

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ST. PETERSBURG COLLEGE,

Petitioner,

vs.

Case No. 17-6253

MARVIN BRIGHT,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge D. R. Alexander conducted a hearing in this case on February 12, 13, and 14, 2018, in St. Petersburg, Florida.

APPEARANCES

For Petitioner: Mark E. Levitt, Esquire  
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STATEMENT OF THE ISSUE

The issue is whether Respondent should be terminated from employment for the reasons stated in the Final Disposition - Notice of Dismissal (Notice), dated October 11, 2017.

PRELIMINARY STATEMENT

On October 11, 2017, the President of St. Petersburg College (College) issued a Notice advising Respondent, then the Provost of the Tarpon Springs Campus, that he was being terminated effective that date for the following reasons:

- 1) he failed to timely advise his supervisor and the College administration of his arrest and the nature of the charges;
- 2) he failed to provide the College with information and requested documentation regarding the arrest and allegations;
- and 3) he failed to immediately return College property as requested. Respondent timely requested a formal hearing and the matter was referred by the College to the Division of Administrative Hearings to conduct a formal hearing to resolve the dispute.

At the final hearing, Petitioner presented the testimony of five witnesses. Petitioner's Exhibits 1, 2, 4 through 15, 17 through 19, and 21 were accepted in evidence. Exhibit 3 was accepted as a proffer only. Respondent testified on his own behalf and presented the testimony of four witnesses. Respondent's Exhibits 1 through 13, 15 through 23, 26 through 30, 32, 34, 38, 42 (pages 00309 and 00310 only), and 43 through 47 were accepted in evidence. Respondent's Motion for Sanctions pursuant to sections 120.595(1) and 57.105, Florida Statutes, is addressed in the Conclusions of Law.

A five-volume Transcript of the proceeding was prepared. Both parties filed proposed recommended orders (PROs), which have been considered.

FINDINGS OF FACT

A. Background

1. The College is a public institution of higher education charged with the responsibility of providing post-secondary education. Currently, there are approximately 33,000 students enrolled at the College. It has eight campuses, including the Tarpon Springs Campus. Seven of the campuses have Provosts, who report to the Senior Vice President of Student Services. The College is overseen by a five-member Board of Trustees (Board), each Trustee appointed by the Governor.

2. In this contentious dispute, the College seeks to terminate Respondent from his position as Provost of the Tarpon Springs Campus, a position he has held since 2014 under an annual Contract for Employment for Administrative Personnel of Community Colleges. The contract has been renewed three times, most recently for a term beginning on July 1, 2017, and ending June 30, 2018. The College, however, can decline to renew his contract for no cause at the end of each term.

3. The annual contract provides that "the Board may suspend or dismiss the Administrator [Provost] for cause pursuant to the applicable provisions of the Florida Statutes

and the Board of Trustees' Rules and Colleges Procedures." Also, under Board Rule 6Hx23-2.2012 (rule 23-2.2012), the College can terminate contractual employees for "immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness or conviction of any crime involving moral turpitude." In this case, the College relies upon misconduct in office as the ground for dismissal.

4. The contract requires Respondent to comply with all relevant statutes and rules of the State Board of Education, the State Board of Community Colleges, and the Board of Trustees. He also is required to comply with the terms of any College internal policies and procedures in effect at the time that his first contract became effective, and continuing throughout his term of employment.

5. The position of Provost is a very high-ranking administrative position. The Provost is responsible for overseeing all aspects of student services, which includes student complaints of harassment and discrimination, as well as working in partnership with Academic Deans and the faculty. It is a highly visible position with the College and in the community. The College characterized the position as the "face" of the campus and the Tarpon Springs community. The Provost also serves on various community boards and organizations to represent the views of the College.

6. At the time of Respondent's hire in 2014, the President was Dr. William Law, while Dr. Tonjua Williams served as Senior Vice President, Student Services. Dr. Williams is now the President and the one responsible for making the decision to terminate Respondent's employment, subject to confirmation by a majority of the Trustees.

