

# Mateer Harbert

A T T O R N E Y S   A T   L A W

ORLANDO • OCALA

**FRANCIS E. PIERCE, III**

E-MAIL ADDRESS

fpierce@mateerharbert.com

**DIRECT LINE  
(407) 425-9044**

March 20, 2013

W. Scott Cole  
University of Central Florida  
Office of the General Counsel  
4000 Central Florida Boulevard  
Millican Hall, Suite 360  
Orlando, Florida 32816-0015

Re: Suspension Order of February 20, 2013 for Greek Organizations

Dear Mr. Cole:

I tried to call you today but I was informed that you were out of the office until March 22, 2013. I am sorry that I missed the opportunity of discussing the issues below but I hope that you will be able to discuss the following issues shortly after your return.

This firm represents the members of the North-American Interfraternity Conference that have chapters at UCF. Our clients include Alpha Epsilon Pi, Alpha Phi Alpha, Alpha Tau Omega, Beta Theta Pi, Delta Epsilon Psi, Delta Sigma Phi, Delta Upsilon, Iota Phi Theta, Kappa Alpha Psi, Lambda Chi Alpha, Lambda Sigma Upsilon, Lambda Theta Phi, Phi Beta Sigma, Phi Gamma Delta, Pi Kappa Phi, Sigma Pi, Sigma Chi, Sigma Lambda Beta, Sigma Nu, Tau Kappa Epsilon, Theta Chi, and Zeta Beta Tau.

I write this letter today to request the immediate end of the wholesale suspension of a variety of Greek activities at the University of Central Florida. My clients further demand the withdrawal of the program entitled the "Way Forward" as a prerequisite to any "reinstatement" as each of our client's organizations on the University of Central Florida campus are validly registered and recognized active organizations pursuant to UCF-5.011, Rules and Regulations of the University of Central Florida. None of these organizations have been charged with any violation of UCF-5.012, Rules and Regulations of the University of Central Florida which formed the basis of the suspension of Greek activities by the University on February 20, 2013. These organizations have not been afforded their rights of due process guaranteed by UCF-5.013, Rules and Regulations of the University of Central Florida. These organizations have not been informed that the suspension of Greek activities on February 20, 2013 was a penalty imposed by Section UCF-5.013, Rules and Regulations of the University of Central Florida.

W. Scott Cole  
March 20, 2013  
Page 2

As of February 20, 2013, through an email from Dr. Maribeth Ehasz, fraternities and sororities have been prohibited from holding social, new member education, or initiation activities without notice, without the opportunity for a hearing, and in violation of the constitutional and contractual rights of the students and organizations affected. By implementing this suspension, the University of Central Florida has disregarded its own rules regulating student organizations as well as impairing these organization's recognized property rights without due process.

As members of the Greek community, our clients recognize the importance of the dangers of hazing and alcohol abuse. Each of our member organizations requires compliance with anti-hazing and alcohol policies in order to remain in good standing. To that end, our clients support the goals of providing a safe education community. However, our clients cannot support the arbitrary and capricious manner in which the University has sought to address these issues.

### **Due Process**

The University of Central Florida has an elaborate set of rules and regulations outlining offending conduct which includes written notification of violations, review, hearing and appeal procedures as well as sanctions. Unfortunately, the evidence available to us indicates that not one of the due process measures was used prior to imposing the sanction of a system-wide suspension of a variety of Greek letter organizations' activities. There is no reference in the University's rules or regulations for the requirement of any organization subject to any sanction having to appear before a "Reinstatement Committee". In this circumstance, there is no evidence that any type of notice, review, hearing or appeal has occurred prior to the current arbitrary suspension of activities. It is clear that UCF has not followed its own rules and regulations in suspending these activities and demanding that the suspended Greek lettered organizations participate in the "Way Forward" as a prerequisite to "reinstatement".

"Those young people do not shed their constitutional rights at the schoolhouse door. The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures- Boards of Education not excepted." *Goss v. Lopez*, 419 U.S. 565, 574 (1975) (internal citations omitted). UCF may enact rules and regulations under the Board of Governors Regulations, however, once the rules are established "An agency violates a person's due process rights if it ignores rules promulgated thereby which affect individual rights." *Matar v. Florida Intern. University*, 944 So.2d 1153, 1157 (Fla. 3d DCA 2006).

In *Student Alpha ID Number GUIA v. School Board of Volusia County*, 616 So.2d 1011 (Fla. 5th DCA 1993), the Fifth District Court of Appeal found that "a fundamental requisite of due process is the opportunity to be heard and declared that at the very minimum, students facing

W. Scott Cole  
March 20, 2013  
Page 3

suspension must be given *some* kind of notice and afforded *some* kind of hearing.” (Citing *Goss*, emphasis in original). The Fifth District found that “After *Goss*, it became clear that due process in student disciplinary proceedings requires adequate notice, an opportunity to be heard, and **substantial evidence to support the penalty.**” *Student Alpha*, at 1012 (emphasis supplied). In the current mass suspension of Greek lettered organizations’ activities, there is no evidence as a result of any process to support the University’s actions.

