

CONFIDENTIAL POSITION STATEMENT

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Via EEOC Portal

July 14, 2025

Jacquie Jones-Mounts
Acting Local Director
U.S. Equal Employment Opportunity Commission
Greenville Local Office
301 N. Main Street, Suite 1402
Greenville, South Carolina 29601
Jacquie.Jones-Mounts@eoc.gov

Re: Christopher Todd Hagins/ Winthrop University
EEOC Charge No. 436-2025-01847

Dear Ms. Jones-Mounts,

This firm represents Winthrop University (“Winthrop”) with regard to the above-referenced Charge of Discrimination filed by Todd Hagins (“Hagins” or “Charging Party”)(WM). This correspondence shall serve as Winthrop’s Statement of Position in response to the allegations raised by Charging Party. Please treat this correspondence, the information in it, and its exhibits as confidential and limit review to representatives of the Equal Employment Opportunity Commission (“EEOC”). This letter and the exhibits may confidential, privileged, and/or proprietary information and are not to be disclosed without the express permission of Winthrop. Please note that this Statement is based on our investigation and understanding of the facts as of this date. Winthrop reserves the right to present additional facts or arguments if new information becomes available to it.¹ In addition, you will note that portions of Winthrop’s response have been

¹ This position statement, while believed to be true and correct in all respects, does not constitute an affidavit or sworn statement. It does not represent all evidence regarding this matter as if it were a trial. This position statement is submitted on the express condition that it not be used as evidence of any kind in any administrative or court proceeding in connection with the above-referenced Charge, or in any other Charge or lawsuit involving Winthrop. Also, Charging Party has included attorney-client privileged information in her charge, which must be protected if the EEOC receives any FOIA request in the future. This position statement and the accompanying exhibits are confidential and are protected from disclosure pursuant to the confidential material disclosure provisions set forth in §§ 83.1 through 83.6 of the EEOC’s Compliance Manual, as well as the exception to disclosure requirements of FOIA, codified at 5 U.S.C. § 552(b)(7) and 29 C.F.R. §1601.22.

redacted to protect the attorney-client privilege and that certain documents have been withheld, redacted, or submitted as confidential to the EEOC because of privilege and/or confidentiality concerns.

Charging Party's factual allegations contend he was discharged from his employment by Winthrop in retaliation for his opposition to how Winthrop investigated and addressed a complaint made by Amy Bailey (WF), his direct report referenced above.² Bailey complained of a hostile work environment based on race and retaliation. Bailey filed a Charge with the EEOC, to which Winthrop recently submitted a Position Statement (EEOC Chg. #436-2025-00331). For reasons explained below, Hagins' Charge should be dismissed in its entirety without further proceedings because Charging Party fails to present evidence demonstrating that his discharge was in retaliation for legitimate protected activities in opposition to an alleged violation of Title VII, the only evidence demonstrates his discharge was for legitimate non-retaliatory reasons, and he cannot demonstrate pretext to rebut Winthrop's reasons for his discharge.

As an initial matter, Hagins' EEOC Charge alleges he believes his "termination was retaliatory, stemming from [his] opposition to illegal and discriminatory practices by the University's administration and Board of Trustees." Hagins asserts that "during [his] tenure, [he] witnessed multiple instances of discriminatory conduct" and mentions "racial discrimination," "gender discrimination" and "discrimination against LGBTQ students and employees." Notably, Charging Party does not allege that he complained internally to Winthrop officials about these three areas as required by Winthrop policy and applicable federal law. He also does not allege that his dismissal from Winthrop was because of or related to any of these three areas. *See Miles v. Dell, Inc.*, 429 F. 3d 480, 492 (4th Cir. 2005). Winthrop agrees that Hagins did not make an internal complaint as required about any of these areas or the related assertions he makes in the EEOC charge and that Hagins has made them, for the first time, in his Charge. (*See* fn. 6, *infra*) As a result of Hagins' failure to report, Winthrop was not afforded the opportunity provided by Title VII to obtain information from Hagins about his purported concerns, conduct a prompt and thorough investigation, take any needed remedial action, and present its investigation, conclusions, and remediation efforts to the EEOC or a reviewing court. Hagins' failure to do so bars his Charge with regard to these areas for failure to satisfy conditions precedent for filing a charge with the EEOC. For purposes of this Position Statement, Winthrop has not been provided with timely notice, adequate factual information, or the opportunity to conduct an internal investigation into these three areas. Accordingly, Winthrop has been precluded and prejudiced by Hagins' omissions from providing a response herein to these areas. Winthrop considers these three areas/allegations to be barred, moot, unripe, and/or waived. As confirmation, Hagins did not mention any of these

