

BEFORE THE DIRECTOR  
OF THE  
OFFICE OF CAMPAIGN FINANCE  
D.C. BOARD OF ELECTIONS AND ETHICS  
2000 14<sup>TH</sup> STREET, N.W., SUITE 420  
WASHINGTON, D.C. 20009  
(202) 671-0550

IN THE MATTER OF )  
)  
**Dr. William L. Pollard** ) DATE: February 6, 2004  
**President** )  
**University of the District of Columbia** ) DOCKET NO.: Investigation 03-03  
**4200 Connecticut Avenue, N.W.** )  
**Washington, D.C. 20008** )

**ORDER**

**Statement of the Case**

This matter arises out of a complaint filed by Terrance J. Lynch (complainant), Executive Director of The Downtown Cluster of Congregations located at 1313 New York Avenue, N.W., Washington, D.C., 20005, alleging a violation by the President, Dr. William L. Pollard (respondent), of the University of the District of Columbia (UDC) located at 4200 Connecticut Avenue, N.W., Washington, D.C., 20008, of the Employee Conduct provisions (Standards of Conduct) of the D.C. Personnel regulations. Specifically, complainant alleged that respondent extended favorable treatment to Wilhelmina Reuben-Cooke (Reuben-Cooke) when he hired her as UDC Provost and Vice President of Academic Affairs (VPAA) because she is a friend and former colleague.

**Issues**

1. Whether respondent gave preferential treatment to Reuben-Cooke when he hired her as UDC Provost and VPAA, in violation of §1803.1(b) of the Standards of Conduct, because Reuben-Cooke is a friend and former colleague?
2. Whether respondent lost complete independence and impartiality when he hired Reuben-Cooke as UDC Provost and VPAA, in violation of §1803.1(d) of the Standards of Conduct, because Reuben-Cooke is a friend and former colleague?
3. Whether respondent made a government decision outside of official channels when he hired Reuben-Cooke as UDC Provost and VPAA, in violation of §1803.1(e) of the Standards of Conduct, because Reuben-Cooke is a friend and former colleague?

**Background**

The Board of Elections and Ethics (Board), through its Office of Campaign Finance (OCF), is responsible for enforcing the Standards of Conduct against certain District

employees, including the UDC President. Section 1800.2 of the Standards of Conduct states, in part, that “[t]he maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by employees is essential to assure the proper performance of government business and the maintenance of confidence by citizens in their government.”

To that end, OCF was concerned about a July 11, 2003 article entitled, “UDC chief fills spot with friend of family,” by S.A. Miller in The Washington Times. It stated, inter alia, that respondent had hired Reuben-Cooke as UDC provost and VPAA and “[i]n hiring [Reuben-Cooke, respondent] bypassed the school’s board of trustees and personally pushed her resume through the search committee, according to university officials. It continued that Reuben-Cooke “is married to D.C. lawyer Edmund Cooke, who helped [respondent] secure his \$200,000-a-year job at UDC a year ago,” and whose “experience has been as a law professor at Syracuse University, where [respondent] was a professor of social work and dean of the College of Human Services and Health Professions for nine years.” OCF monitored similar articles which appeared in The Washington Times for about a week thereafter.

OCF initiated an informal internal query into the possibility that respondent may have circumvented an established process to hire Reuben-Cooke because she was a friend and former colleague. Under the Standards of Conduct, OCF is charged with determining whether respondent exercised prohibited employee conduct. It should be noted that OCF lacks the jurisdiction to determine personnel grievances of any otherwise valid selection or appointment. See D.C. Official Code Section 1-619 (2001 Edition).

Then, on July 18, 2003, OCF received complainant’s letter wherein he posed a series of questions composing an allegation that respondent extended favorable treatment to Reuben-Cooke, over other qualified candidates, when he hired her as UDC Provost and VPAA. See Attachment A. Upon review thereof, and in light of the OCF internal inquiry, OCF accepted the complaint for filing on July 25, 2003; and, an investigation was initiated.

The following questions, as requested by complainant, were at the heart of this investigation:

1. Is the award of a \$10,000 bonus a standard hiring practice at UDC?
2. Did Reuben-Cooke’s credential meet the minimum advertised hiring credential?
3. Was Reuben-Cooke hired according to standard hiring procedures established by the Board of Directors and consistent with the hiring of other high ranking employees?
4. Was Reuben-Cooke promised a tenured position at the David A. Clarke School of Law, and is that appropriate given she was not hired at the Law School but as Provost and Vice President of Academic Affairs? Is such a promise a standard hiring procedure?

