

David j. Figuli, esq.
8697 S. blue creek road
Evergreen, Colorado 80439
720-810-2495
Facsimile: 303-679-1971
dfiguli@higheredgroup.com

Dorothy A. O'Brien
O'Brien & Greve, P.L.C.
Attorneys and Counselors at Law
2322 East Kimberly Road, Suite 100E
Davenport, IA 52807

Re: Your client: Dr. Paul Jeffries

Dear Counsel:

I am in receipt of your demand letter and proposed *Petition* with respect to your referenced client. I have reviewed your clients demands and allegations of law and fact and am responding on behalf of the University and Dr. Bullock.

We find no basis in law or fact that would support the demands that have been asserted by your client. We have carefully analyzed the arguments and contentions that are implicit in your draft *Petition* and find no merit either in the factual characterizations or the legal claims.

Let me address the proposed legal claims:

Interference with Contract

This claim alleges that Dr. Bullock, personally, interfered with alleged contract rights of Dr. Jeffries with the University. Implicit in the claim is the strange charge that Dr. Bullock, in undertaking his responsibilities of his position in representing the University's interests and discharging his fiduciary responsibilities to the University and its governing board, "improperly and unjustifiably interfered with Dr. Jeffries's contract by causing his termination without cause..."

The law in Iowa is clear on this issue and consistent with the prevailing law in the U.S. That law holds that an official of an employer is not liable for interference with contract relations while discharging his responsibilities in administering contracts of the employer. *Bossuyt v. Osage Farmers National Bank*, 360 N.W. 2d 769 (Iowa 1985); *Kabe's Restaurant, Ltd. v. Kintner*, 538 N.W. 2d 281 (Iowa 1995). See also, *Restatement of the Law of Torts (Second)* §769. Further, the actions of such officials are covered by a privilege which cannot be overcome without a compelling demonstration of actual



malice. *Id.* This is true even if a breach of contract results, the law holding that the breach is that of the employer with no implication of liability for the official administering the employer's interests. *Bossuyt* at 778

Defamation

This claim also is without facial validity. First, the factual allegations are demonstrably false. However, the incident complained of was a meeting between a University official charged with managing the relationship between the University and its faculty. The members of the faculty of the University are established in the *Faculty Handbook* as "co-managers" with the responsibility, *inter alia*, for participation in a managerial capacity in matters concerning faculty welfare, including faculty tenure decisions. Again, the law of Iowa is clear and consistent with prevailing U.S. law holding that discussions amongst co-managers within the context of a common business pursuit, including especially personnel discussions, are privileged against defamation claims. *Knudsen v. Chicago and Northwestern Transportation Company*, 464 N.W. 2d 439 (Iowa 1990); *Haldeman v. Total Petroleum, Inc.*; 376 N.W. 2d 98 (Iowa 1985). The University and its officials were not only protected in the pursuit of their internal discussions concerning their considerations, perceptions and actions with respect to Dr. Jeffries, but they were compelled to engage those discussions with candor under prevailing principles of academic good practice as recognized by national academic organizations.

Beyond the legal failings of this claim, the facts as alleged, even if true, do not constitute slander. Your client claims that the University announced his termination. In order for that to constitute slander, the statements made would have to be utterly untrue. Under Iowa law, even if the statement were only true in "gist" or "substantially" so, it would not be actionable as slander. *Behr v. Meredith Corporation*, 414 N.W. 2d 339 (Iowa 1987).

Further factual support for this claim is also predicated on an allegation that the University's vice president stated that Dr. Jeffries actions were of the same level of gravity to him as if he were confronted with a person with addiction or who had engaged in financial improprieties. No one could reasonably conclude from this set of factual allegations that these statements characterized Dr. Jeffries as an addict or as one who mismanages finances. [Please provide by return letter the names of any person(s) who will confirm that Dr. Jeffries' reputation was negatively impacted in their mind by the statements that are the subject of your defamation claim. The University will take appropriate steps to clarify any misunderstanding.] A reasonable mind could only conclude from the alleged statements that the actions of Dr. Jeffries created a situation of grave concern in the mind of the speaker. This is not slander. In fact, it is nothing more than an opinion statement, and in that, not one that has any defamatory impact.