² The basis for discrimination which Hagins listed on the EEOC Form 5 is "color." However, the only allegation stated by Hagins for violation of Title VII is based on retaliation. If the Commission believes Hagins' Charge is based on "color," Winthrop requests to receive detailed notice of the factual basis for such claim and an opportunity to respond.

three areas in his grievance to President Serna or his grievance appeal to the South Carolina State Employee Grievance Committee.

In the EEOC Charge, following Hagins' reference to the above-referenced three areas, he then states that his termination followed his efforts to protect another employee who made internal complaints about a hostile work environment and retaliation for making the complaint. Hagins says he was retaliated against for opposing those discriminatory practices. These allegations were raised by Hagins previously, not during his employment but after his dismissal, and were mentioned in his employee grievance. Accordingly, Winthrop is familiar with these allegations and will respond to them, as set forth below. To the extent the EEOC desires Winthrop to respond to the three areas mentioned in the prior paragraph, Winthrop asks to receive a detailed explanation of the factual basis for such allegations and an opportunity to investigate and respond.

I. FACTS

A. Winthrop is an Equal Opportunity Employer and Prohibits Discrimination, Harassment, and Retaliation

Winthrop University is a comprehensive public university located in Rock Hill, South Carolina that provides students with personalized and challenging undergraduate, graduate, and professional programs of national caliber within a context dedicated to public service to the nation and the State of South Carolina. Winthrop is fully committed to equal opportunity generally as an institution and in all its employment aspects. It is the policy of Winthrop not to discriminate against any employee because of race, color, religion, sex, national origin, age, veteran status, sexual orientation, disability, gender identity, or any other protected characteristic under applicable federal, state, or local law. (Exhibit A – Equal Employment Opportunity Policy). Winthrop has a zero-tolerance policy for any form of unlawful discrimination because it “recognizes that employees are the essential resource of the institution” and it understands and values that its success largely depends on the quality of its employees with diverse backgrounds and experiences. (Exhibit A). Further, Winthrop “prohibits, any form of discipline or retaliation for reporting, pursuing, or cooperating in the investigation of complaints of employment discrimination that are consistent with this policy.” (Ex. A). Winthrop also maintains and publishes a “Non-Discrimination and Anti-Harassment Policy” (*see* Exhibit B) which provides that “Winthrop University is committed to maintaining a workplace that is free of unlawful discrimination and harassment” and prohibits “any form of discipline or retaliation for reporting incidents of unlawful discrimination or harassment, pursuing any such claim or cooperating in the investigation of such reports.”

B. Overview

This Charge presents the case of a university General Counsel who violated his duties in numerous ways and on several levels. Todd Hagins came to Winthrop University from the University of South Carolina where he was the Director of Compliance and Professional Standards in the Law Enforcement area of the university. He was hired by Winthrop on February 16, 2023. Copies of Winthrop's Position Description for General Counsel and Hagins' application materials are attached as Exhibits C and D. He assumed additional duties as Secretary to the Winthrop Board of Trustees in March 2023 for which he received an additional stipend.