In a case very close on point, *Alpha Eta Chapter of Pi Kappa Alpha Fraternity v. University of Florida*, 982 So.2d 55 (Fla. 1<sup>st</sup> DCA 2008), where the University of Florida did not follow its procedures in suspending a Pi Kappa Alpha Chapter at the University of Florida, the Chapter’s suspension was reversed. “We agree with the Second District’s conclusion that denial by a public university of a right accorded by its own conduct code to question adverse witnesses **requires reversal** in a case such as this.” *Id.* at 56 (emphasis supplied). The Court in *Alpha Eta* relied on the case of *Morfit v University of South Florida*, 794 So.2d 655 (Fla. 2<sup>nd</sup> DCA 2001) which held that the school’s failure to follow its own conduct code denied the student due process and the student’s suspension was reversed. *See also Matar, supra.*

The suspension of recruitment activities is a direct violation of the student’s and chapter’s property, contract, and other economic rights. The Third District Court in *Gamma Phi Chapter of Sigma Chi Fraternity v University of Miami*, 703 So.2d 497 (Fla. 3d DCA 1997), held that “as a matter of law, the sanctions – including a suspension of ‘rushing’ – imposed by the University on the appellant fraternity by virtue of the letter of October 15, 1997 adversely affected its ‘substantial property, contract or other economic rights’ and were based on an *ex parte* fact-finding process which was neither adequate nor fair.” *Id.* at 498. The *Gamma Phi Chapter* case mirrors what has occurred to the UCF Greek system.

The University has stated that the organizations will be reinstated when the administration is satisfied that the Greek “culture” reflects the values of “The Golden Rule”. However, the University itself has completely disregarded The Golden Rule and has chosen to proceed without regard to fundamental due process. This process is in clear violation of the Constitution of the United States of America.

### **Freedom of Association**

In addition to the above rights that have been affected by the system wide suspension of a variety of activities, the students constitutional rights of free association have been abridged by a suspension of their right to conduct new member recruitment and new member education. *Healy v James*, 408 U. S. 169, 92 S. Ct. 2338, 33 L.Ed 2d 266 (1972).

Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not

W. Scott Cole  
March 20, 2013  
Page 4

explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition. There can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges that associational right.

*Id.* at 181 (internal citations omitted). The Court went on to ardently state that “Such impediments cannot be viewed as insubstantial” and that a “heavy burden” rests on a University to qualify its actions. *Id.* at 182, 184.

### **Interference with Contract Rights**

The purpose of the legal system is to protect the fundamental rights afforded by the Constitution. *Retail Clerks Union Local 799, of Miami v. Lerner Shops of Florida*, 140 Fla. 856, 868 (1939). Any unlawful interference with fundamental rights may properly be prevented, including interference with contractual obligations. *Dade Enterprises v. Wometco Theatres*, 119 Fla. 70, 73-4 (Fla. 1935); *Paul’s Drugs, Inc. v. Southern Bell Tel. & Tel. Co.*, 60 P.U.R.3d 114, 205 (Fla. 3d DCA 1965).

Many chapters’ activities currently suspended by the University are subject to individual and group contracts for participation in socials, housing, formals, and meals. This suspension of activities without notice considerably impacts the economic well-being of our client organizations.

### **Equal Protection**

There are 480 student organizations on the UCF campus and the SDES action of unilateral mass suspension of activities has only been focused on ten percent of the organizations. Those organizations, all with Greek letter identification, were swept up by the SDES office’s actions without regard to whether any organization had caused any of the perceived difficulties identified as reasons to support the mass suspension of activities. This action clearly shows selective enforcement and violates the equal protection rights of these organizations as the Greek letter organizations have been treated disparately by the University.

### **Conclusion**

The current wholesale suspension of many of the activities of the Greek system by the University of Central Florida violates student and organization’s due process rights, equal protection rights, freedom of association, property rights, and contractual rights. The United States Supreme Court has emphatically stated that “The loss of First Amendment freedoms, for

W. Scott Cole  
March 20, 2013  
Page 5

even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347 (1976).

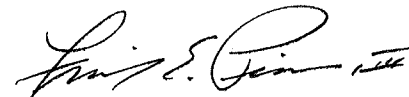
If our understanding is incorrect, please immediately provide copies of notices issued to these organizations pursuant to UCF-5.013(1)(b), Rules and Regulations of the University of Central Florida, state when the mandatory preliminary conferences pursuant to UCF-5.013(1)(d) were held, please provide copies of the written notice to each Chapter required by Section UCF-5.013(4)(a)(1), Rules and Regulations of the University of Central Florida and copies of the final decision required by UCF-5.013(4)(a)(9), Rules and Regulations of the University of Central Florida. I further respectfully request copies of any rule, regulation or formal University of Central Florida action which was the basis of the system wide suspension of the Greek lettered organizations’ activities on February 20, 2013.

Our clients do not wish to litigate these matters unless required to do so. They seek to resolve this issue with the University in a reasonable and timely manner. Such a resolution cannot be achieved by one-sided actions by either party. Collaboration between the fraternities and the University reaps great benefits when the rights and privileges are respected by each other. However, the path that the University has chosen thus far has been the path of arbitrary and capricious management of our clients.

We hereby demand that the University immediately end the current suspension of all fraternity and sorority activities including but not limited to new member education, initiation activities, recruitment, and social events. We also demand cancellation of the use of the process called the “Way Forward” as a prerequisite for “reinstatement”. We are willing to work together to create a partnership between the North-American Interfraternity Conference and its constituent members to address the concerns of the University of Central Florida.

As time is of the essence, after you receive this letter, please call me so that we can arrange a meeting to discuss a resolution.

Sincerely,

  
Francis E. Pierce, III