

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FRANK PICKERING

FILED

PLAINTIFF

VS.

JUN 28 2004

CI 04-0169

UNIVERSITY OF SOUTHERN
MISSISSIPPI, DR. SHELBY THAMES,
individually and officially, Mr. TIM RYAN,
individually and officially

J. Ellen Adams
FORREST COUNTY CIRCUIT CLERK

DEFENDANTS

COMPLAINT

PLAINTIFF ALLEGES:

1. Plaintiff is a resident of Forrest County, Mississippi.
2. The University of Southern Mississippi is located in Forrest County, Mississippi.
3. The individual Defendants are employed in Forrest County and are employed by the University of Southern Mississippi (USM).
4. The Court has jurisdiction regarding the subject matter and persons herein.
5. The Court has venue herein.

FACTS

6. Plaintiff was wrongfully terminated from his employment for Defendants on or about October 3, 2003.
7. Plaintiff was employed as Director of Development for the College of Business at USM. One of his duties and obligations was to raise money to enhance the College of Business in several respects. Amongst Plaintiff's supervisors included the individual Defendants.
8. The Plaintiff was successful with regard to accomplishing his work duties and, indeed, was complimented by his supervisors to include the individual

Defendants. The basic agreement between the Plaintiff and the Defendants was that he would be paid appropriately for enhancing the funding status of the University.

9. Indeed, on public television Plaintiff was complimented for his success. He was personally recognized for being responsible for obtaining over 6.5 million dollars in commitments. However, the treatment of Plaintiff changed remarkably once he reported the illegality and/or wrongdoing of Dr. Shelby Thames and others.

10. Plaintiff reported to the Board of Trustees member, Mr. Carl Nicholson, that Plaintiff was keenly aware of the collusion that had occurred between the Board and Dr. Thames regarding the hiring of Dr. Thames as president of the University. Mr. Nicholson stated flatly to Plaintiff that Plaintiff better "watch what he said" or words to that effect. The Plaintiff responded that the Board and Dr. Thames had acted inappropriately and should correct the situation or words to that effect. The wrongful actions of the hiring of Dr. Thames as president included, but is not limited to the following: acting inappropriately to have Dr. Horace Fleming terminated as president, reporting inaccurately what the actual view of Dr. Thames was by the University faculty, using Board "insiders" on the Board to facilitate the hiring of Dr. Thames, using Mr. Nicholson to provide inside information regarding secret Board activities, and sabotaging the opportunities of other candidates vying for President.

11. Clearly, the hiring of Thames was not an unbiased, impartial action undertaken by the Board as it is and was required to be. The procedure used to hire Dr. Thames was unfair, biased, prejudiced, and geared, to the detriment of others, towards favoring Dr. Thames. As Nicholson told Plaintiff, certain actions

had to be taken so that Thames would receive the position as president or words to that effect.

12. The essence of the foregoing is that the appointment of Dr. Shelby Thames as president of the University of Southern Mississippi was achieved as a result of collusion and inappropriate and illegal interactions which resulted in Dr. Thames becoming president of USM.

13. Mr. Pickering reported the essence of his views to the effect that the actions taken in regard to the hiring of Dr. Thames was illegal, inappropriate, wrong, and/or a serious misdeed that needed to be corrected.

14. The Plaintiff also reported the wrongdoing to others (other than Mr. Nicholson) including but not limited to: Mr. Tim Ryan, Harold Doty, Dr. Bill Gunther and the State Auditor of the State of Mississippi.

15. After the foregoing had occurred, Mr. Tim Ryan, individual defendant herein, and Mr. Harold Doty made the work environment of Plaintiff so difficult, so unpleasant, and so hostile that Plaintiff had to seek medical attention.

16. In spite of the obvious accomplishments of the Plaintiff, the Plaintiff was treated with great hostility by Mr. Ryan, and Mr. Ryan untruthfully told Plaintiff that his job performance was poor or words to that effect. On one occasion Plaintiff was kept a virtual prisoner by Ryan and Doty for two and a half hours. They maintained a ruthless course of action which included threatening Plaintiff with termination, making untruthful statements to Plaintiff about his job performance, telling Plaintiff that Dr. Shelby Thames wanted Plaintiff fired, criticizing Plaintiff because of his age, embarrassing Plaintiff, ridiculing Plaintiff, yelling at Plaintiff, and intentionally inflicting emotional distress upon Plaintiff.