7. Shortly after his hire in 2014, the College became aware of allegations at his prior employment in Virginia, which involved an inappropriate relationship with a subordinate female employee. Dr. Law directed Dr. Williams to speak with Respondent about the allegations. Respondent acknowledged to her that the allegation was true, and, as a consequence, he was moved from a position on campus to a district office position.

8. Dr. Law decided to give Respondent the opportunity to continue to serve at the College, but the expectations of the College with regard to his personal conduct were made very clear in a memorandum to Respondent from Dr. Williams. It stated in part that "it all boils down to exercising good judgment. Modeling good judgment is highly valued at [the College] and has a significant impact on staff morale, leadership effectiveness and student success." Respondent acknowledged in writing that he received the memorandum. According to the President, this established the expectation that he would always use good judgment in matters concerning the College.

9. During his tenure at the College, Dr. Williams and Respondent had what she characterized as a "great relationship," "a very close working relationship," and one that was "open and transparent." She added "[t]here were no problems with us reaching each other when we needed to speak and talk."

B. The Incident

10. Around 1:30 a.m. on August 21, 2017, a physical altercation between Respondent and a female occurred at her apartment in New Port Richey. Although Respondent is married, the two had been involved in an affair for around two years. The female was not a student or employee of the College.

11. On Thursday, August 31, 2017, Respondent was served with papers requiring him to appear for a hearing in circuit court on a domestic violence injunction involving the female. While attending the hearing on Friday, September 1, 2017, Respondent was arrested by the Pasco County Sheriff's Office and charged with two felonies, one for Burglary - Occupied Dwelling Unarmed (§ 810.02(3)(a), Fla. Stat.), and another for Battery - Commit Domestic Battery by Strangulation (§ 784.041(2)(a), Fla. Stat). Both charges related to the incident that occurred on August 21, 2017.

12. After spending the night in jail, Respondent bonded out on Saturday, September 2, 2017.

13. On October 26, 2017, the charges were dismissed by the State Attorney after he declined to prosecute the matter.

C. Events After the Arrest

14. The College was closed officially for Labor Day weekend on September 2, 3, and 4, 2017. On Tuesday morning, September 5, 2017, Respondent texted Dr. Williams asking, "can we talk privately tomorrow I have a home life situation but I need to converse with you." Respondent knew that Dr. Williams planned to attend a conference at the Tarpon Springs Campus the following day, and he intended to speak with her at that time. Dr. Williams responded "absolutely." Nothing in the text suggests the "home life situation" was related to a legal matter or criminal arrest or that there was any urgency in meeting with her. Nor did it suggest that the subject of the meeting involved something that could potentially affect the College's reputation or his continued employment. In fact, Dr. Williams assumed he wanted to discuss "a personal matter."

15. Due to the threat of Hurricane Irma, then in the Gulf of Mexico and headed towards the state, Dr. Williams did not attend the conference the next day. Also, the College closed officially on September 6, 2017, due to the hurricane and did not reopen officially until September 18, 2017.

16. With the approval of his supervisor, Dr. Rinard, Respondent flew to Maryland, where his wife and children reside.

He did not return to Florida until September 13, 2017. During this intervening period, he did not attempt to contact his supervisor or the President regarding his arrest.

17. Even though the College was closed for the hurricane, administrators continued to perform duties and responsibilities related to the safety and security of the College. Dr. Williams conducted at least two conference calls per day via telephone or Skype, where as many as 60 administrators would join in the call to discuss situations on the campuses. Although he was in Maryland much of the time, Respondent joined in the conferences on most, if not all, of those occasions. In fact, on Monday, September 11, 2017, he texted Dr. Williams regarding the situation on the Tarpon Springs campus, which had been conveyed to him by his staff.

18. On September 12, 2017, Respondent texted Dr. Williams and advised he was returning from Maryland. The text stated in part: "I need to speak to you regarding a personal/family matter. I will discuss all in detail with you." Again, it made no reference to his arrest.