Hagins' first year of employment was largely uneventful. While there were some internal criticisms of his job performance, there was also appreciation for some of his efforts. However, things changed drastically beginning in April 2024, as explained below. In short, Hagins' actions and omissions completely eroded the trust and confidence in his legal abilities, his discretion, his ability to work well with others at Winthrop, his candor, his protection of confidential as well as attorney-client privileged information, and his protection of the University's interests over his interests and the interests of his direct report, Amy Bailey. It was determined by President Serna (WM) and Board Chair Glenn McCall (BM) that the improper conduct of Hagins and the lack of trust and confidence in him and his ability required dismissal from employment at Winthrop, of which they informed him in a meeting on September 9, 2024. Hagins filed a grievance which was heard by President Serna on October 11, 2024. A written determination was issued on October 18, 2024 by President Serna which described his reasoning. Below, as requested, is a summary of the University's position in response Hagins' EEOC charge alleging retaliation for his opposition to Winthrop's handling of the Bailey matter.

C. Charging Party's Employment with Winthrop

As noted above, Hagins was hired into the position of General Counsel in February 2023, and he assumed Secretary to the Board duties in March 2023. In these roles, he had interaction with Bailey who was, at the time Hagins was hired, an employee in the Office of the President with the position of Administrative Coordinator I. A copy of that position description is attached as Exhibit E. Bailey was hired in March 2023, shortly after Hagins was hired, and reported directly to Tammie Phillips (WF), the Executive Director in the Office of the President. A portion of Bailey's job duties included providing administrative assistance to the Secretary to the Board of Trustees, and she began interacting with Hagins regularly beginning in April 2023. From the time Bailey started working with Hagins, Bailey was observed to be routinely in Hagins' office, or they (Hagins and Bailey) were in Bailey's office with the door closed and were often overheard whispering. In January 2024, Phillips went to lunch with Hagins and Bailey. Bailey intentionally sat next to Hagins in the booth and when they were ordering food, Bailey ordered food for Hagins, which Phillips thought was a little unusual. In addition, Bailey often came in late with excuses for why she was late and then, 10 minutes later, Hagins was seen coming in late also. She did not think much of it at the time, but as circumstances unfolded, she recalled that it was unusual.

Nevertheless, Phillips gave Bailey a somewhat gratuitous “exceeds expectations” in the one performance evaluation Phillips prepared while Bailey was in the position reporting to her. As time went by, Bailey began working more and more with Hagins to the point Bailey was spending the vast majority of her time working with Hagins and not enough time working on her duties in the Office of the President. During the short time Bailey worked in the President’s Office, she routinely asked Phillips for her job duties to be expanded beyond her approved job description and for more money. She even asked Phillips when she was going to retire so she could take Phillips’ job.

In September 2023, President Serna approved the creation of a new position in the Office of General Counsel to assist Hagins in his General Counsel and Board Secretary duties and keep him on track.³ At that point, Hagins was monopolizing much of Bailey’s time, so it made sense to create a support position and allow the President’s Office to address its needs. During the creation of the position description for the new assistant position in the Office of the General Counsel, Hagins worked on and shared drafts of new position descriptions with Bailey, knowing the potential that she could be an applicant for the position. The inclusion of Bailey in the development of a position description appears to have begun in February 2024 and undermined the integrity of a fair job search process. At one point, Hagins created a draft job description of “Legal Operations Manager” and shared it with Bailey on March 8, 2024. It reads as a paralegal-level position which would have paid Bailey substantially more salary. This draft job description was never shared with Human Resources by Hagins. During this time, Hagins approached Phillips and requested that she ask the President to raise Bailey’s then-current salary higher so Bailey could make what she wanted to make in salary. However, this was not possible for the position of Administrative Coordinator I held by Bailey. What Hagins subsequently proposed for approval by Winthrop was an administrative support position, the same level as Bailey held in the Office of the President (Administrative Coordinator I).⁴ That position description was approved (Exhibit E). Bailey applied as a candidate for the new position. Following interviews Hagins claimed he conducted,

³ Many university officials had difficulty getting a timely response or document review from Hagins and had to literally go to his office and meet with him to get anything accomplished. Also, Hagins was constantly grappling for ways to organize his work, deliverables, tasks, etc. These are some of the reasons it was believed he needed assistance to stay on track.

