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*Fraternity President*

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March 16, 2103

Dr. Maribeth Ehasz  
Vice President of Student Development  
and Enrollment Services  
University of Central Florida  
P.O. Box 160160  
Orlando, FL 32816-0160

Dear Dr. Ehasz:

Please be advised that the National Panhellenic Conference members with chapters at the University of Central Florida remain deeply concerned by the across-the-board suspensions on Greek activity that the University has recently imposed. We have authorized our legal counsel to send the enclosed letter to the University's General Counsel. We wanted you to be aware of it in hopes that the University will rethink the actions taken against its students who are members of our organizations and the other Greek groups on campus.

Sincerely,

Julie Marine Leshay  
National President

Cc: John C. Hitt, President  
Robert Coleman, Fraternity and Sorority Advisor  
Tammie Pinkston, Alpha Delta Pi, National President  
Leslie Klaidman, Alpha Epsilon Phi, National President  
Sandi Edwards, Alpha Xi Delta, National President  
Letitia Fulkerson, Chi Omega, National President  
Phyllis Grissom, Delta Delta Delta, National President  
Jeanine Triplett, Delta Zeta, National President  
Amy Kates, Kappa Alpha Theta, Fraternity President  
Beth Langford, Kappa Delta, National President  
Mary Tatum, Pi Beta Phi, Grand President  
Keeley Riddle, Zeta Tau Alpha, National President  
Nicki Meneley, Executive Director, National Panhellenic Conference



# MANLEY BURKE

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March 16, 2013

*Via Regular U.S. Mail  
and Telefax: (407) 823-6155*

W. Scott Cole  
Vice President and General Counsel  
4000 Central Florida Boulevard  
Millican Hall, Suite 360  
Orlando, FL 32816-0015

Dear Mr. Cole:

**“The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker* 364 U.S. 479 (1960).**

It is particularly disturbing that one of America's largest public universities would ignore the constitutional and contractual rights of its students and the fraternities and sororities of which they are members. That the actions may be well intended fails to justify the deprivation of rights, even for what is arguably a short period of time. The University has in place policies and procedures that afford due process for those instances when students or student organizations violate the rules of the university or the laws of civil society. But that has not occurred here. Instead, without a shred of due process, Greek organizations and their members were stripped of their associational rights and contractual rights.

We write to request the immediate end of the suspension of Greek activities and a return of all rights and privileges accorded recognized student organizations on the UCF campus.

This firm represents the members of the National Panhellenic Conference that have chapters at UCF. Our clients include Alpha Delta Pi, Alpha Epsilon Phi, Alpha Xi Delta, Chi Omega, Delta Delta Delta, Delta Zeta, Kappa Alpha Theta, Kappa Delta, Kappa Kappa Gamma, Pi Beta Phi, and Zeta Tau Alpha.

Our clients recognize the importance of ending hazing and alcohol abuse. That is why each of these national organizations has strict rules prohibiting hazing and the use of

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alcohol in chapter activities in new member activities. They require compliance with alcohol laws and they educate their members on the dangers of alcohol. Hazing is strictly prohibited. When their rules are violated, the organizations discipline their members. In short, our clients are supportive of your goal to address issues in the Greek system at UCF. But our clients cannot support the arbitrary manner in which UCF is proceeding.

## **Violation of Due Process**

As an initial matter, there can be no dispute that UCF is a state actor. The Fourteenth Amendment to the United States Constitution and Article I, section 9 of the Florida Constitution provide that no person shall be deprived "of life, liberty or property without due process of law." Protected interests are generally created by and defined by sources "such as state statutes or rules entitling the citizen to certain benefits." *Goss v. Lopez*, 419 U.S. 565, 572 (1975).

In *Goss*, the Supreme Court held in a student disciplinary case involving short suspensions that an accused must be "given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." *Id.*

In a recent case involving Florida Atlantic University, a Florida Court of Appeals addressed procedural due process rights of students in disciplinary cases. *Lankheim v. Florida Atlantic University*, 992 So.2d 828, 2008 Fla. App. LEXIS 14648. Citing to *Goss*, the Fourth District Court of Appeals held in *Lankheim* that once the state extends certain benefits, "the state may not withdraw that right on grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct occurred."

Here, UCF extended the benefits of official recognition to the members of the UCF Greek community. Further, UCF, in the Golden Rule Student Handbook, promised its students the right to a fair and impartial hearing (See page 7, ¶1.g.). UCF also established a detailed disciplinary process for student organizations (See Golden Rule Student Handbook, p.40-45). The Golden Rule Student Handbook clearly sets forth the very procedural safeguards discussed in *Goss* and its progeny, including notice and the opportunity to be heard.

Rather than following its own written rules and procedures for disciplinary proceedings, UCF instead declared by fiat that every Greek organization, regardless of its individual history, was prohibited from engaging in new member education, new member initiation, new member recruitment (the very life blood of our chapters), and all Greek social life.