19. After he returned to Florida the next day, Respondent and Dr. Williams agreed to meet on September 14, 2017, at a local restaurant. However, the President later informed Respondent that she was unable to make the meeting and needed to reschedule. She attempted to reach him later that day by



telephone to reschedule the meeting but was unsuccessful. At that point, she assumed Respondent wished to discuss a personal family matter that did not involve the College.

20. The two exchanged texts again on Sunday, September 17, 2017, but Respondent chose not to mention his arrest.

21. Around noon on September 18, 2017, or 17 days after his arrest, Respondent telephoned Dr. Williams, and, in a 15-minute conversation, he advised her that he had been arrested on September 1, 2017, he was innocent of the charges, and he had retained counsel. He also told Dr. Williams that he was involved in a relationship with a woman that went awry, and the incident was not work-related. Respondent added that he had gone to court on September 1, 2017, to file a restraining order against the female, and he believed he was being scammed.<sup>1/</sup>

22. During the call, Dr. Williams told Respondent she needed more details. She specifically asked that he provide a police report with the details of the incident and the name of the victim to verify she was not a student. Dr. Williams also told Respondent that he needed to contact Dr. Rinard, his immediate supervisor, and tell him what had happened.

23. Had Respondent been unable to reach Dr. Williams by telephone on September 18, 2017, his belated efforts to notify the President would be further delayed, as Respondent's first choice was to speak to her one-on-one, or if this was not

possible, to discuss the incident by telephone. His actions also raise an inference that he always intended to speak with the President, and not his direct supervisor.

24. Later that same day, September 18, 2017, Respondent spoke with Dr. Rinard by telephone. According to Dr. Rinard, Respondent "informed [him] that he had had an affair, that the woman he had an affair with had pressed charges, he was arrested, that these were all lies, that she was a thief, she had stolen property, [and he] admitted that he was wrong to have had an affair." Dr. Rinard asked Respondent if the incident involved a student or employee or occurred on College property. He was told it did not. He did not provide Dr. Rinard with the name of the victim. The following day, the two again spoke briefly while attending a Board meeting. Respondent asked if he needed anything more in reference to their conversation the previous day and Dr. Rinard answered "no."

25. While at the Board meeting, Respondent spoke privately with a Board member, Trustee Gibbons, and disclosed that he had been arrested.

26. On the evening of September 18, 2017, the President telephoned Respondent and commented that she was looking at the charges on a website. She said she needed more information regarding the incident, but Respondent told her he had no documentation regarding the arrest.

27. During the call, Respondent asked the President to speak with his attorney who could provide any details that she wanted concerning the charges. Although Dr. Williams testified there was no agreement to speak with the attorney, Respondent's criminal attorney, Mr. Theophilopoulos, testified that he understood Dr. Williams had agreed to a conference call around 5:30 p.m. on September 20, 2017, so that he (the attorney) could answer any questions she had. Dr. Williams denies that a conference call was scheduled. Respondent contends otherwise and says he went to his attorney's office and waited for her to call at the scheduled time, and when she did not, they both attempted to call her from his office but were unsuccessful.<sup>2/</sup>

28. Whether or not such a call was scheduled, it is undisputed that it never took place. However, Dr. Williams telephoned Respondent around 6:11 p.m. on September 20, 2017, while he was driving home from his attorney's office. The Vice President of Administrative/Business Services & Information Technology, Mr. Miles, participated in the call. Mr. Miles has oversight of the Human Resources Department.

29. During the call, Dr. Williams informed Respondent that he was being placed on administrative leave, with pay and benefits, effective that date. Again, she requested a copy of the police report or details of the incident, as the College needed more information so that it could properly assess the

situation. Respondent replied that he had no written reports but his attorney had "new information" regarding the charges. Respondent was told to have his attorney contact the College General Counsel, Ms. Gardner.

30. A few hours after the phone call, Respondent received a memorandum from Dr. Williams via email confirming that he was being placed on administrative leave, with pay and benefits, until further notice. According to Dr. Williams, this would give the College more time to thoroughly review the situation before deciding what action to take. At that time, the College still lacked the name of the victim and detailed information regarding the arrest.