17. Additionally, Plaintiff was slandered. Mr. Ryan told others that Plaintiff was an abuser of alcohol which is not true. Mr. Ryan told at least one person that Plaintiff had a "drinking problem" which is not true. Other untruthful statements were made regarding Plaintiff and his medical condition.
18. Additionally, upon Plaintiff filing a grievance regarding his situation, the Defendants adopted a course of action which deprived Plaintiff of a hearing before he was, ultimately, fired.
19. Additionally, Mr. Doty made inappropriate comments with regard to Plaintiff's wife in the presence of others.
20. All of the foregoing contributed to a hostile work environment .
21. When Plaintiff requested sick leave because of how the foregoing affected him in a medical context, he was denied sick leave.
22. When Plaintiff told Mr. Ryan that his doctor had advised him that he needed time to recover from the high level of job related stress and anxiety, he was denied relief. The fact that Plaintiff's daughter delivered copies of his doctor's written statement to Mr. Ryan did not stop the inappropriate course of conduct regarding Plaintiff by the Defendants.
23. On October 9, 2003, Plaintiff, through his attorney, again made it clear that the Plaintiff is a whistleblower who has been fired because he reported illegality herein. Indeed, the Defendants exacerbated their treatment of Plaintiff by untruthfully stating that Plaintiff "abandoned his employment" which is palpably untrue. These untruths were addressed in a letter written to Defendant Ryan on October 9, 2003, which is attached hereto as Exhibit A. Also see Exhibit B which contains numerous inaccuracies which Exhibit A establishes. Please note to whom Exhibit B has been copied.

24. Please see Exhibit C which is the grievance Mr. Pickering filed regarding his treatment. Please note that the grievance was provided Mr. Ryan and Dr. Shelby Thames. Plaintiff received no relief regarding said grievance. Moreover, he received no hearing before being fired. He received no notice of hearing before being fired. His treatment was arbitrary, capricious, and violates the Due Process clause of Mississippi's constitution.
25. In spite of seeking relief both verbally and in writing, the Defendants have failed to provide said relief.
26. Furthermore, a Notice of Claim, has previously been filed, but no response to said Notice of Claim has been forthcoming. There has been no denial by the Defendants of its assertions.
27. **COUNT ONE:** While incorporating herein all of the foregoing, as if fully copied herein, Plaintiff further alleges that he is entitled to relief pursuant to his status as a whistleblower and pursuant to Mississippi case law. Plaintiff reported illegal conduct, and he was terminated as a result of his reporting.
28. **COUNT TWO:** While incorporating herein all of the foregoing, as if fully copied herein, Plaintiff further alleges, as described above, the Plaintiff has been slandered. For example, as shown above, Defendant Ryan told third parties that Plaintiff "had a drinking problem" which he does not. These statements were untrue and known to Mr. Ryan to be untrue.
29. **COUNT THREE:** While incorporating herein all of the foregoing, as if fully copied herein, Plaintiff further alleges, as described above, the Plaintiff has been the victim of either intentional or negligent infliction of emotional distress. As described above, the actions, acquiescings, or ratifications of the Defendants, have inflicted severe emotional distress upon Plaintiff. If the Defendants'

wrongful conduct, as summarized above, was not intentional, the conduct was negligent, and, as a proximate result, of this negligence, the Plaintiff has been the victim of emotional distress caused herein. Indeed, the actions of the Defendants have been so inappropriate that the Plaintiff has had to seek significant medical attention.

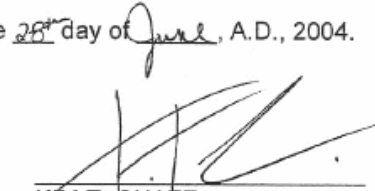
30. **COUNT FOUR:** While incorporating herein all of the foregoing, as if fully copied herein, Plaintiff further alleges, as described above, it was represented to Plaintiff that, if he performed his duties appropriately, he could reasonably expect that he would be remunerated appropriately and reasonably expect to keep his employment with the University. Plaintiff relied upon these representations, changed his position with regard to these representations, and has been detrimentally impacted because the Defendants have not kept their end of the bargain regarding these representations. Furthermore, Plaintiff obtained over six and one-half million dollars worth of pledges and/or funding to the benefit of the University. In return Plaintiff has received the foregoing wrongful course of conduct. Consequently, Plaintiff asks for relief herein pursuant to the torts of Equitable Estoppel, Promissory Estoppel, and/or Detrimental Reliance.