Discharge in Violation of Public Policy

This claim has no support in law. The case cited is inapposite. The *Tullis* case engages facts where an employer unequivocally committed contractually to pay for an

employee's health insurance, deducted funds from the employee's pay to do, failed to apply those funds to that end despite the employee's disputations, and then terminated the at-will employee when he filed a claim for medical expenses incurred. The employer attempted to hide behind the at-will contract right to terminate an employee for "no cause." The court simply found that under the circumstances, the use of at-will employment rights to defraud the employee was against public policy.

No factual case of any similar ilk is present here, even under the most liberal construction of your client's allegations. Nothing prevents any employer from contractually protecting its business interests and good will from disparagement by one of its employees. Dr. Jeffries' assertion that he could not perform his duties as an ethicist without having the unbridled right to wage a public assault on the University is intellectual hypocrisy. It certainly is not a position that is supported by any rational sense of public policy.

It is the position of the University and Dr. Bullock that the claims of Dr. Jeffries as set forth in the draft *Petition* are frivolous and without merit. If those claims are asserted in a legal proceeding, the University will pursue its rights to recover its attorneys fees incurred in defending against those claims. Those claims create no settlement leverage and will be defended to a final adjudicated conclusion.

The University has also carefully considered the settlement demands of your client. While my client may have had an interest in reaching an amicable resolution to this matter with Dr. Jeffries if it is his determined course to leave the faculty of the University, the inflated and unreasonable demands set forth in your letter provide no basis for reasonable discussion.

We believe that the University's action is wholly defensible. The actions of Dr. Jeffries in rejecting the proffered tenure contract was unquestionably a repudiation of that offer and constituted a counter-offer. His post hoc attempt to accept the offer by pre-dating it after his counters were rejected, creates no supportable contractual claims and is of dubious ethical standing. The decision of the Board of Trustees to remove its support for any further offer of a tenure contract to Dr. Jeffries, and to delay any further consideration of tenure for Dr. Jeffries for a period of time was well within the policy specifications surrounding tenure as set forth in the Faculty Handbook.

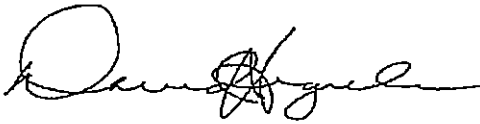
As we have previously discussed, the University will hold open the attached tenure-track contract offer that was previously extended to Dr. Jeffries. That offer will remain open for the duration of the term of the contract or until rescinded by the University. If Dr. Jeffries decides to accept the contract and commence performance before the end of September, the compensation will be paid in full. Any acceptance and commencement of performance after September 30, will be subject to a pro-ration of the compensation.

The tenure-track contract offered herein and previously provides Dr. Jeffries full financial recovery, and is in all essential respects related to his obligation to mitigate his damages equivalent to the employment for which he contends in his *Petition*. We believe that he is bound by the duty to mitigate damages established under Iowa law to accept that employment offer. Indeed, if he fails to do so, any damage claims asserted by Dr. Jeffries will be subject to offset in the amount of the economic recovery available to him under the proffered contract. *Chadima v. National Fidelity Life Insurance Company*, 848 F. Supp 1418 (S.D. Iowa 1994); *Welter v. Humboldt County*, 461 N.W. 2d 335 (Ct. App. 1990).

In the event that your client accepts the tenure-track contract that has been extended to him by the University, the University is willing to submit the issue of his ongoing status, including his tenure status, to mediation before a mutually acceptable mediator. We believe that substantial progress can be made toward the end of restoring Dr. Jeffries relationship with the University with the aid of a skilled independent. The University is committed to the pursuit of that process.

We will await your client's return to work.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Figuli". The signature is written in dark ink and is positioned above the typed name.

David Figuli