31. On September 20, 2017, Dr. Williams notified three of the five Trustees about the incident and shared with them the information she had gathered up to that point. She also told them she was still "working" on what action to take.

32. Respondent decided to return to Maryland the same evening he was placed on administrative leave. He testified that while driving to Maryland, he received a call from Trustee Gibbons, who told him the Board had voted to not terminate him if he was cleared of the charges. This assertion was not corroborated, and there is no record of any Board meeting at which a vote would have taken place.

D. The Termination Process

33. On September 21, 2017, Dr. Rinard advised Tarpon Springs faculty and staff that Respondent had been placed on administrative leave and that an interim Provost had been appointed. That evening, Dr. Williams and Mr. Miles spoke with Respondent by telephone. They informed him that the College had not yet received information regarding the arrest and instructed Respondent to return his keys. Mr. Miles offered to meet with him to pick up the keys. However, Respondent, who by then was in Maryland, told them he had already mailed his keys to his attorney. The following day, September 22, 2017, through its own investigation, the College was able to obtain a copy of the Pasco County Complaint Affidavit providing additional details regarding the arrest.

34. On Saturday, September 23, 2017, Mr. Miles left a voicemail for Respondent and reminded him that he wanted to meet with him to obtain the keys to College property. Mr. Miles also sent a text, which stated, "Dr. Williams asked me to obtain your work keys so I'm coming today," meaning that he (Mr. Miles) would drive to Respondent's home in Palm Harbor or the campus that day to retrieve the items.

35. In response to Mr. Miles' request, Respondent replied by email that the keys had been sent to his attorney via Federal

Express from Maryland. He added that if the College had any further questions, his attorney should be contacted.

36. As of Monday, September 25, 2017, the College had not received any additional information from Respondent or his attorney regarding the arrest, and it had not received Respondent's keys or swipe card.

37. On September 25, 2017, Dr. Williams determined that termination proceedings should begin. The same day, Dr. Rinard issued a memorandum recommending that Respondent be dismissed from employment. The basis for the recommendation was as follows:

You have engaged in misconduct by not timely disclosing to the College your arrest and the charges pending against you. You have also engaged in misconduct by not providing the College with documentation related to your arrest and not returning the College's property upon request. You have also engaged in misconduct by not being truthful and forthcoming about the details of your arrest.

38. The memorandum was actually prepared for Dr. Rinard's signature by Mr. Miles, who oversees the Human Resources Department and is also an attorney. According to the memorandum, Respondent's actions violated rule 23-2.2012, which authorizes the College to terminate an administrator for the offense of "misconduct in office." The recommendation also

referred to rule 6Hx23-2.19, which outlines the procedure the College must follow when it proposes to terminate an employee.

39. The following day, September 26, 2017, Respondent's attorney emailed the General Counsel asking for directions on where to return the keys and swipe card that were in his possession. She replied that all College property, including any electronic devices or computers, should be delivered to the security desk lobby of the district office in St. Petersburg.

40. On September 28, 2017, five days after Dr. Williams' directive, the keys and swipe card were delivered and secured by the College. The College did not receive Respondent's college-owned laptop and other electronic devices until October 11, 2017.

E. The Predetermination Hearing and Termination

41. After the recommendation to terminate was issued, Respondent requested a predetermination hearing, which is afforded an employee before a decision is made regarding termination.

42. On October 5, 2017, a hearing was conducted by the Senior Vice President of Instructional & Academic Programs, Dr. Anne Cooper, who had the authority to affirm, modify, or reject Dr. Rinard's recommendation. Respondent was accompanied by his attorney at the hearing.

43. At the hearing, Respondent was provided a timeline of events. In response, Respondent presented his own timeline for reporting the arrest, as well as a written statement from the alleged victim in the incident which resulted in his arrest.

44. On October 9, 2017, Dr. Cooper issued a recommendation to the President that Dr. Rinard's decision to terminate Respondent's employment be upheld. The recommendation is found in Petitioner's Exhibit 11.