⁴ The position was submitted to Pres. Serna by Hagins as an administrative assistant and was approved on September 5, 2023 at Winthrop's standard starting salary for the AA75 classification which was \$36,000 per year. It had been proposed by Hagins on August 16, 2023 as an administrative assistant. On October 3, 2023, Hagins resubmitted it as an administrative coordinator (AH10) position and was approved with a salary of \$44,000 (standard Winthrop starting salary for AH10 with no budgetary responsibilities). Winthrop's class and comp manager did not hear from Hagins again about the position until April 5, 2023. The position description was "updated" by Hagins to "eliminate duties not directly related to the General Counsel and Board of Trustees." The job vacancy notice was then created and forwarded to Hagins on April 18, 2024 with a title of administrative coordinator. Hagins approved the notice and returned it to HR for posting on May 14, 2024. The search closed on May 30, 2024. HR was notified on June 6, 2024 that Bailey was selected. Hagins emailed HR on June 18, 2024 requesting an increase in the starting salary from \$44,000 to \$53,957. HR responded that it could support a 10% increase for the position. HR submitted a request to the President to increase the starting salary from \$44,000 to \$48,400, which was approved.

Hagins indicated his decision to hire Bailey to Human Resources on June 6, 2024. Her effective hire date into the Administrative Coordinator I job in the Office of General Counsel was July 16, 2024.

Prior to Bailey being hired into the position in the Office of General Counsel, on or about April 29, 2024, an email was received in the email account inbox of the Winthrop Board of Trustees which purported to be written by a student and complained that the person heard a “racially incentive” word spoken possibly by a person in the President’s Office. Bailey reviewed it as part of her job to monitor the Board’s email inbox. Bailey then sent the email to Hagins. Later that day, Hagins handed a WORD document to Lisa Cowart, Winthrop’s Vice President for Human Resources, containing the body of the complaint but, unknown to Cowart, omitting the other information contained in the email (i.e., the sender’s name and email address, time, etc.). (Exhibit F) Cowart read the WORD document and asked Hagins whether he had heard what was stated in the document. Hagins replied “no.” The WORD document concluded with “I now leave this with you and relieve myself of the burden it has caused,” “I do not want to pursue this even further,” and strangely asked “that you have Todd Hagins, legal counsel look into the matter.” Hagins told Cowart that he would respond by telling the employees in the Office of the President (Bailey and Phillips) to take the University’s computer training on harassment and discrimination. That was the remedy Hagins recommended. On information and belief, Hagins sent such a suggestion but neither Bailey nor Phillips completed the training as they had taken it previously.

Because the WORD document contained no contact information whatsoever and failed to identify the names of persons involved, dates, comments made, or otherwise,⁵ Cowart did not have sufficient information to conduct an investigation. However, as noted below, Hagins later admitted that the April 29 complaint came to the Board of Trustees by way of email and, as such, had a return email address and purported sender’s name. Hagins’ failure to inform Cowart immediately on April 29 of the fact it came in by email such that Cowart could, at a minimum, try to contact the sender of the email was a breach of Hagins’ duties to Winthrop relating to the investigation policies of Winthrop and applicable law and his duties as General Counsel and Secretary to the Board. Further, in Bailey’s Charge which she signed under penalty of perjury on November 7, 2024, Bailey has since admitted that she wrote the “anonymous” complaint (§14 of Bailey’s Charge) but failed to ever tell that to Winthrop until over 6 months later in her Charge. It is worth noting that Bailey remains an employee of Winthrop, now in the Office of Student Affairs, reporting to the Vice President for that office. As an employee of Winthrop, Bailey had an obligation to report the conduct promptly so a timely investigation could be conducted.⁶ However,

⁵ Winthrop notes it is not uncommon for anonymous complaints to be received by mail in WORD format such that Cowart would have no reason based on the appearance of the document to question it at that time.

⁶ “Employees who believe they are being subjected to unlawful harassment or discrimination must notify their supervisor, department head, the Vice President for Human Resources, Employee Diversity, and Wellness or her designee, or any other department head with whom they feel comfortable.” (Winthrop’s Non-Discrimination and Anti-Harassment Policy, Ex. 2)

Bailey delayed two months to do so from the time of the “anonymous” April 29 report and longer than that from the time of the events at issue. Based on this information and that described below, Winthrop submits it is most likely Hagins knew on April 29, 2024 (or previously) that Bailey authored the “anonymous” complaint.