5. Did Reuben-Cooke receive in addition to the signing bonus a promise of a tenured position any other awards or incentives not standard to UDC hiring procedures?

On July 25, 2003, at the request of complainant, Dr. Meredith Rode (Rode) of the UDC Department of Mass Media, Visual and Performing Arts, a member of the committee appointed to fill the position of Provost, submitted a memorandum containing, *inter alia*, a statement voicing her dissent with the committee's decision to forward Reuben-Cooke's name to respondent; and, a copy of the invitation for nominations and applications for the position of UDC Vice President for Academic Affairs. See Attachment B. She further stated that she believed that Reuben-Cooke's name came before the committee in an "inappropriate and prejudicial" manner.

OCF immediately sought to obtain additional information in this matter. On July 30, 2003, letters were dispatched to respondent, Reuben-Cooke, and Edmund D. Cooke, Jr., Esq. (Cooke) to gather the necessary facts. For each recipient, a request for an extension was sought by, and approved therefor, so that each could consult with legal counsel before answering the OCF letter.

On August 5, 2003, OCF acknowledged complainant's complaint and requested him to submit supplementary information, if any, to support his complaint. Nothing further was received from complainant.

On August 18, 2003, OCF received "Statement to the District of Columbia Board of Elections and Ethics," from Cooke. See Attachment C. On the same date, Reuben-Cooke submitted her answer to OCF's letter. See Attachment D.

On September 8, 2003, Rode submitted by facsimile her notated copy of a July 17, 2003 Memorandum to the UDC Board of Trustees from respondent, entitled "Appointment of Dr. Wilhelmina Reuben-Cooke, Provost and VP, Academic Affairs." See Attachment E. OCF next received respondent's answer on September 9, 2003. See Attachment F.

By September 16, 2003, OCF learned the names of the remaining persons who composed the committee appointed to fill the position of UDC Provost. On that date, letters were dispatched to Dr. Abiose Adebayo (Adebayo) of the UDC School of Engineering and Applied Sciences, Dr. Vijaya Melnick (Melnick), Director of the UDC Office of Sponsored Research and Programs, Dr. Norman Kondo of the UDC Department of Chemistry and Physics, Dr. Rachel Petty (Petty), Dean of the UDC College of Arts and Sciences, and Dr. Freddie Dixon (Dixon) of the UDC Department of Biological and Environmental Sciences.<sup>1</sup> On September 29, 2003, the same letters were dispatched by facsimile to Adebayo and Kondo.

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<sup>1</sup> OCF learned that two (2) other members of the committee were Diallo Sumbry, the UDC student representative, and Dr. Lawrence Gary of the Howard University School of Social Work in Washington, D.C. The former was unavailable and the latter was not present during deliberations over Reuben-Cooke. OCF never learned the name of the third member.

OCF sought to elicit from each member the circumstances under which the appointee was chosen. Each letter requested the member to respond to the following:

1. Explain how Ms. Cooke's name came before the Committee.
2. Did Ms. Cooke satisfy the Committee's requirements to apply for and fill the position?
3. Was there any difference in how the Committee screened Ms. Cooke?
4. Was the Committee under any pressure to forward Ms. Cooke's name as a finalist for the position?

Adebayo's answer was received in OCF on October 3, 2003 (see Attachment G); answers from Kondo, Melnick and Petty were received on October 9, 2003 (see Attachments H, I and J); and Dixon's answer was received on October 14, 2003 (see Attachment K).

On October 16, 2003, OCF received two (2) more submissions from Rode. One was an October 15, 2003 memorandum directed to the OCF investigator, Wesley Williams, entitled "Attached Materials re: UDC VPAA Appointment." See Attachment L. It included advertisements and articles regarding the "requirement for the terminal degree" and "quoting professionals in the field of law who state that the J.D. is not equivalent to a Ph.D." The second was a note also to Mr. Williams and included a September 3, 2003 memorandum to Petty from Rode entitled "VPAA Search Report." See Attachment M.

The investigation was formally completed on October 24, 2003. Nonetheless, at a meeting of the Board held on November 5, 2003, for personal reasons, the undersigned, through the Director, requested an extension of time, pursuant to D.C. Official Code §1-1103.02(c), within which to complete the recommendation in this matter. The Board granted the request.

Moreover, on February 4, 2004, OCF received a copy of the July 8, 2003, Faculty Evaluation and Retention Committee "Tenure Report and Recommendation for Wilhelmina M. Reuben-Cooke"; and, three (3) affidavits, dated January 30, 2004, each from Robin C. Alexander, Esq. (Alexander), UDC General Counsel, Christine Poole (Poole), UDC Director of Human Resources, and Petty, attesting that each has "no personal information or knowledge that would indicate that [respondent's September 9, 2003 submission to OCF] misstates or misrepresents his own personal knowledge." See Attachments N, O, P and Q.