45. By letter dated October 11, 2017, the President advised Respondent that she was upholding the recommendation for dismissal because Respondent:

1. Failed to timely advise supervisor and college administration of the arrest and nature of the charges;
2. Failed to provide the college with information and requested documentation regarding the arrest and allegations; and
3. Failed to immediately return college property as requested.

46. These grounds differed slightly from those in the memorandum signed by Dr. Rinard on September 25, 2017. Whereas Dr. Rinard's memorandum stated that Respondent had failed to timely inform the College of his arrest and pending charges, Dr. Williams' Notice stated that Respondent had "[f]ailed to timely advise supervisor and college administration of the arrest and nature of the charges." Whereas the memorandum



stated that Respondent had failed to provide the college with "documentation related to [his] arrest," the Notice stated that he had "[f]ailed to provide the college with information and requested documentation regarding the arrest and allegations." Finally, whereas the memorandum stated that Respondent had not returned the College's property upon request, the Notice stated that Respondent had "[f]ailed to immediately return college property as requested."

47. Although Respondent contends he is prejudiced because the original charges were modified, the allegations in the memorandum and Notice are substantially the same, and Respondent did not demonstrate how he was prejudiced by the minor changes. No matter which set of charges apply, the College has established that the allegations are true.

F. The College Regulations and Policies

48. Both parties agree there is no specific College regulation that requires employees to immediately notify their supervisor or other College officials after they are arrested and charged with a crime. However, Dr. Williams stated there is an expectation that a high-ranking employee, such as a Provost, should immediately notify his supervisor, within one or two working days, given the repercussions to the College that might arise if and when the charges became public.<sup>3/</sup>

49. The College relies on rule 23-2.2012 as the "principal ground for prosecution in this case." That rule allows the College to dismiss an employee under written contract for "misconduct in office." The term is not further defined by rule or statute that is applicable to the College. Because Respondent is not a career service employee, the College cannot rely on procedures applicable to that category of employees.

G. Analysis of Respondent's Conduct

50. At hearing, Respondent characterized the incident as "a personal and private matter" that was unrelated to the College. However, he agreed he had an obligation to tell the President and Dr. Rinard about the incident so that the College would not be blind-sided if the incident became public. He contends he made good-faith efforts to contact Dr. Williams by texting her on several occasions to request a meeting. But none of the texts stated, or even suggested, that he needed to speak with her about a work-related matter or that he had been arrested for two felony charges. Moreover, these efforts evidence the fact that he knew he had an obligation to timely, completely, and candidly report anything that could impact his effectiveness as a Provost or the reputation of the College. He failed to fulfill this obligation.

51. Respondent does not dispute the fact that he made no effort to notify his immediate supervisor, Dr. Rinard, regarding

his arrest until Dr. Williams instructed him to do so on September 18, 2017. More than likely, this was because he had very little contact with Dr. Rinard, who had assumed his position in July 2017. On the other hand, he had a much closer relationship with the President, and she is the individual who makes the final decision. According to Respondent, it was important that he discuss the matter one-on-one with the President due to the "nature of the sensitivity of the situation itself, my accuracy of understanding the accusations and the false accusations, which were also racially motivated."

52. After Respondent was unsuccessful in personally speaking with the President on September 6, 2017, he should have immediately disclosed his arrest by telephone. The record shows that he had ample opportunity to report the incident to the President by telephone beginning on the day after he was arrested. His failure to do so exhibits a lack of good judgment and trustworthiness.

53. The delay in reporting the arrest from September 1 until September 18, 2017, was unreasonable in light of all circumstances. As Dr. Williams noted, "there is an expectation of good judgment for Provost and campus leaders, Deans, and others in that role. And you always expect your leaders, you know, [to] protect the Institution and make sure they are aware of what is going on."

54. In the same vein, Mr. Miles pointed out that the College ended up having "to get the information ourselves" after Respondent failed to provide additional information regarding the arrest. This led him to ask whether he could "trust Dr. Bright to give me what I need to do the job that I need to do." He added that it was imperative that the College know "what exposure" it might have and how to "react to the situation" should the incident become public.

