I have never comported myself in anything other than a manner consistent with my role as Ombuds, if there are allegations that have been leveled against me it smacks of retaliation for performing my duties. Any such retaliation would also violate the Ombuds Office Charter, which states that, "The University shall not tolerate retaliation against individuals for use of the Office of the Ombudsperson. Similarly, the Ombudsperson shall be protected from retaliation as a result of his/her role."

If there are allegations against me, fairness dictates that I receive those allegations in detail, that I know who is accusing me of what, and that I have an opportunity to consult with counsel before participating in any investigatory interview. With all due respect, failure on the part of the University of Mississippi to allow me an opportunity to review the allegations, any alleged evidence, and to respond to same with advice of counsel prior to reaching any "findings or recommendations" will not be a legitimate investigatory process.

Again, with all due respect, I feel like, had I not raised the issue of the inappropriateness of the Ombuds Office participating in a formal investigatory interview, it was your intention to ambush me with allegations at our meeting. Having served as an arbitrator for many years, I know what fair investigatory processes are, and that is not remotely fair.

All the best,

Paul

Paul J. Caffera
University Ombuds
University of Mississippi
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25 Galtney Lott Plaza
University, MS 38677-1848 U.S.A.
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From: gwrowzee <gwrowzee@olemiss.edu>
Sent: Tuesday, October 13, 2020 11:55 AM
To: pcaffera@olemiss.edu <pcaffera@olemiss.edu>
Subject: RE: EORC investigation

Paul, I certainly understand your position. However, in all fairness, I need to tell you that part of what I am investigating are allegations against you, personally. The meeting would be your opportunity to present your side, as well as point me toward any witnesses or information you need me to explore before I complete my investigation.

At the end of the investigation I will be promulgating a personnel report that will include findings and recommendations which might affect you as a University employee. I understand the role of the Ombuds, but when allegations are directed at you personally as a University employee I need to make sure you have the opportunity to present your side before I make any findings or recommendations.

I understand the dual position you occupy (both Ombuds and University employee) might create some difficulty for you in determining whether you will participate in this investigation, but I needed to offer you the opportunity.

Thanks again for your help!

Gene W. Rowzee, Jr.
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From: pcaffera@olemiss.edu
Sent: Tuesday, October 13, 2020 10:47 AM
To: [gwrowzee <gwrowzee@olemiss.edu>](mailto:gwrowzee@olemiss.edu)
Subject: Re: EORC investigation

Good morning, Gene.

It is always good to hear from you. Although, as you know, I am sometimes able to offer informal observations about issues that affect the campus, the Ombuds Office Charter agreement prohibits me from participating in any formal investigatory processes (<https://ombuds.wp2.olemiss.edu/wp-content/uploads/sites/33/2019/08/UM-Ombudsperson-Charter-Accessible.pdf>):

The Office of the Ombudsperson shall operate only as an informal dispute resolution resource and shall not...participate in any formal investigation or adjudication process.

The Ombuds Office Charter also mandates that, "The Office shall adhere to the International Ombuds Association (IOA) Code of Ethics and Standards of Practice." Inasmuch as I sit on the IOA's Government and Policy Committee; I know these documents well and I adhere to their requirements. The IOA's Standards of Practice (https://www.ombudsassociation.org/assets/docs/IOA_Standards_of_Practice_Oct09.pdf) require that the Office operate independently of the organization...." The Standards of Practice also includes the following provisions:

3.1 The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following:

The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual's express permission, given in the course of informal discussions with the Ombudsman

4.5 The Ombudsman does not participate in any formal investigative or adjudicative procedures

Consequently, although I would otherwise be pleased to meet with you, I am constrained from doing so as part of any formal investigatory process. Since the purpose of your invitation to meet involves EORC "conducting a personnel investigation," I am foreclosed from meeting with you. I trust you will understand.

Additionally, you may recall that, the Ombuds Office does not maintain any records of who contacts or meets with me, and, as a matter of practice, I do not even ask the

names of those who contact or meet with me (case in point the e-mail I sent to you earlier this morning). Therefore, even were it possible to meet with you as part of a formal investigation, I would not be confident in my having the clarity of recollection that would be of assistance to you in your investigation.