The scope of the OCF investigation encompassed reviewing, analyzing and verifying all submitted information; examining applicable UDC records and regulations; research; and in-house meetings.

### **Relevant Regulatory Provisions**

Section 1801, "Remedial Action," of the Standards of Conduct reads:

- "1801.1 Violation of these regulations by an employee may result in remedial action which may be in addition to any penalty prescribed by law."

- “1801.2 When, after consideration of the explanation of the employee, the Board of Elections and Ethics or the agency head decides that remedial action is required regarding any matter covered under this chapter, appropriate action shall be immediately taken or ordered. Remedial action may include, but shall not be limited to, the following:
- “(a) Changes in assigned duties;
  - “(b) Divestment by the employee of his or her conflicting interest;”
  - “(c) Corrective or adverse action pursuant to [the personnel regulations]; or
  - “(d) Disqualification for a particular assignment.”

Section 1802.1 of the Standards of Conduct provides that enforcement of the Standards of Conduct against members of boards and commissions required to file Financial Disclosure Statements (FDS) with OCF and employees in the Executive Service is the responsibility of the Board; and, said responsibility is delegated to OCF.

Section 210, “Executive Appointments: General Provisions,” of Title 8, University of the District of Columbia, (UDC regulations) as amended at 40 DCR 3358-3359 (May 21, 1993), reads, in pertinent part:

- “210.1 In order to allow the President to appoint highly qualified and experienced executive talent to senior administrative positions, as well as to provide flexibility in making top administrative appointments, the President is authorized to make executive appointments to designated positions in the Educational Service, in accordance with the provisions of §§210 through 212.
- “210.2 Except as required under §212, an executive appointment may be made on a noncompetitive basis. Each executive appointee shall be qualified for the position to which he or she is appointed.
- “210.3 Executive appointments are ‘at will’ appointments and executive appointees shall serve at the pleasure of the President. A person serving under an executive appointment shall not have any job tenure or protection in that position. An executive appointment may be terminated at any time without appeal or right to compensation.
- . . .
- “210.5 The President shall determine compensation for each executive appointment, including initial compensation upon appointment and subsequent changes in compensation, in accordance with the level of responsibility of the position, the experience and qualifications of the appointee, and other factors, in accordance with the administrative pay scale approved by the Board.”

It specifies at §212.1(a) of the UDC regulations that the position of “Provost” shall be filled by executive appointment; but at §212.3, it reads, in part, “The President shall provide for a formal search and selection process, including active faculty participation, to fill the [position of Provost]”; and, at §212.4, it reads, “A person newly hired for the position of Provost. . .may be granted academic title and rank with tenure in the department in which he or she is qualified.”

### **Summary of Evidence**

In support of his complaint, complainant relies upon his letter, Attachment A; and the four (4) submissions by Rode, Attachments B, E, L and M. Rode, a UDC faculty member since 1968, was appointed to the search committee by respondent. When the majority of the search committee ultimately forwarded the name of Reuben-Cooke to respondent, Rode dissented on the bases of Reuben-Cooke’s qualifications and the fact that her application came through respondent.

Respondent relies upon his September 9, 2003 letter, Attachment F. He maintains therein that Reuben-Cooke is qualified for the position of Provost and that the process used to select her for that position was fair and without preferential treatment.

OCF relies upon the affidavits of five (5) members of the search committee appointed by respondent: Adebayo, Attachment G; Kondo, Attachment H; Melnick, Attachment I; Petty, Attachment J; and Dixon, Attachment K. OCF also relies upon the Tenure Report from the Faculty Evaluation and Retention Committee, Attachment N.

### **Findings of Fact**

Having reviewed the allegations and the entire record in this matter, I find:

1. Respondent and Cooke met at Syracuse University in New York in the early 1990’s, when the former was serving as Dean of the School of Social Work and the latter was an associate professor of law. Exhibits (Exhs.) F, N and (&) O.
2. Respondent assumed the presidency of UDC in June 2002, after: applying for the position in the fall of 2001, as a result of a request from an executive search firm, Korn/Ferry International (KFI), which indicated that his name had been submitted to the firm, by individuals other than Cooke; undergoing a thorough background and professional investigation of his over 30 years in academia, also by KFI; being interviewed by the 16 members of the UDC Search Committee, composed of trustees, faculty, staff and students, not including Cooke; and accepting the invitation to visit UDC for a day of interviews when he met with numerous constituent organizations, of which one (1), Coalition for UDC, was chaired by Cooke, who did not attend the interview. Exhs. C, F, N & O.
3. Upon his arrival to UDC, respondent was served by Petty and then Dr. Wilmer Johnson as Acting Provosts; but sought to exercise his right to appoint a new academic team for his administration. Exhs. F, J & P.