Almost two months later, during the afternoon of June 27, 2024, Hagins went to Cowart’s office and handed her a WORD document. It was an unsigned letter which Hagins represented as from Bailey alleging certain racial statements by Phillips. (Exhibit G) Cowart reviewed it and noted to herself the obvious similarities with the April 29 complaint that was also handed to her as a WORD document by Hagins. In their discussion, Hagins mentioned that Bailey had emailed her complaint to him. Cowart asked Hagins to forward Bailey’s June 27 email to her (Cowart). In this meeting, Hagins admitted to Cowart that the April 29 complaint to the Board of Trustees actually came in by email. Cowart asked Hagins to forward that email as well. She told Hagins she would need to tell President Serna about Bailey’s complaint soon because he would be traveling for three weeks beginning the following day. Hagins responded by saying that he assumed she would bring in outside employment counsel to “keep it privileged.” Cowart asked Hagins why he was saying this because conducting employment investigations into Title VII matters is what she does and is not something she would normally assign to outside counsel. Hagins did not respond to Cowart’s statement and then said he would have to recuse himself from involvement in the matter. That day, Hagins sent an email to Bailey indicating he was recusing himself because of a conflict of interest. He later informed President Serna that he was recused from involvement in the matter. As soon as Hagins left her office, Cowart pulled out the April 29 complaint and identified numerous similarities between it and the June 27 complaint. Cowart also considered the fact that Hagins presented Bailey’s complaint on her behalf rather than Bailey submitting it directly to Human Resources which would be the normal process and the fact this was the same way the April 29 complaint was presented to Cowart – by and through Hagins. Essentially, she felt “something was off” in the way these matters were presented to her. For these reasons, Cowart decided to meet directly with President Serna the next morning, without Hagins being present.

In the early morning of June 28, Cowart met with President Serna and presented him with both complaints. She asked him if he had ever heard anyone say Phillips used racially insensitive language. Serna said “no” and that in fact he had never heard, or heard of, any racially insensitive statements by Phillips or, in fact, complaints of any kind about Phillips. President Serna also believed the manner of presentation by Hagins was odd and agreed it was inappropriate for Hagins to recommend bringing in outside counsel for the investigation. Serna agreed that Hagins should be recused and that Cowart should conduct the investigation and manage it like any other complaint. Later that morning, Hagins forwarded the April 29 email to the Trustees’ email account to Cowart. However, Cowart noticed that Hagins’ new email had deleted all of the sender’s information from the April 29 email, so she had to email him again to provide the complete, unaltered April 29 email (Exhibit H) Hagins sent it, and Cowart reached out to the sender’s email

address, albeit two months late due to Hagins' omissions and lack of candor, but did not receive a response.

Cowart, as the chief administrative officer for Human Resources who is responsible for this area, was surprised by Hagins' legal advice and disagreed with Hagins' recommendation of having outside legal counsel conduct the investigation because conducting investigations is part of her job and because she believed, and later confirmed, that Hagins was incorrect about the attorney-client privilege. Even if the investigation were conducted by outside counsel, the investigation, notes, evidence, statements, report, and actions in response would not be considered privileged and, in fact, would be necessary evidence to demonstrate that Winthrop conducted a prompt and thorough investigation and took effective remedial action, all according to EEOC regulations, Title VII, and applicable law and Winthrop policy.⁷

Cowart conducted a prompt and thorough investigation with the assistance of Zan Jones (BF), also in the Human Resources office at this time with the title of Associate Vice President of Human Resources and Chief Diversity Officer. As was normal practice, the Office of Human Resources conducts the investigation into harassment/hostile work environment complaints regarding an employee without involving the General Counsel beyond general updates about the matter. If there was a need for specialized legal assistance in employment law, Cowart relied on the same specialized outside counsel in employment law as had been Winthrop's practice for over 30 years (including many years before Cowart's tenure) and also because Hagins did not have employment law expertise and was recused in any event.

