

CONFIDENTIAL LEGAL MEMORANDA REGARDING HIRING OF PRESIDENT AND WITHDRAWAL OF REPRESENTATION

To: Board of Trustees of Mott Community College

Date: November 26, 2024

The content of this email provides legal analysis and opinions and is considered attorney client privileged. The privilege is owned by the Board and not to be violated by any one member of the board unless the Board as a whole waives the privilege.

Preamble

As I begin this memoranda I want to impress that I take no role in who the Board hires as the President of Mott Community College. My only role is to make sure I properly advise the Board as the legal requirements for the hiring process. The content of this memoranda relates solely to the legality of the process of hiring.

Issue

Was the decision on November 25, 2024 to hire Shaunda Richardson-Snell as the President of Mott Community College for a period of 3 years legal?

Brief Answer: No.

Legal Requirements

As we have discussed previously the Michigan Community College Act provides the board with the authority to hire a Chief Executive Officer. The act's only requirements are that the person have a bachelor's degree and the contract of employment cannot be greater than 5 years. MCL 389.124 It is also well known by you all that a majority of the members elected is required to pass any action. MCL 389.113

The later requirement is significant as at least 4 members must vote in favor a candidate to hire them for President. This is regardless of the number of members actually voting. A tie vote or something less than 4 will not result in the hiring of a President.

Obviously there are many antidiscrimination laws, both federal and state, that apply to any hiring decision. Those are not at issue at this time. Your Policies act as an additional legal guideline for you to follow. At present your Policies have no provisions related to the process to use in hiring a President.

Your Policies do have provisions that relate to a Conflict of Interest. 1361. In pertinent part this policy provides:

Board members must avoid any conflict of interest with respect to their fiduciary responsibility. A Board member shall be considered to have a

conflict of interest if the Board member or other person in a familiar or otherwise significant relationship to the Board member has existing, or potential financial, or other interests, which impair or might reasonably appear to impair the Board member's independent, unbiased judgment in the discharge of his or her responsibilities to the College.

This is a very broad conflict of interest provision. It applies to not only actual circumstances where a Board member's judgment is impaired but those circumstances where the Board member's judgment might reasonably appear to be impaired. It is also very broad as it applies to not only a decision where a Board member might be involved but also to the Board member's family or significant other is involved. Another area where it is broad relates to not only existing issues but potential issues both financial and otherwise. There is also nothing in this provision that limits the conflict to only circumstances where the Board member or their family would receive a financial benefit from the college. It could be any financial benefit.

I have done some research on the issue of what happens when a board makes a decision when a conflict of interest exists. As far back as 1863 the Michigan Supreme Court addressed this situation in the case of *People ex rel Plugger v Overyselt Twp Board*, 11 Mich 222. The court ruled that "All such transactions are void" in referring to the vote of the Board when a conflict of interest existed. Also in the case of *Woodward v City of Wakefield*, 236 Mich 417 (1926) the Michigan Supreme Court again stated:

It is universally recognized that it is improper and illegal for a member of a municipal council to vote upon any question brought before the council in which he is personally interested. * * * Statutes frequently prohibit a member of a municipal council from taking any part in any action in which he is personally interested, and, if the statute is violated, the action of the council may be avoided without regard to actual fraud or whether it was beneficial to the municipality.

In being consistent with Michigan Law your policies provide in section 6 of 1361:

All Board members have the responsibility to ensure that the Board is made aware of situations that involve personal, familial, or other business relationships that could be of concern to the College.

Please note that this obligation of disclosure applies to **all** Board members, not just the Board member who may have the conflict of interest. There is no requirement of a written complaint. (Section 7 of 1361 does discuss a written complaint process but does not say the absence of a written complaint means there is no conflict) Your policy continues and says:

When a Board member determines that the possibility of a conflict of interest exists, the Board member shall disclose the potential interest and thereafter shall abstain from participation in both the discussion of the matter and the

vote thereon. If the Board member has any concern regarding a conflict exists, the Board member shall consult with the Board Attorney.

This requirement of disclosure applies to not only actual conflicts of interest but also those that are just a possibility. Furthermore that Board member has to abstain from voting or participating in the matter where the conflict potentially exists. Lastly when in doubt the policy encourages a discussion with the attorney.

Facts Provided to Me.