All the best,

Paul

Paul J. Caffera

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From: gwrowzee <gwrowzee@olemiss.edu>
Sent: Tuesday, October 13, 2020 8:43 AM
To: pcaffera@olemiss.edu <pcaffera@olemiss.edu>
Subject: EORC investigation

Paul, my office is conducting a personnel investigation and I need to meet with you via Zoom on Thursday or Friday of this week. What is your availability on those two days?

Thank you for your assistance!

Gene W. Rowzee, Jr.
Equal Opportunity/Regulatory Compliance
The University of Mississippi
P.O. Box 1848
120 Lester Hall
University, MS 38677-1848
1-662-915-7735
1-662-915-1229 (fax)

10/15/2020

Mail - pcaffera@olemiss.edu - Outlook

gwrwzee@olemiss.edu

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UNIVERSITY
MISSISSIPPI


Interoffice Memorandum

OFFICE OF THE PROVOST

University, MS 38677

Phone: (662) 915-5974 Fax: (662) 915-5280

TO: School of Journalism and New Media Faculty and Staff

FROM: Dr. Noel Wilkin, Provost and Executive Vice
Chancellor for Academic Affairs 

DATE: October 23, 2020

SUBJECT: Ongoing Anonymous Email

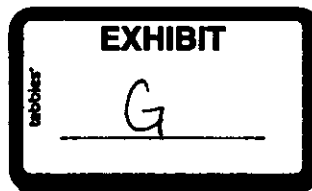
Dear Faculty and Staff,

These are truly difficult times. As we adjust everything that we do to be responsive to our missions of teaching, service, research, and scholarship due to the pandemic, we are all facing personal challenges and hardships that the pandemic and its restrictions impose.

For you, this has been further aggravated by ongoing, persistent, and accusatory emails from an anonymous source. The nature of the anonymous allegations and the questions asked seem to indicate that those behind the emails do not understand our policies, our practices, or the definitions of terminal degrees. They ignore, or fail to understand, the role that you, the faculty, play, in addition to the administrative offices, to ensure compliance with those policies, practices, and standards. They also have failed to notice relevant external facts that support our policies and practices, like the fact that the credentials of our faculty mirror those found at other public, flagship research universities in the appropriate disciplines. I am sure all of us would be happy to explain our processes and practices. After all they are public, and we all have a responsibility to embrace, adhere, and explain them. Yet, the emails persist.

At an educational institution, our work is based on the free exchange of ideas in a civil and open environment to advance truth and knowledge, which are core to our mission. This anonymous approach violates the very core of academic discourse and transparency.

A hostile work environment allegation was filed by members of the faculty against the



individuals responsible for the anonymous communications. It is my understanding that the Office of Equal Opportunity and Regulatory Compliance is conducting an investigation in response to your request. Additionally, the tenured faculty (with 2 absent and 1 abstaining) within the school filed a grievance claiming hostile working conditions that resulted from these behaviors as it "has increasingly created a chilling effect on faculty speech, dampened faculty collegiality, interfered with teaching and scholarship, and caused several to express they feel they work in a hostile environment." While the EORC investigation takes place, I am exploring mechanisms to give faculty some relief from this barrage of anonymous allegations in the workplace. These efforts take time, and we appreciate the faculty's patience and resolve while we do this work.

Caffera Meeting with Gene Rowzee

Rowzee: Say something real quick

Goodloe: Goodloe

Rowzee: Yea, it, it's, it's lagging a little bit. Do you want to, uh, do you want to try to sign back in, or

Goodloe: No, it's probably going to end up being this way. I hope that's not a major problem, I do Zoom stuff all the time, and you know, the audio on my computer is, is not great, and it just works better when I use the phone and that's what causes the lag sometimes.

Rowzee: Well, all this technology is going to make our lives so much easier, and it hadn't really happened yet.

Goodloe: Oh, I know, yea

Rowzee: Okay, so let me give ya'll the spill I have been telling everybody, and, uh, and then I'll, I'll deviate from that when uh, when we get, when I get towards the end. Uh, and, and I am going to record this, do you want me to share it so that you are able to record it as well?