55. Dr. Cooper, who conducted the predetermination meeting and is the chief academic officer of the College, testified that the Provost is a high-profile position and the face of the campus in the community. She noted that even though the College was closed for a hurricane, "there were multiple opportunities to report the incident to his direct supervisor, Dr. Rinard, and he failed to do so." She also testified that the incident could have blind-sided the President and Board of Trustees and put "the College in a very poor light in regard to the community." She added that "there was potential for multiple issues associated with not reporting it sooner," and "someone in that high-profile leadership position would know that." She summed it up by saying that even if there was not a specific written policy requiring Respondent to promptly report the incident to his superiors, an obligation to do so "is leadership 101."

56. Besides failing to report the incident for 17 days, the evidence as a whole shows that, once the incident was reported, Respondent was non-responsive, uncooperative, and somewhat evasive in responding to Dr. Williams' direction to provide her additional information regarding the arrest and the name of the victim. The President had legitimate reasons for requesting additional information. Without this information, the College was at risk of having its reputation and credibility damaged. As the President pointed out, she asked for information, and when she did not receive it, this forced her to "go dig [herself] to find information" from another source. This should not be the job of the President.

57. Finally, as previously found, Respondent did not promptly turn in all College keys and equipment, despite being told to do so on numerous occasions.

#### CONCLUSIONS OF LAW

58. The College is required to demonstrate, by a preponderance of the evidence, that good and sufficient reason exists to terminate Respondent's contract with the College. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990); St. Petersburg Coll. v. Rodriguez, Case No. 05-0343 (Fla. DOAH Feb. 8, 2006; SPC Mar. 23, 2006), aff'd, 949 So. 2d 208 (Fla. 2d DCA 2007) (per curiam).

59. Under the Employment Agreement executed by the parties, "[t]he Board may suspend or dismiss the Administrator for cause pursuant to the applicable provisions of the Florida Statutes and the Board of Trustees' Rules and Colleges Procedures."

60. Florida Administrative Code Rule 6A-14.0411(4) authorizes each college board of trustees to "adopt policies addressing positions and contracts" of employees under written or continuing contracts.

61. Pursuant to this authority, Board rule 23-2.2012 provides that an employee under written contract "may be suspended or dismissed upon recommendation of the President at any time, provided the charges must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness or conviction of any crime involving moral turpitude." The College maintains that Respondent's conduct constitutes misconduct in office within the meaning of the rule.

62. The term "misconduct in office" is not defined by statute or rule applicable to community colleges. However, the definitions in rule 6A-5.056, which relate to the suspension and dismissal of personnel by school districts, are instructive. See, e.g., Seminole Cmty. Coll. v. Brown, Case No. 08-3265 (Fla. DOAH Mar. 13, 2009; SCC Oct. 19, 2009).

63. Rule 6A-5.056(2) (e) defines the term "misconduct in office" as "[b]ehavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties."

64. By a preponderance of the evidence, the College has established that Respondent's ability to effectively perform his duties has been reduced by waiting 17 days to notify the President and his supervisor that he had been arrested for two felonies. Despite having numerous opportunities to do so over that timeframe, he intentionally and repeatedly delayed reporting his arrest. This conduct is cause for questioning his reliability, judgment, and trustworthiness and is a clear example of misconduct.

65. Moreover, once disclosure was made, he failed to comply with requests by the President to provide additional written details regarding the arrest. This caused the College (and President) to seek that information from other sources. Coupled with his failure to timely report the arrest, it evidences a lack of judgment, candor, and honesty on Respondent's part and has resulted in a loss of trust and confidence of those in the College with whom he must work. To this end, the College, as an employer, must have discretion and control over the management of its personnel and internal affairs. This includes the prerogative to remove employees whose misconduct hinders efficient operation.