It came to my attention a short time ago that the possibility of a conflict of interest existed on the board as it relates to Shaunda Richardson Snell. This involved Trustee Couch. I did talk to both Trustee Couch and to her daughter Dana to learn about the issue. From what I was told Dana and her real estate firm is assisting Shaunda Richardson Snell in the purchase of a home. This arrangement would result in a financial benefit to Dana and her real estate firm. Ms. Couch did not believe a conflict of interest existed as she did not see any money from Mott going to her daughter or her real estate firm. I advised that I believe a potential conflict of interest existed under the policy despite her feeling to the contrary. I also had a very brief discussion with Shaunda Richardson Snell but as I am the board counsel I did not provide a lot of information. She did ask for the policy number and I provided that to her.

I did discuss this issue with the Chairperson and advised that I believed the possibility of a conflict of interest existed and a full disclosure should be made. In preparation for the November meeting we discussed that it should be on the agenda if Ms. Couch's motion to hire Ms. Richardson Snell was going to be on the agenda. As you know neither item was on the agenda. When Ms. Couch moved at the meeting to add the hiring of Ms. Richardson Snell to the agenda neither the Chair nor Ms. Couch added the conflict of interest issue to the agenda nor did they discuss it. At that time the motion to hire Ms. Richardson Snell as the president failed.

In preparation for the continuation of the meeting on November 25 I was made aware by Trustee Swanson that he was considering bringing the issue of hiring Ms. Richardson Snell as the president back up. I advised him that if this were to occur he would need to advise the Board of the potential conflict involving Ms. Couch and Ms. Richardson Snell and she would have to abstain from any discussion or voting. I furthermore advised that if hired there could be legal challenges to the hiring which if brought would be difficult to defend. Furthermore I advised that any decision made by Ms. Richardson Snell, if she were the president, could be challenged and possibly overturned by a court if it was found she was not properly hired for the position. In preparing for the meeting I completed prepared Mr. Michael John for this issue. He has advised me that at the meeting, when the issue was brought up, that he slid a note to the Chairperson about the conflict of interest issue to remind him to bring it up. The Chairperson declined.

Legal Opinion

Given your very broad conflict of interest provision and based upon what I was told I believe the potential for a conflict of interest exists and that to a reasonable person they could see the potential for a conflict of interest. Therefore under your very broad policy a full disclosure should have been made, Ms. Couch should not have brought the motion and she should not have voted on the motion. Without Ms. Couch's vote the motion would have been 3 to 3 and would have failed. On that basis I believe according to Michigan law the decision is void and a court of law would so rule. This could subject the college to litigation and possibly void any decisions made by Ms. Richardson Snell.

Please note this does not mean the Board could not still vote to hire Ms. Richardson Snell. The Board simply needs 4 votes not including Ms. Couch. It is your choice to decide how you wish to remedy this situation if at all. I would suggest at a minimum a meeting to discuss in closed session these confidential legal opinions I have provided. If so desired and if a special meeting you would need to add any other matters you wish to have acted on.

The Continuation of Garan Lucow Miller as Board Counsel

The conduct of attorneys are governed by the Michigan Rules of Professional Conduct. In MRPC 1.16 (a)(1) our rules dictate that an attorney "shall" withdraw if the representation will result in a violation of the rules of professional conduct or other laws. Furthermore MRPC 3.1 indicates that in defense of a claim we cannot put forth frivolous claims. Lastly MRPC 8.4 says that attorney misconduct is found if the attorney engages in any conduct that is dishonest, deceitful or involves misrepresentations.

Given these legal requirements it is my opinion that I cannot assist in anyway in the drafting or negotiation of a contract for Ms. Richardson Snell for her to be retained for 3 years as the president as suggested in the Motion to hire her. If you choose to continue to implement the decision made on November 25 you will have to find an alternative method of drafting and reaching a mutually acceptable contractual arrangement.

Also my law firm is discussing at this time if we can continue to act as your counsel on other matters. I can state that I personally will end my involvement very soon as I believe the trust relationship necessary to act effectively has been lost. Under our rules and if the firm decides to withdraw as counsel we are to assist while you search for other legal counsel. I would suggest asking us to only perform absolutely necessary legal matters and to the extent that other matters can wait until future counsel is chosen you should do so. If our firm decides to continue and you choose to retain Garan Lucow Miller your legal matters would likely be handled by Ebony Duff with assistance from Courtney Krause and Mike John.

My hope is a meeting will be scheduled and we can go into Closed Session to discuss this attorney client privileged written opinion. I thank you.

William J. Brickley