During the investigation, Cowart and Jones interviewed Hagins as a potential witness. Cowart began Hagins' interview by referencing the April 29 email to the Board which Hagins had sent to Cowart on June 28, 2024 at her specific request on June 27, 2024. She showed Hagins both documents and noted the similarities. Hagins did not respond. Cowart asked Hagins why he represented the April 29 email complaint to her as a WORD document. He told her he had copied and pasted the body of her email into a WORD document. He said he didn't know why he did so or why he wouldn't have just printed the email. Cowart was shocked by this revelation, which appeared to reflect an intent to deceive, a failure to cooperate in a Title VII investigation, and withholding of material factual information from a senior university official.

⁷ As it turned out later, Hagins' attempt to inappropriately shroud the investigation and prohibit its disclosure by use of the attorney-client privilege was, as he admitted to President Serna, actually based on his personal desire to silence any mention of a possible personal relationship between Hagins and Bailey which had been raised around this same time. It is also important to note that if Cowart had followed Hagins' biased, self-serving, and incorrect legal advice, it would have been to the great detriment of Winthrop as it would not have an investigation file to present to the EEOC in this very matter, in response to Bailey's EEOC Charge referenced above, or subsequently to a court to defend itself in the event of a lawsuit.

Cowart then noted to Hagins some differences in the email version of Bailey's June 27 complaint, which he had forwarded to Cowart at her request on June 28 (Exhibit I), and the WORD document Hagins had handed to her on June 27 (Exhibit G). Hagins responded by admitting that, after he and Bailey discussed the original complaint Bailey had emailed to him on June 27 at 2:19 PM, he advised Bailey to add language to her complaint to include as a supporting statement a reference to Hagins' recommendation that staff in the President's Office retake Winthrop's computer discrimination/harassment training. Bailey followed Hagins' legal advice and revised the original complaint, and what Hagins handed Cowart on June 27 was Bailey's revised complaint with the text recommended by Hagins. Obviously, this blatant advocacy on behalf of a Winthrop employee against the interests of Winthrop, intentional misrepresentation/omission, and lack of candor and cooperation in a Title VII complaint from Hagins - a General Counsel no less - created great concern for Cowart as well as President Serna when he was informed, not only about Hagins' advocacy/representation of Bailey, but also about his deception, poor judgment and unethical handling of Title VII evidence and respect for the investigation process and Cowart as a fellow executive and member of the President's Cabinet of senior officials.

When Cowart asked about whether Hagins had witnessed the use of the "N" word by the fountain as claimed by Bailey, Hagins said he "was going through his phone looking at emails and was not actively listening to the conversation while Bailey and Phillips were talking" and "thought he heard [Phillips] say a phrase rather than a word." Hagins did not say what phrase he was referencing and notably did not corroborate that Phillips used the "N" word at the fountain. As stated above, Cowart had previously asked Hagins on April 29 whether he had heard the racial statement mentioned in the document received that day. Hagins replied "no."

Because Hagins had a conflict of interest relating to Bailey's complaint and his legal judgment was therefore tainted and compromised by his relationship with Bailey and other matters referenced above, he had recused⁸ himself as noted above and, *a fortiori*, was shielded from the information provided during the investigation, discussions and decisions about the investigation, consideration of the evidence, legal analysis, and the resulting conclusions and actions. Despite his admitted recusal, Hagins continued inappropriately to object to Human Resources' handling of the investigation and assert without legal basis that it be referred to outside legal counsel to make it privileged and protected from any disclosure. As discovered later, this bad legal advice was given not to protect Winthrop or conduct a proper HR investigation, but actually to protect his own personal divorce interest.

⁸ Cowart properly believed that Hagins' recusal shielded him from all aspects of the Title VII matter and did not consult with Hagins about the information gathered during the investigation, the statements of witnesses, corroborating evidence, or the recommendations to President Serna. She did however, as a courtesy to Hagins as a fellow senior official, offer to share this information with him if he would agree to keep it confidential and not disclose it to Bailey, an offer to which he never responded. Winthrop submits this is a tacit admission of Hagins' allegiance to Bailey over his legal and employment obligations to Winthrop.