4. In July 2002, respondent advised Reuben-Cooke that as the new UDC President that he was authorized to hire a new administrative team, which included the position of Provost; and, queried whether Reuben-Cooke would be interested. Exh. D.
5. Whereupon, in October 2002, respondent began the search process, for, inter alia, a permanent Provost in October 2002. Exhs. F, J & P.
6. Respondent drafted the advertisement for the position of Vice President for Academic Affairs, with the proviso of "Open Until Filled," with Poole's assistance; and placed announcements in academic magazines and newspapers, and in The Washington Post. Exhs. F, J, O & P.
7. The appointee ultimately selected for the position of Vice President for Academic Affairs would serve as Provost. Id.
8. In the fall of 2002, respondent formed a 9 member Provost Search Committee (Committee), comprised of inter alia, Adebayo, Dixon, Kondo, Melnick, Petty, who also served as chairperson, and Rode, who, more often than not, individually or in teams, rated all the applications. Exhs. B, E, F, G, H, I, J, K, O, P & Q.
9. On November 19, 2003, respondent charged the Committee to review all candidates applying for the position of Provost, and discussed with them the essential characteristics that he thought necessary for the position; and, to forward to him the names of the top 8-10 candidates. Id.
10. Respondent and the Committee were fully aware that respondent would ultimately select the Provost from among the Committee's list of candidates; and that respondent would decide upon the compensation for the Provost. Id.
11. The Committee met on December 2, 9, and 18, 2002, to establish criteria for the initial screening of applicants, to develop 2 "instruments for use in conducting initial and in-depth screening of candidates," and to form 2-member teams to complete the screening of 90+ candidates in the first pool, without the presence or assistance of respondent. Exh J; Id.
12. Respondent contracted in January 2003 with the firm of Maria Perez and Associates (Perez), an executive search firm with an academic practice to assist in finding and recruiting candidates; and, to conduct background checks on finalists. Exhs. F & J; Id.
13. Applications were received by UDC Human Resources, Perez, Petty and respondent; and, all applications were forwarded to the Committee because no applicant was "officially in the pool until [the] application was logged in by the Human Resources Office, compiled [therein] and transmitted to the Committee" by the Committee's staff assistant. Exh. J; Id.

14. The Committee did not review any application that did not traverse through the UDC Human Resources Office, the employees of which were not responsible for making any determination as to merit of any applicants. Id.
15. After meeting, reviewing, qualifying and quantifying, the Committee transmitted to respondent a list of the 7 best qualified candidates from the first pool on March 6, 2003. Id.
16. In less than 10 days after submission of a best qualified list to respondent, the Committee commenced an evaluation of a second pool of applications; and, these applications were received after the Committee's review of the first pool and, in the view of the Committee, as related to respondent, failed to produce any best qualified candidate for a list for transmittal to respondent. Id.
17. In April 2003, respondent selected one person, from the list from the first pool of applications transmitted by the Committee, and a person directly from the first pool of applications,<sup>2</sup> but not included within the 7 of the best qualified candidates, for April campus visits and interviews. Id.
18. On April 29, 2003, respondent met with the Committee to request its consideration of Reuben-Cooke for the position of Provost and indicated that she had recently expressed interest in being considered for the position by sending her application. Id.
19. By April 30, 2003, Reuben-Cooke's application had been transmitted to the UDC Human Resources Office and then disseminated to the Committee for its review, qualification and quantification as with each other application for the position of Provost. Id.
20. "The procedure employed for reviewing [Reuben-Cooke's] resume was substantively similar to all other candidates[; h]er application went through an initial screening, a more exhaustive second round screening and a final qualitative and quantitative assessment by each Committee member[; and t]he scores were averaged and submitted to the Committee of the whole for a decision to recommend or otherwise." Exh. G; see also Exhs. H, I, J and K.
21. "[Reuben-Cooke] met the requirements set forth for applicants for the position." Exh. I; see also, Exhs. G, H, J and K.
22. The Committee alone was responsible for ascertaining the experience, training and credentials for all applicants, including the definition of "earned doctorate or equivalent terminal degree," which was a requirement for any applicant for Provost because the Committee established and applied its own criteria. Id. and Finding of Fact (Finding) No. 11.