Goodloe: You mean on Zoom?

Rowzee: Yes

Goodloe: Um, can you just provide me a copy of your recording, is that, can you do that?

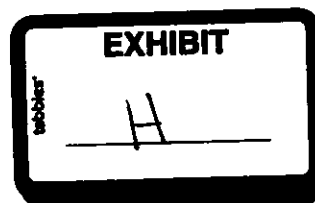
Rowzee: Yes

Goodloe: Why don't you just do that?

Rowzee: I think I can just email it.

Goodloe: Sure, let's just do it that way

Rowzee: Okay. Alright I am recording it now. Okay, so what has happened is, uh, earlier in the semester I, uh, I received some complaints and concerns from, uh, folks in the School of Journalism and they were saying that, that there was a hostile work environment being created on the basis of race and



national origin and just in general, and so when they made that complaint, I began an investigation, and it's a personnel investigation. It is protected under 25-1-100, so these notes I am not going to be giving out to people, uh, you know under Freedom of Information Act requests, and when I get done with this investigation, I will draft a report.

Goodloe: I am sorry to interrupt you, did you just cite a statute there or I, uh, you threw out some numbers.

Rowzee: Yes, 25-1-100, uh, which is the personnel records exception to the Open Records Act.

Goodloe: Okay, got you, go ahead.

Rowzee: So, uh, so when I get done with this investigation, I'll be drafting a report, and that report will have findings and recommendations if I am able to make any findings or recommendations, and that report will go to the Dean and Provost and will go to the complainants and will go to the people I identify as respondents. So, uh, and those recommendations could be anything from no recommendations to, uh, you know some kind of personnel action, to, it could be anything, it's, it's really just whatever I come up with, so it's, uh, at this stage, this is kind of an informal process, I am just trying to find out what's going on based on the complaints I have received, and uh, so let me give you, usually at this point I, I ask a witness or I ask even complainant, so tell me what's going on, but I wanted to provide you, since I have talked to about thirty people, what I understand the complaint is with regard to Mr. Caffera. So, there is a belief among some of the folks over there that he may be causing or contributing to this hostile work environment, uh, in the School of Journalism and it has to do with anonymous emails and online trolls. There is also a belief among some over there that, uh, he may be using his public office to pursue a personal grudge for a friend or an intimate, and that has to do with Dr. Swain and Dr. Beoni and, and those kind of related things. So, where I am in this right now is, uh, I am finishing up, you know, I, I'm doing some IT stuff, and, uh, looking at some computers, and, I, and, and really, , I, I just, I just want to know what's going on. I, I just want to try to find out what the story is, uh, so I can complete my investigation. And this is not, as far as my investigation goes, this is not an investigation that has anything to do with the Mississippi Free Press Article or, or Dean Norton, or any of that stuff, this is, except tangentially, if that helps me identify the folks that, uh, that I need to talk to, so that's where I am, and, uh, and, and if ya'll would like to talk about it today, we can. If we want to come up with a, a time

next week to reconvene if Paul wants to talk to me, that's fine to. It's, uh, you know, it's, it's really up to ya'll.

Goodloe: O....

Rowzee: if ya'll want to provide me any witnesses I need to talk to, uh or any, any documents or, or any kind of evidence I need to look at, uh, you know, just let me know.

Goodloe: Okay, well, and I was just going to ask you a couple of things just so I, you know, we are kind of on the same page here. Um, what, is anybody else present with you in the room now?

Rowzee: Nope

Goodloe: Okay

Rowzee: Just me

Goodloe: Um, now I have talked to an investigator with UPD about this situation, so I understand there is also a criminal investigation, are, are you acting in conjunction with that?

Rowzee: Uh, I, I don't know what conjunction means, if I have somebody that comes in and, and says I am mad because of a stalking statute, then I forward them over to them, because I am not doing that, I'm, if, if I have some piece of evidence that I think is, is beneficial to them, then I have forwarded that to them, but I am not, I am not in there, we're not, we're, we're kind of, I, I don't want to call it siloed, but I'm doing my thing, and they're doing their thing.

Goodloe: Okay, but I mean, if you obtain information through your investigation that you think they might need or want to look at, you would forward it over to them, is that correct?