To be clear, this was done with no notice, no opportunity to be heard, no opportunity to learn why even chapters with no recent disciplinary violations were subject to this action. This action violates the procedural due process guaranteed to your students by the constitutions of both the United States and the State of Florida.

### **Violation of Freedom of Association**

There can be little doubt that students and the groups they choose to associate with are entitled to First Amendment protections and the right to be recognized by the university.

The Supreme Court has long recognized the right of expressive association and has “long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. United States Jaycees*, 468 U.S. 608, 622 (1984).

Of course the university can promulgate and enforce reasonable rules on associations that seek official recognition.

But the United States Supreme Court has held that there can be “no doubt that an unjustified denial of official recognition to college organizations burdens or abridges that associational right.” *Healy v. James*, 408 U.S. 169, 181 (1972). *Healy v. James* is the seminal case involving the rights of student organizations to receive official recognition. There, the Court held that a public university’s refusal to confer recognition on a Students for a Democratic Society chapter violated the students’ First Amendment rights of freedom of association. The Court held that once a student group files an application for recognition, the burden then shifts to the college administration to justify its actions if the application is denied. *Id.* at 184.

The Court made it clear that the “heavy burden” rests on the college to demonstrate the appropriateness of that action. In *Healy*, the college could not meet that burden to justify the denial of recognition to the SDS chapter.

In this case, the action to suspend the vast majority of Greek activities is not an appropriate response to the actions of a minority of student members and those groups that fail to uphold the standards of their fraternal organization and violate university rules and society’s laws. Numerous less restrictive alternatives are available to UCF than this arbitrary mass discipline. We acknowledge that certain chapters at UCF have committed disciplinary violations. But they have been punished.

The vast majority of Greek chapters and their members work hard to embody the founding ideals and principles of their respective organizations. Punishing the innocent for the past actions of others is not appropriate. A public educational institution is charged with recognizing these limitations. UCF fails its students when it chooses to ignore their students' rights and protections.

### **Interference with Contractual Relations**

There are also important contractual rights at stake. National fraternities and sororities have invested heavily in establishing chapters at UCF, typically at the invitation of the University. Particularly those that have entered into leases with UCF and who have every right to rely on and expect that the University would fairly honor those leasehold interests. These groups expected that the University would not damage the ability of the lessee to provide their members with the benefits the members expected to receive or to recruit and retain the members necessary to meet the financial demands of and maintain the property. Already our clients report receiving calls from members and their parents inquiring about refunds because the members are not receiving the benefits they had every right to expect.

To be clear, this decision is dramatically affecting the livelihood of our clients' chapters. Some own chapter houses. At least one only recently entered into a lease with UCF. All have contractual relationships with their members. All are now facing dramatic financial hardships because of UCF's actions.

### **Length of Suspension**

It is not sufficient to say that the suspension of Greek activity on campus is just temporary. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Neither is it appropriate to impose as a condition of reinstatement of the rights to your students that each group will now have to pass. The lengthy set of questions, the short schedule on which answers must be prepared, and the impossibility of presenting answers to all of the questions in the very limited time before the committee make the process itself punitive and dangerously arbitrary. Given what the University has placed at risk, there is no doubt that enormous pressure has been placed on the members who will have to endure this test. Frankly there can be little doubt that if a chapter sought to demand of new members that they perform a similar test, the University, and as well as the national fraternity, would treat it as hazing.

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It is also a matter of concern that the most recent university statements now appear to exclude national representatives from even attending the presentation of their own chapter of its values-based national involvement plan presentation.

## Conclusion

Our clients do not want to go down the road of litigation, unless pressed to do so. The actions here are a clear violation of the constitutional rights afforded to students at a public university.

Our clients want the best for their members and your students. They are dedicated to providing a quality experience to their members who join in a commitment to scholarship, philanthropy and community service consistent with the proud ideals to which each of the national organizations is dedicated. Their goals are consistent with those of the University. There is much to be gained by the University and the fraternal groups partnering with each other to accomplish the important goals that the University has articulated. Such a partnership can only be successful when the rights of each other are respected and together the University and the fraternal organizations respect the rights of the student members.

We hereby request an end to the suspension of all fraternity and sorority activities, including but not limited to, new member education, initiation activities, recruitment, and Greek social life. If we are forced to pursue litigation, we will seek injunctive relief and monetary damages. We are also of course familiar with the recent case *Barnes v. Zaccari*, in which the former president of Valdosta State was held personally liable for violating the due process rights of a former student. *Barnes v. Zaccari*, 669 F.3d 1295 (2012).

**“It can hardly be argued that either students or teachers shed their constitutional rights... at the school house gate.” *Tinker v. Des Moines Cnty. Sch. Dist.*, 393 U.S. 503, 506 (1969).**

Sincerely,



Timothy M. Burke  
Daniel J. McCarthy