31. **COUNT FIVE:** While incorporating herein all of the foregoing, as if fully copied herein, Plaintiff further alleges, as described above, that Mississippi's Due Process clause has been violated by Defendants. Plaintiff was entitled to a hearing regarding his grievance **before** being terminated. Plaintiff received no such hearing. Additionally, in a substantive due process context, Plaintiff has also been deprived of his Mississippi constitutional rights. Plaintiff asks for relief for this additional reason.

WHEREFORE PREMISES CONSIDERED, Plaintiff asks for the following relief:

- A. Plaintiff asks for compensatory and or actual damages in an amount the jury deems appropriate. The Plaintiff contends this amount requested is in excess of the requisite jurisdictional minimum. Although the jury should determine what damages Plaintiff is entitled, Plaintiff contends he is entitled to relief in excess of \$100,000.00.
- B. Plaintiff asks for punitive damages in the amount of the jury deems appropriate. Again, this amount requested also exceeds the Court's jurisdictional minimum.
- C. Plaintiff asks for injunctive relief.
- D. If Plaintiff has asked for inappropriate relief, Plaintiff asks for all relief to which he is entitled.

RESPECTFULLY SUBMITTED this the 26th day of June, A.D., 2004.



KIM T. CHAZE
Attorney for Plaintiff
MSB#5974
300 S. 25th Avenue
Hattiesburg, MS 39401
601-582-3947

KIM T. CHAZE

Attorney at Law
300 S. 25th Ave.
Hattiesburg, Mississippi 39401
(601) 582-3947 Office
(601) 582-9156 Telecopier
KChaze1069@aol.com

October 9, 2003

FILE COPY

Mr. Tim Ryan
Executive Director
USM FOUNDATION
P.O. Box 10026
Hattiesburg, MS 39406

Re: Frank Pickering

Dear Mr. Ryan:

Since you copied your letter to me dated October 3 to counsel for USM as well as Dr. Thames, I can only assume they have sponsored and agree with its contents. Consequently, I will respond on behalf of my client. I am copying this letter to Mr. Gore since he represents the University. In the future, please have Mr. Gore write me as opposed to you writing me. I am more comfortable with that procedure.

Your letter is replete with inaccuracies. You and your colleagues have harmed my client and caused him severe physical and mental stress. Then, you make it worse by firing him because he cannot appear at USM because his medical treatment and advice prohibits him from working at USM. The stress he has been subjected by you and others there, to include Dr. Thames, has been intolerable.

Instead of offering him relief and consideration, Dr. Thames and USM fires him. Not only that, AFTER he is fired, you disingenuously tell him he can receive "fair consideration". Dr. Thames, you, Dr. Doty, and others at USM have clearly decided to cause my client so much grief and harm that you desire him to disappear and not resist your inappropriate efforts in that regard.

My client now knows, crystal clearly, that his complaints about how USM is run, as described briefly in his grievance, is why he is being fired. He files his grievance and then he is fired immediately. You ignore his father just dying. You ignore his health status. You ignore the needs of his family. You simply want him to go away and not complain about the University's wrongdoing. That is not



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October 9, 2003

going to happen. He is prepared to seek relief in spite of your threatening, unkind action towards him.

With regard to your letter and its many inaccuracies, please note the following:

- a. My client told both you and Mr. Dvorak that he needed time to recover from the stress caused by you and others at USM. You told him, at that time, this was understood.
- b. My client's daughter, who will be a witness in this matter, delivered my client's doctor's written statement to you and Dr. Doty.
- c. Adding to this situation was the fact that my client's father died. Nobody at the University offered genuine, personal consideration to my client. Flowers were sent by someone out there. You knew his father had died.
- d. It is a flat falsehood that you were assured my client would attend the banquet. My client told Dr. Doty's assistant he would "try" to come. However, this was before his father died.
- e. My client has received one message from USM and that was your letter dated September 25. My client responded to that letter and told you he had to return to his doctor for his doctor's medical assessment. He also asked that the meeting be rescheduled. Then, a few days later, you fire him.
- f. As stated, your October 3 letter is full of untruths. Nothing else, at this time, needs to be stated to demonstrate that.