On July 1, 2024, Cowart and Jones met with Bailey. Bailey started out by saying that she did “not want this at all,” that she “did not want [Cowart] to do anything about it,” and she “just wanted it on record” but had no intention of pursuing a formal complaint against Phillips. Bailey stated, with no reference to dates or context, that she had a conversation with Phillips which “came up this year” involving Phillips’ prior employment in which Phillips supposedly told her about a maintenance supervisor who would call one of his employees his “N”-word. Bailey did not provide any context regarding this discussion or how this topic came about. Bailey further complained that Phillips said a Winthrop employee (who is a white male) calls his wife (black female) his little “N”-word. Bailey said it was mentioned in an affectionate way and was not racial. Again, Bailey did not provide any context to the statement in any conversation and informed the investigators that Phillips did not use the word with malice. Bailey admitted she had not told Phillips that this type of conversation was not welcome or that she objected to the discussion in any way. Bailey said she would look at her calendar and get back to Cowart with the date for this conversation but never did so.

Bailey also claimed that Phillips used the “N” word on a separate occasion at the time of a student protest on campus when Bailey asked Phillips about her family trip to the beach. Bailey claimed Phillips mentioned that her niece (WF) was dating a black male who went on the beach trip with them. Bailey claimed Phillips recounted that her brother-in-law, while walking on the beach, referenced a black male walking ahead of him and supposedly said look at that “N” walking up there. The niece’s boyfriend (BM) then said, “I guess y’all thought I would be like that.” Bailey said that Phillips’s sister was having a hard time with her daughter dating a black guy but stated that she does not think Phillips is a racist. As before, Bailey did not tell Phillips that her language was inappropriate, unwelcome, or offensive to her.

The investigators asked Bailey about the anonymous note to the Board. Bailey explained how she saw the email and went to Hagins and Phillips about it. Cowart asked Bailey if she (Bailey) had written the April 29 complaint to the Board. Cowart did so because the language and phrasing used in the April 29 complaint and Bailey’s June 27 complaint were similar. Bailey denied writing the April 29 complaint and doubled-down by claiming she “used some of the language” from the April 29 complaint “because her sentiments were the same as the writer’s.” As we now know, and as Cowart correctly suspected, Bailey was lying to Cowart about her authorship of the April 29 complaint to the Board of Trustees. Bailey claimed that she wrote the June 27 document “to protect herself and assumed it would be placed in a legal file if something came up later.” She emphasized to the investigators again that she did not want Phillips to get in trouble and that she had never heard anyone say that Phillips made a racial statement.

Cowart asked Bailey whether Hagins knew about Phillips’ discussion with Bailey about whether there was a personal relationship between Bailey and Hagins based on a comment someone else had made to Phillips. Bailey stated she had informed Hagins of the comment by Phillips and that

she (Bailey) was upset about it. Bailey reported that, after she had informed Cowart of the question previously, Bailey told Phillips that the comment in question was inappropriate and that she “would not tolerate the rumor because it was offensive to her and her husband.” This communication had been suggested by Cowart to Bailey as an appropriate response Bailey should make to Phillips to resolve the matter. Nothing further about this comment has been mentioned to date, so the response suggested by Cowart effectively remedied that matter. During the interview, Bailey implied that Cowart and Phillips were friends which could affect the investigation, but Cowart noted that she and Phillips, like many others, were work friends/colleagues but were not personal friends outside of work and that Cowart’s job as Vice President for Human Resources came before anything else and that she was going to do her job and conduct a thorough investigation.

