



THE ELMORE AND SMITH LAW FIRM, P.C.

79 Woodfin Place, Suite 103, Asheville, NC 28801

November 17, 2021

Coastal Carolina University
Attn Mr. Carlos Johnson
Singleton Building 112
103 Tom Trout Dr
Conway, SC 29528-0654

Fax (843) 349-2968, and
Email: carlosj@coastal.edu

Dear Carlos,

Thank you for your letter yesterday.

As you know, we initially spoke on September 29, 2021 after Dr. Earnest retained my services and I provided you a letter of representation. In that conversation, you stated unequivocally that Dr. Earnest would not be allowed to remain as an employee of the University. I asked if he could remain in any position, even "dusting books in the library". You stated that was not a possibility. You hinted that you would investigate my client for other possible transgressions to support CCU's decision. You also hinted that if Dr. Earnest were involuntarily separated from employment, his job search would be much more difficult. "How he leaves is up to him" is what I recall you repeating.

I understand now that you deny making any such statements once the public learned of CCU's extreme position. You speak throughout your letter to me that you are "surprised and concerned" that I have "mischaracterized" your statements. I am also surprised and concerned that you took such an extreme and unfair position, and now deny doing so only because your position created a public relations problem for the University. Nonetheless, I hope moving forward that we can avoid any further miscommunications. In an effort to make certain no further miscommunications occur, please note that all future verbal conversations between my office and CCU will be subject to recording.

CCU has admittedly suspended my client from his teaching responsibilities once student protestors made a demand that CCU remove him from teaching. Although you characterize this suspension as a mutual agreement between CCU and my client, it was not. My client was not given any choice in remaining in the classroom.

Given that CCU suspended my client from teaching and was seeking his termination, Dr. Earnest initiated his administrative review process. Pursuant to CCU's own policy, my client's supervisor "must hold a meeting with the grievant" within twenty (20) days. No one from CCU contacted me nor Dr. Earnest to hold this meeting. Instead, I received the following email from you on November 1, 2021 (22 days after his request) at 2:31 p.m.:

Please let me know when you are available to discuss this matter. I want to present an idea to you concerning Dr. Earnest's future with CCU and discuss the informal conciliation step in the University's Faculty Grievance process.

Carlos C. Johnson
Senior VP and University Counsel
Coastal Carolina University

I responded to you in less than 48 hours as I had other pressing client matters to attend to that day including a deposition and mediation. When we did speak, you made no mention of CCU holding a meeting with Dr. Earnest other than to dismiss the process as unnecessary. I stated yesterday that CCU did not respond to this Notice of Intent letter. I stand by my statements.

Given CCU's failure to provide Dr. Earnest with an informal resolution, he filed a request for administrative review on November 3, 2021. CCU has fifteen (15) days to provide a meeting with his Dean, which is currently scheduled for today at 2:00 p.m. (following your request to delay the meeting last week.) Dr. Earnest intends to proceed with this meeting. Please note that this meeting will be recorded.

Both myself and Dr. Earnest have requested of CCU to articulate the conduct violations of which it alleges he is guilty. Yesterday, after the close of business, I received your letter in which you reference Dr. Earnest's speech regarding the student protests as the basis for CCU's actions. I appreciate you providing this information. If there is any other basis, and if there is any evidence supporting CCU's assertions that my client violated CCU's policies, I ask you to please provide it. It is not fair to Dr. Earnest to only learn of the accusations and evidence against him at hearing (or less than 24 hours before a hearing, as is the case here).

I also am a bit surprised now to find your denying that CCU is taking any punitive action against Dr. Earnest and, as a result, that you might now disagree that he is entitled to an administrative review of this matter. You are certainly taking a very loose interpretation of CCU's policy. Reassigning a professor from teaching responsibilities is punitive action, even if his pay is unaffected.¹ Giving my client an ultimatum: "retire or be fired" is absolutely punitive action, even if you deny doing so now. Along that vein, I understand CCU has already assigned Dr. Earnest's teaching responsibilities for next semester to other instructors. CCU clearly, through your direct words and now, its actions in removing Dr. Earnest from the spring semester, is seeking my client's termination. However, if CCU intends to deny my client the review process it promulgated to its faculty, please let me know now so that I can direct my time and resources elsewhere.

To recap where we are now, CCU is offering Dr. Earnest the opportunity to voluntarily separate or it will begin to investigate his speech as a conduct violation. Dr. Earnest made a true statement regarding what at best was a misunderstanding (and at worst a deliberate hoax) by student protestors. Your suggestion that his accurate observation regarding protests somehow

¹ *Ridpath v. Board of Governors Marshall University*, 447 F.3d 292 (4th Cir. 2006)

“endangered the welfare” of the University community would be comical if the implications of CCU’s accusations were not so devastating to my client’s life.

I also remind you that CCU publicly professes that it encourages faculty to share controversial ideas and viewpoints as doing so “engage(s) in augmentation and discussion- an engagement that lies at the core of academic freedom”². CCU, by labeling Dr. Earnest’s speech as dangerous, is making a mockery of the principles it purports to value.

If CCU will punish a faculty member for the offense of publicly speaking a truth, your University has problems far beyond this one case. What will CCU’s response be when protestors demand that a professor be fired for hanging an American flag on his door³? Or when protestors demand that a professor be fired for his refusal to account for race when grading students? ⁴ Or when protestors demand a professor be fired for criticizing another scholar’s opinions in an academic journal? ⁵ Or when protestors demand that Jews not be allowed to be in leadership positions? ⁶

I fear that based on how CCU is treating Dr. Earnest’s expression of speech, we already know the answers to these questions.

All of this being said, if CCU honestly believes that Dr. Earnest endangered the University community with his observation and speech, or otherwise violated some university policy, please do not delay your investigation any longer. I expect CCU to provide Dr. Earnest with his opportunity to know the allegations against him, examine the evidence against him, and have this matter heard before a neutral faculty committee. If CCU is unwilling to do the same, please state as much so that we might move forward.

Thank you for your kind attention to this matter.

Sincerely,



Ruth C. Smith

² [Freedom in the Classroom | AAUP](#), cited by CCU Faculty Manual Section 5.2.1

³ [Students protest, but USC professor refuses to take down his Blue Lives Matter flag \(leoaffairs.com\)](#)

⁴ [Prof sues UCLA 'over suspension for not grading black students more leniently' \(nypost.com\)](#)

⁵ [Music professor threatens to sue university for investigating him over defense of 'racist' composer | The College Fix](#)

⁶ [Jewish students forced out of USC student government for pro-Israel views \(jns.org\)](#)