Rowzee: Probably so, yea.

Goodloe: Okay

Rowzee: If, if it had, but at this point, I don't know what, what they are even investigating.

Goodloe: Okay, I

Rowzee: I, I don't know if there, if there is some kind of cyber stalking thing, I don't know.

Goodloe: Well, yea, I mean, I had a good conversation with the officer, I think Kendall Brown, I think is his name, is that correct?

Rowzee: Yes

Goodloe: Okay, and, and I mean, I will be honest with you, basically what you just told me, is almost point for point what he told me that he was investigating, so

Rowzee: "laughs"

Goodloe: I, I just you know, for what it's worth, I throw that out. Um, okay, so

Rowzee: He and I, he and I, he and I have not coordinated on what I just told you, because I just wrote it down about five minutes ago.

Goodloe: Okay

Rowzee: Before we got on the call.

Goodloe: Alright, so, is, is Paul being compelled by the University to answer questions, or provide information?

Rowzee: Uh, no, I, I'm just asking him to cooperate, I don't know if there will be any ramifications or if there will be, you know, if somebody will take that as a, uh, uh, you know a bad inference from that, I don't know. Uh, that's, that's something that occurs outside my office.

Goodloe: Yea, okay, so that was going to be my next question.

Rowzee: "Inaudible"

Goodloe:

Rowzee: I was going to say if he was being compelled, then actually that would, that would help on the criminal side because if he feels like he has to do this, if he's, uh, if he's being coerced into doing this, or, or there is going to be some job action, then, uh, then none of that can be used on the criminal side, so.

Goodloe: Okay

Rowzee: I, I kind of wish I could coerce him, but I can't.

Goodloe: Alright, and, and so what you were saying I think is that you do not know but there may be some adverse employment action taken if he does not answer questions.

Rowzee: Correct

Goodloe: Okay

Rowzee: I don't know if they'll take a negative inference for that.

Goodloe: Alright, and then, are, are you able to provide any documents that support these allegations that support these allegations?

Rowzee: I am not.

Goodloe: Okay

Rowzee: I am not, I'm, I'm in the investigation right now

Goodloe: So,

Rowzee: "inaudible" over, I don't know, yea.

Goodloe: I mean, can you identify what documents would be relevant to your investigation?

Rowzee: Uh, I could, I could identify, uh the online posts, that I think we are all familiar with on Facebook and, uh, and Twitter, and, uh, there's a couple of websites I think in WordPress and Myspace, uh, there's uh, so, so, somethings like that, I, there might be an Instagram "inaudible"... I haven't' looked on Instagram, uh, but I have just been looking at the things that have been provided to me, and uh, then there's some emails, but uh, but the emails, you know Paul's going to know which ones, if any, he was involved in, and which ones, if any, he wasn't, so, uh

Goodloe: So, so if, if I sent a written request for documents you would not be able to provide me anything correct?

Rowzee: Not, not at this time.

Goodloe: Okay, um, now you mentioned that you were waiting for some information from IT, which I guess leads me to believe that the University is accessing emails or email accounts, is that correct?

Rowzee: No, I've, I've got some, I've got some, I am not accessing the email accounts.

Goodloe: Okay, would

Rowzee: But, I am not, but that's

Goodloe: Would you

Goodloe: I'm sorry?

Rowzee: I might (inaudible)

Goodloe: Okay, so, so you, you have not ruled out that for example, just to make it specific, the University would, would access Mr. Caffera's email account, that, that may happen, is what you are saying?

Rowzee: That is what I am saying, I may do that, and I want to tell you why I am not doing that yet. I wanted to speak to Paul and I wanted to speak to a couple other people first, so that maybe I would not have to do that because once you start looking at people's emails and start looking at their computers, you are going to see a lot of personal stuff that, even if, that you don't want to see, that what might not be relevant to what I am looking at, and I don't want to see that stuff, but if I get into a situation where nobody is talking to me, then I have to go where the investigation leads me.

Goodloe: Yea, and of course,

Rowzee: (inaudible).. that is why I have not.