My client never abandoned his employment. Plain and simple. He has endured much, and, now, he has been fired. It is evident he will not receive fair treatment at the hands of USM. Thus, in effect, he has had the grievance process taken from him also.

Page Three
October 9, 2003

My client has informed you in his grievance that Dr. Thames was hired illegally as President. In addition to his other mistreatment, he has been mistreated because he reported this illegal conduct.

Sincerely,



KIM T. CHAZE

KTC/js
PC Lee P. Gore, Esq.

**THE UNIVERSITY
OF SOUTHERN
MISSISSIPPI
FOUNDATION**

BOX 10026
HATTIESBURG, MS 38408
PHONE (601) 266-8902
FAX (601) 266-8735

October 3, 2003

Mr. Frank Pickering
12 Monarch Boulevard
Hattiesburg, Mississippi 39402

EXECUTIVE COMMITTEE

MS. MELANIE HUNBERGER
PRESIDENT

MR. ROBERT "TOY" MCLAUGHLIN
VICE PRESIDENT

MS. DOTTIE THOMSEN PERSONS
SECRETARY

MR. ANDREW S. MERCIER
TREASURER

MRS. JAN LACY
MEMBER AT LARGE

MR. IRA J. MIDDLEBERG
POLICIES, PLANNING AND EVALUATION

MR. THOMAS P. MCDONNELL, III
INVESTMENT CHAIR

DR. JON D. THORNTON
DEVELOPMENT COUNCIL CHAIR

MR. J. MARLIN IVEY
PAST PRESIDENT

DR. SHELBY F. THAMES
EX OFFICIO

MR. TIM A. RYAN
EX OFFICIO

DR. LINDA MCFALL
EX OFFICIO

Dear Frank,

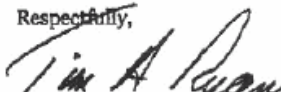
Although you never submitted any request for personal or major medical leave, you exhausted all of your personal and major medical leave on Friday, September 26, 2003. You also failed to attend the BAC banquet on Friday, despite assuring us that you would be present and requesting extra tickets for your family. You have not responded to my messages asking when or if you planned to return to work. Since you have not returned to work at the conclusion of your leave, nor given me any indication of when or if you plan to return to work, your absence is "without leave." Therefore, the University considers your employment abandoned and terminated as of September 29, 2003. You will receive your termination pay through that date.

You should be advised that the foregoing decision is based not only upon your abandonment of employment, but also upon the issues previously discussed with you, as well as other performance issues that have arisen since that time.

The University and I fully intended, and still intend to give your grievance full and fair consideration. Please let me know whether you wish to continue your grievance. If you wish to pursue your grievance with someone other than myself, please contact the Director of Human Resources so that other arrangements can be made.

Please call my office to arrange a mutually agreeable time for you to remove your personal property from your office. If you have any questions regarding your termination pay or any other benefits, please contact the Human Resources Department.

Respectfully,



Tim A. Ryan
Executive Director
Office of Development

cc: Dr. Shelby F. Thames, President
Dr. Harold Doty
Mr. Lee Gore
Mr. Mark Dvorak.



Grievance of Mr. Frank Pickering:

I file this formal grievance for the following reasons. I also have numerous other concerns, but the following are the main ones:

FILE COPY

- a. There have been numerous statements either to me or about me regarding the desire of the University to fire me because I am too old or words to that effect. I regard this as discriminatory.
- b. My wife has been insulted by University representatives.
- c. I have been insulted by University representatives.
- d. The stress I have suffered has caused me to seek medical assistance.
- e. My work environment has been made hostile by President Thames, Dr. Ryan and other University representatives.
- f. There have been numerous statements made by University representatives regarding the University's intention to hire younger persons to replace me.
- g. In meetings with the entire staff, there have been outbursts of accusations which are slanderous and ill-founded.
- h. Crude statements have been made about me and my wife.
- i. I have had my secretary effectively taken from me.
- j. In spite of the fact that I have attained all reasonable goals, I am told I must do even more even though I have raised or acquired over six and a half million dollars towards our new building campaign.
- k. I have been harassed, threatened, and stressed unnecessarily on a daily basis.
- l. I am keenly aware of how inappropriately the hiring of Dr. Thames was conducted. I strongly believe a significant contributing factor to the treatment I am receiving is that Dr. Thames wishes to have younger persons and persons who are not aware of how he was hired working under him.