66. By itself, a failure to timely return College property when requested would not warrant dismissal. However, Respondent's failure to do so, when coupled with the other misconduct, reinforces the decision by the College to dismiss him.

67. Respondent contends that he was under no express duty, by policy or rule, to report his arrest and therefore he cannot be lawfully dismissed. This contention is misplaced. Respondent should not need a written rule to explain that his actions were inherently antithetical to his employer's interests. Offenses other than those specifically enumerated in a policy or rule may constitute just cause when they are so serious as to impair the individual's effectiveness. Misconduct in office may be established where the conduct engaged in by the individual is of such a nature that it speaks for itself in terms of its seriousness and its impact on the individual's effectiveness. For example, a failure to exercise professional judgment and integrity constitutes misconduct in office and justifies termination of an employee. Palm Bch. Cnty. Sch. Bd. v. Finney, Case No. 15-7009TTS (Fla. DOAH Jan. 4, 2017; PBCSB Mar. 8, 2017); Palm Bch. Cnty. Sch. Bd. v. Sorensen, Case No. 09-2749 (Fla. DOAH Nov. 18, 2009; PBCSB Jan. 27, 2010).

68. Respondent also contends his effectiveness to perform his duties was not impaired because he continued to work at a



high level during the closure of the College due to Hurricane Irma. This argument misses the point. Impaired effectiveness can be inferred from certain misconduct. Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492, 498 (Fla. 5th DCA 2000). There is ample evidence in the record that the College has lost confidence in Respondent's ability to effectively perform his job. Also, there is competent and substantial evidence that Respondent's colleagues no longer trust him to use good judgment or exhibit honesty in his dealings with them.

69. When all of the infractions are considered together with the high standards to which educators are held, termination is the appropriate penalty.

70. Respondent has requested sanctions pursuant to section 120.595(1). Even if he prevails, however, attorney fees are not recoverable against an agency under this statute when the agency is the initiator of the action. This is because by definition the agency cannot be a nonprevailing adverse party since it is not trying to change the outcome of its own action. See § 120.595(1)(e)3., Fla. Stat. Therefore, relief under this statute is not available. He also has requested attorney's fees pursuant to section 57.105(5). However, that provision requires that a separate final order address the issue. Accordingly, jurisdiction is retained for the limited purpose of resolving the issue if a final order is rendered in Respondent's favor.

71. Respondent's Motion to Strike Paragraph 78 of Petitioner's Post Hearing Brief, which relies on an exhibit not moved into evidence, is granted.

72. Finally, Respondent's contention that the College violated section 1021.81(1)(b) and rule 6A-14.047 by releasing the recommendation of Dr. Rinard to a newspaper should be raised in another forum.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that St. Petersburg College enter a final order terminating Respondent's employment as Provost at the Tarpon Springs Campus.

DONE AND ENTERED this 4th day of April, 2018, in Tallahassee, Leon County, Florida.



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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of April, 2018.

## ENDNOTES

<sup>1/</sup> It is unclear whether the victim or Respondent, or both, were attempting to secure a restraining order against the other individual. Although Respondent testified he was seeking one, he was served with papers on August 31, 2017, requiring him to attend a circuit court hearing the following day on the victim's request for a restraining order.

<sup>2/</sup> During its rebuttal case, the College offered into evidence the telephone records of Dr. Williams on September 20, 2017. They did not reflect any incoming calls from Respondent or his attorney on that date. See Pet'r Ex. 21. After the hearing, Respondent attempted to secure the telephone records of his attorney to prove that the attorney had called the President on September 20, 2017. However, the cell phone company, Frontier Communications, was unable to produce such records. Respondent's Request for Judicial Notice of the cell phone company's letter is denied. In any event, resolution of this minor dispute is not necessary in order to resolve the termination issue.

<sup>3/</sup> As it turned out, the Tampa Bay Times received an anonymous email disclosing Respondent's arrest. This prompted a reporter to call the College public information officer on September 28, 2017, to inquire whether the College was aware of Respondent's arrest, when it learned of his arrest, what was his status with the College, and what action the College intended to take.

### COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.