

The Office of the
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Robert T. Hill

The question before us today is in regard to a possible Title VII violation in reference to of an affidavit for impeachment filed by College of Graduate Studies Senator Rachel Friant (seat 2) against College of Graduate Studies Senator Patrick Cherubin (Seat 1). According to the University of Central Florida's Statutes, 702.6 reads:

702.6 The LJR Committee will determine whether or not the contents of the Affidavit fall within the jurisdiction of an impeachable offense and shall specify in an addendum to the Affidavit which provision(s) of the Student Body Constitution, Student Body Statutes, and/or Senate Rules may have been violated. While the individual filing the Affidavit may suggest potential violations within the Affidavit, the final determination on which provision(s) may have been violated shall be made by the LJR Committee.

Additionally, UCF Golden Rule 5.008 reads:

UCF-5.008

Rules of Conduct

The following defined and described actions include, but are not limited to, conduct for which disciplinary action may be taken at the University of Central Florida. Students are responsible for the observation of all University policies and regulations. Each student is expected to abide by these rules of conduct, and administrators are expected to enforce them. These Rules of Conduct should be read broadly and are not designed to define prohibited conduct in exhaustive terms. Additional rules and regulations may be revised during the year; announcements will be made on adoption of the changes or additions. The right of all students to seek knowledge, debate ideas, form opinions, and freely express their ideas is fully recognized by the University of Central Florida. The Rules of

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Conduct apply to student conduct and will not be used to impose discipline for the lawful expression of ideas. Students are prohibited from engaging in:

(4) Harmful Behavior

- (c) **Discriminatory Harassment:** defined as verbal, physical, electronic or other conduct based on a protected category (such as race, color, religion, national origin, gender equity, et al), which, due to the severity and pervasiveness of the conduct and its targeted nature on the basis of a protected category, (i) has the purpose or effect of creating an objectively intimidating, hostile or offensive educational or work environment; and (ii) has the purpose or effect of unreasonably interfering with an individual's employment, schooling, or business with the University. Harassment under this provision is conduct that would constitute harassment under federal or state civil rights laws or under University Regulation (UCF-3.001) and Prohibition of Discrimination, Harassment and Related Interpersonal Violence Policy.

After reviewing documentation provided to me by relevant parties, the following facts have been established:

The review process of the Affidavit was seen by the Legislative, Judicial, and Rules (LJR) Committee on February 01, 2019. At that meeting, the following relevant facts have been ascertained based on audio recordings obtained from the Student Government Advisor Wills Brown:

(-11:08) Chair Davis: Mr. Senator Cherubin is going through the impeachment statutes [for allegations of] misfeasance and malfeasance.

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(-6:56) Senator Gilliland: Clause three (3) she (Senator Friant) defines malfeasance based on 700B of this chapter and that's not true. 700B talks about improper student conduct... I don't think its ok to say that Chapter 700B *defines* malfeasance as, if that's not at all what it says.

(-5:36) Chair Davis: We are not in the position *right now* to be striking anything from the Affidavit, that would come at a later phase after the Senate decides whether or not to impeach.

Following the LJR Committee meeting, an addendum was submitted and signed by Chair Davis. In it, the following statement is included, "Should all allegations of misfeasance prove to be true, this proves to be a clear violation of the governing documents of the University of Central Florida Student Government Association, one that is an impeachable offense."

LJR Chair Davis made it explicitly clear that if any member of the committee believes that one (1), not all offenses contained within the Affidavit warrant further investigation, and is impeachable under Chapter 700, a movement toward impeachment is the proper course of action. This point was also made clear on the Senate floor during the Impeachment Hearing on February 07, 2019.

According to the Wex Law Dictionary, "malfeasance" is defined as the following: Intentional conduction that is wrongful or unlawful, especially by officials or public employees.

Malfeasance is at a higher level of wrongdoing than "nonfeasance" (failure to act where there was a duty to act) or "misfeasance" (conduct that is lawful, but inappropriate)

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It is my opinion as Attorney General that, after careful review, section 702.6 was indeed followed and impeachment proceedings should continue at this time.

According to Title VII, Impeachable offenses are listed as the following:

- A. Misfeasance, defined as an excessive or malicious exercise of the powers granted by the Student Body Constitution, Student Body Statutes, or Senate Rules.
- B. Improper Student Conduct, defined as a violation of the Golden Rule, which resulted in sanctions for the student.
- C. Neglect of Duty, defined as continual or long-term inadvertent, negligent, or willful disregard in obeying and executing the duties of the office in which the individual serves. This also includes the formal receipt of three (3) Censures against said individual.
- D. Conviction of a violation of local, state, and/or federal law.

According to audio evidence, LJR Chair Davis made it explicitly clear that if any member of the committee believes that if only one (1), not all, offenses contained within the Affidavit are an Impeachable offense and warrant further investigation, a movement toward Impeachment is the proper course of action. As “malfeasance” nor “harassment” is not defined in Title VII as an Impeachable offense, only Chapter 700 Offenses should be considered. Thus, the reasoning behind why only “misfeasance” is listed in the addendum as an alleged Impeachable offense.

After further investigation, Chair Davis explained that allegations of “harassment” and “malfeasance” were left on the Affidavit in order to ensure that all tangible evidence from both parties can be reviewed so that a determination of what does and does not fall under the umbrella of misfeasance, which is an impeachable offense, can be made.

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I recommend to Senate Leadership that they confer with each and every Senator for the following: 1. Review Chapter 700, the addendum, and any vocabulary that may be foreign to them 2. Upon doing so, ensure an understanding exists that all evidence presented should only be considered for a violation of "misfeasance". It is vital that all relevant evidence be reviewed to ensure an equitable discovery process exists in determining the prevalence of misfeasance.

At the time of the Removal Hearing, a vote for removal must only exist under the purview of Chapter 700.A, as is stated in the addendum forwarded by Chair Davis.

In reference to section 700B, as it is mentioned in the Affidavit:

700B states that in order for impeachment proceedings to begin under the purview of that section, a sanction must have been issued by the Office of Student Conduct (OSC). Given that Senator Cherubin has not received any formal notice from OSC nor been found "In Violation" of any University policy through such processes, if an association of a particular charge the Senate is currently reviewing is being considered as a violation of 700B, such charges should not be voted on, nor considered by the Student Government Senate during the Removal Hearing.

However, as an allegation of a violation to the Golden Rule is present, Harassment (UCF 5.008-4c), the following steps should be taken:

Upon confirmation of this opinion by the Senate President, the Senate President should within forty-eight (48) hours contact the Office of Student Conduct regarding a violation of UCF 5.008-4c. At that time, their own investigation into alleged harassment as well as other Golden Rule violations may begin should they deem it appropriate.

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As previously stated in previous Advisory Opinions, I encourage all parties carefully review their statutory duties, rights, and responsibilities in order to ensure that proper procedure is being followed and their obligations are met to their fullest extent without overstepping or falling short of what is required.

Because this is now an ongoing investigation within the Student Government Association as well as a possible case within the Office of Student Conduct, I kindly ask that any questions regarding the Student Conduct process, as it pertains to this case, be directed to their office.



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