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FRANK PICKERING

PLAINTIFF

VS.

CAUSE NO. CT04-0169

UNIVERSITY OF SOUTHERN
MISSISSIPPI, DR. SHELBY THAMES,
individually and officially, TIM RYAN,
individually and officially

DEFENDANTS

SUMMONS
(PROCESS SERVER)

THE STATE OF MISSISSIPPI

TO: Dr. Shelby Thames, Office of the President, University of Southern
Mississippi, P.O. Box 5001 , Hattiesburg, MS, 39406-5001

NOTICE OF DEFENDANT(S)

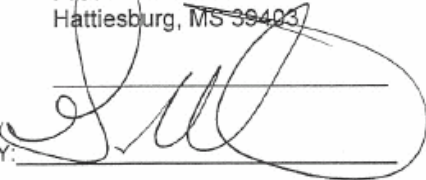
THE PETITION WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT
AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

YOU ARE REQUIRED to mail or hand-deliver a copy of a written response to the
Plaintiff to Kim T. Chaze, Esq., the attorney for the Plaintiff(s), whose address is 300 S.
25th Avenue, Hattiesburg, MS 39401. Your response must be mailed or delivered within
30 days from the date of delivery of this summons and Petition or a judgment by default
will be entered against you for the money or other things demanded in the complaint.

You must also send the original of your response to the Clerk of this Court within
a reasonable time afterward.

ISSUED under my hand and seal of said Court, this 28 day of Jan,
A.D., 2004.

Hon. Lou Ellen Adams
FORREST CO. CIRCUIT CLERK
P.O. Drawer 992
Hattiesburg, MS 39403

BY: 

Copy

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FRANK PICKERING

PLAINTIFF

VS.

CAUSE NO. CI-04-0169

UNIVERSITY OF SOUTHERN
MISSISSIPPI, DR. SHELBY THAMES,
individually and officially, TIM RYAN,
individually and officially

DEFENDANTS

SUMMONS
(PROCESS SERVER)

THE STATE OF MISSISSIPPI

TO: Mr. Tim Ryan, Executive Director, USM FOUNDATION, 118 College Drive
Hattiesburg, MS 39406

NOTICE OF DEFENDANT(S)

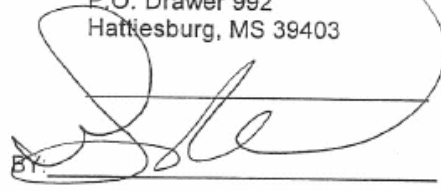
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30 days from the date of delivery of this summons and Petition or a judgment by default
will be entered against you for the money or other things demanded in the complaint.

You must also send the original of your response to the Clerk of this Court within
a reasonable time afterward.

ISSUED under my hand and seal of said Court, this 25 day of June
A.D., 2004.

Hon. Lou Ellen Adams
FORREST CO. CIRCUIT CLERK
P.O. Drawer 992
Hattiesburg, MS 39403


BY _____

copy

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FRANK PICKERING

PLAINTIFF

VS.

CAUSE NO. CJ04-0169

UNIVERSITY OF SOUTHERN
MISSISSIPPI, DR. SHELBY THAMES,
individually and officially, TIM RYAN,
individually and officially

DEFENDANTS

SUMMONS
(PROCESS SERVER)

THE STATE OF MISSISSIPPI

TO: University of Southern Mississippi, Dr. Shelby Thames, President,
Hattiesburg, MS 39406

NOTICE OF DEFENDANT(S)

THE PETITION WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT
AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

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30 days from the date of delivery of this summons and Petition or a judgment by default
will be entered against you for the money or other things demanded in the complaint.

You must also send the original of your response to the Clerk of this Court within
a reasonable time afterward.

ISSUED under my hand and seal of said Court, this 28 day of June
A.D., 2004.

Hon. Lou Ellen Adams
FORREST CO. CIRCUIT CLERK
P.O. Drawer 992
Hattiesburg, MS 39403

BY: 