Goodloe: Yea, and, this is another level, but of course Paul in his official email account has certain protections by virtue of his position as the Ombud that, you know, I mean, I, I think you will probably agree but maybe you don't, that's a big can of worms, is getting into Paul's email account.

Rowzee: Yea

Goodloe: Um, okay, I'll just keep moving, um, I may have asked you this earlier, but I'll, I will just ask again in case I missed something, you know, are there, are there particular standards, rules, contract provisions, anything like that, that the University contends Paul may have violated, and can you identify those for me?

Rowzee: I right now, I am looking to see if there has been a hostile work environment created under (inaudible)... origin or just in general, just from normal old employee standards of conduct.

Goodloe: Okay, okay

Rowzee: and, as far, as far as a specific rule or anything like that, that, I don't know, that's why I am looking. That's, I am just, I'm just following where the complaints have led me.

Goodloe: Okay, alright, and then, timing, is there a, um, is there a deadline, is there some, you know, end date that, that you

Rowzee: inaudible

Goodloe: are required to comply with, or that we are required to comply with?

Rowzee: Not required, uh, I'm, I'm, I'm working on my report, you know

Goodloe: I'm sorry, I didn't understand, you are what?

Rowzee: I am working on my report, starting to work on my final report, and uh, and I still have some more information I need to, to tie down, and uh, I plan on, on promulgating it, uh, by the end of the semester, so if we are able to visit next week, that would be great, uh, and if not, and I get done and the report is sent out and there is supplementary information ya'll want considered, then that would have to just come in later either as an addendum to my report, or at some other level above me.

Goodloe: Alright, and are you able to provide the name of the complainants?

Rowzee: Not yet.

Goodloe: Okay, alright, I tell you what, let's

Rowzee: That would be

Goodloe: Sorry, say that again

Rowzee: The name of the complainants would be in the report.

Goodloe: Okay, alright, I tell you what, let, let me step outside just for a minute with Paul and, uh, we'll, uh, I, I'll be right back.

(walking out)

(walking back in)

Goodloe: Oh, okay we're back

Goodloe: Can you hear me?

Rowzee: Yea

Goodloe: Okay, there you go. Um, okay, um, I appreciate your time, I think that you've answered all of the questions that I have at this time. I need to spend a little bit more time with, with, um, Mr. Caffera, so, I, I think the only thing at this point is, you know, we'll just get back with you first of next week and, and discuss how to proceed from there.

Rowzee: Okay, alright, thank you much, ya'll have a good weekend.

Goodloe: Thanks so much, see you later, alright bye.

END OF CONVERSATION

Goodloe Lewis

From: Paul Caffera <pcaffera@ksu.edu>
Sent: Wednesday, December 30, 2020 10:38 AM
To: Goodloe Lewis
Cc: pcaffera; Paul Caffera
Subject: Fw: Ombuds Office Request for Independent Legal Counsel, pursuant to the Ombuds Office Charter.

From: pcaffera@olemiss.edu <pcaffera@olemiss.edu>
Sent: Tuesday, October 13, 2020 3:05 PM
To: Glenn Boyce <gboyce@olemiss.edu>
Subject: Ombuds Office Request for Independent Legal Counsel, pursuant to the Ombuds Office Charter.

Chancellor Boyce,

The Ombuds Office Charter (<https://ombuds.wp2.olemiss.edu/wp-content/uploads/sites/33/2019/08/UM-Ombudsperson-Charter-Accessible.pdf>) specifies that, "In accordance with the IOA's Best Practices, the Office of the Ombudsperson shall have access to independent legal counsel when necessary in order to fulfill the functions of the position."

Given certain information that came to light today, which I believe may constitute an attack on the ability of the Ombuds Office to fulfil its function, I am seeking a supplementary budget allocation of \$25,000.00 to allow the Ombuds Office to obtain independent legal counsel in order to obtain competent advice for how to proceed. I also seek guidance as to the proper methods of doing so, which comply with any State laws or regulations, while excluding both the University of Mississippi's General Counsel and the Office of the General Counsel from any interaction with or oversight of this independent counsel; this being necessary to allow for true independence of the Ombuds Office's independent legal counsel.

Respectfully submitted,

Paul J. Caffera

Paul J. Caffera

University Ombuds
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