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<sup>2</sup> Whether or not respondent's selection of this person was deemed permissible by the members of the Provost Search Committee is not an issue in this matter.

23. The Committee recognized Reuben-Cooke's "J.D." degree as an "earned doctorate or equivalent terminal degree." Id.
24. "There was no difference in how the Committee screened [Reuben-Cooke;] it was exactly the same." Exh. K; see also G, H, I, and J.
25. Reuben-Cooke's application was rated "best qualified" because it was transmitted to respondent for his consideration with the 2 applications then subject to his review. Id.
26. There was no pressure exerted by respondent upon Adebayo, Dixon, Kondo, Melnick, and Petty to forward Reuben-Cooke's application to respondent. Id.
27. In June 2003, respondent selected Reuben-Cooke as Provost and Vice President for Academic Affairs; and, there was not any exchange or consideration for her appointment. Exhs. F and N.
28. Respondent determined that Reuben-Cooke's compensation should consist of, inter alia, if at all, a \$137,000 contract, which included a \$10,000 signing bonus and tenure at the UDC David A. Clarke School of Law. Id.
29. Whether or not to offer Reuben-Cooke a signing bonus, the promise of a tenured position, or any other award or incentive, as part of her contract for UDC Provost, is within the discretion of respondent, subject to UDC policies and procedures.

### **Conclusions of Law**

Based upon the record, in its entirety, and the evidence, I therefore conclude:

1. Respondent and Reuben-Cooke are UDC executive employees of the District of Columbia government and subject to the Act's financial disclosure statute at D.C. Official Code §1-1106.02; and, the enforcement provisions of the employee conduct regulations at DPM §1800 et seq.
2. As UDC President, respondent has the authority to appoint a qualified Provost and Vice President of Academic Affairs, and fix a compensation commensurate with respondent's determination thereof and the appointee's credentials, in accordance with 8 D.C.M.R. §§210.1, 210.2 and 210.5; and, it was within the sole discretion of respondent to select the applicant he deemed most qualified.
3. To fill the position of Provost and Vice President of Academic Affairs, respondent selected the Committee, which was comprised of 6 UDC faculty members, pursuant to 8 D.C.M.R. §212.3; and, which transmitted Reuben-Cooke's application to respondent because she was best qualified, after its review thereof through the Committee process.

4. Respondent did not give preferential treatment or appear to give preferential treatment to Reuben-Cooke when he appointed her to the position of UDC Provost and Vice President of Academic Affairs because respondent authorized a formal search and selection committee, in accordance with 8 D.C.M.R. §212.3, which qualified and quantified Reuben-Cooke's application for the position before transmitting same to respondent for his review and selection, in accordance with 8 D.C.M.R. §210.2.
5. Respondent did not lose complete independence and impartiality or give the appearance thereof when he hired Reuben-Cooke because the Committee forwarded her application thereto for respondent's consideration, in view of 8 D.C.M.R. §210.1, for the position of UDC Provost and Vice President of Academic Affairs.
6. Respondent did not make a government decision outside of official channels when he hired Reuben-Cooke as UDC Provost and Vice President of Academic Affairs because he selected respondent in accordance with UDC regulations, at 8 D.C.M.R. §§210.1, 210.2 and 210.5, and the procedures established by the Committee, formed in accordance with 8 D.C.M.R. §212.3.
7. The consideration of Reuben-Cooke's initial compensation package, which may have included a \$10,000 bonus, a tenured position at the UDC David A. Clarke School of Law, or any other awards or incentives is solely within the discretion of respondent, as UDC President, as allowed at 8 D.C.M.R. 210.5.

**Recommendation**

I hereby recommend the Director of the Office of Campaign Finance (Director) to dismiss this matter.

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Date

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Kathy S. Williams  
General Counsel

**ORDER OF THE DIRECTOR**

**IT IS ORDERED** that this matter is hereby dismissed.

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Date

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Cecily E. Collier-Montgomery  
Director

**SERVICE OF ORDER**

This is to certify that I have served a true copy of the foregoing Order.

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Rose Rice  
Legal Assistant

cc: Terrance Lynch (also by facsimile)  
Executive Director  
The Downtown Cluster of Congregations  
1313 New York Avenue, N.W.  
Washington, D.C. 20005

Dr. William Pollard (also by facsimile)  
c/o Eric Holder, Esq. and  
Jason Gluck, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401

Members  
Board of Elections and Ethics

**NOTICE**

Pursuant to 3 D.C.M.R. §3711.5 (1999), any fine imposed by the Director shall become effective on the 16<sup>th</sup> day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14<sup>th</sup> Street, N.W., Washington, D.C., 20009.