Phillips was also interviewed by the investigators on July 1, 2024. When asked about Bailey’s allegations, Phillips mentioned that she and Bailey were walking on campus to vendors on the Campus Green when Amy’s daughter walked towards them with a black male student. Phillips has since identified this date as March 21, 2024. Phillips told the investigators that **Bailey** then made the comment “I can’t get her to date anyone except the little Negro boys.” Phillips told the investigators that “Amy had made this comment about her daughter on more than one occasion.” Phillips has since identified one of those prior racial comments by Bailey as the first week of January 2024 when Bailey asked about Phillips’ Nashville beach trip with her family. Phillips told Bailey that her niece (WF) had confided to Phillips that she was dating a black guy, knew that Phillips would not be judgmental about it, and hoped Phillips could smooth it over with her mother. **Bailey** responded: “that’s all my daughter dates are those dark boys.”

The investigators asked Phillips about the alleged statements at the fountain in front of Tillman Hall. Phillips stated that she arrived late for the student protest. Hagins had requested that she and Bailey go and sit on the benches by the fountain to witness the protest which was to occur. Phillips has since indicated that she was not able to come out until the end and recalled seeing Judy Longshaw, another Winthrop employee, talking to a black student and that Bailey made a derogatory comment about the black student’s dreadlocks. Phillips did not respond and says she did not have any contact with Longshaw or the student.

Phillips was asked by the investigators about whether she said a Winthrop co-employee called his wife (BF) the “N” word. Phillips was adamant that she never said he calls his wife that word and that she has never heard him use that word ever. She also noted that the co-employee and his wife have 3 beautiful children. Phillips also denied that her brother-in-law used the “N” word on the beach with her niece’s black boyfriend present. Phillips stated that what really happened was that there was a black male on the beach in front of them who had long dreadlocks and pants sagging, about which the niece’s boyfriend said: “I bet y’all thought I would look like that.” At some point, Bailey asked Phillips how things were going with her niece’s boyfriend (BM). Phillips said things

were going well and told Bailey about families she knew who “make it work” in a mixed-race relationship. Phillips referenced a Winthrop co-employee who makes it work and mentioned also a co-worker (WM) at a prior employer who is married to a black female who he referred to her as his “N” word. While Phillips acknowledged using the insensitive word, it was not in the context of Phillips referring to Bailey, to any Winthrop employee or student, or about any person. She was recounting what someone else said which she found to be inappropriate, but nevertheless they made their marriage work, which was the topic Phillips and Bailey were discussing. Phillips says she believed it was awful for him to refer to his wife that way.

Investigator Jones then spoke with Judy Longshaw (WF) on July 2, 2024, a person who Phillips and Bailey indicated was at the fountain on April 5, 2024. They asked Longshaw about the protest at the fountain. She remembered several things about the event but mentioned nothing about race or racial comments. It was apparent to Jones, knowing Longshaw, that Longshaw had not heard the conversation as alleged by Bailey.

Based on the investigation interviews and no mention of additional evidence or witnesses to be reviewed, a Confidential Internal Investigation Report was prepared by Cowart for President Serna, which was submitted on July 30, 2024. Copies of the interview notes, exhibits, and report are attached as Exhibit J. President Serna agreed with the findings and recommendations. President Serna met with Hagins on June 28, 2024, at which time he informed Hagins that he (Serna) had approved the recommendations of Cowart but did not provide details because of Hagins’ recusal and also because of his obvious bias and advocacy of Bailey’s interests and Hagins’ own personal interests. Phillips and Bailey were notified that the investigation had been concluded and remedial action taken, but without specifics as is consistent with University policy and practice.

On July 24, 2024, Bailey submitted a claim of retaliation to Cowart based on four separate issues. (Exhibit K) Cowart investigated all four and found them to be without merit. Bailey was informed of the University’s decisions and reasoning on September 3, 2024. (*See Exhibit L*) In looking at one of the retaliation concerns expressed by Bailey, it appeared to Cowart that there may be perceived or legitimate confusion as between Bailey and Phillips with regard to which of them would take the lead, for example, where the President’s Office is inviting Board members to an event. Given that both Bailey and Phillips would be continuing their employment, Cowart noted as the head of HR that it might be possible to avoid future issues between Phillips and Bailey by clarifying the job duties of each with regard to the Board of Trustees and the President’s Office. For example, one of the retaliation claims had to do with Bailey’s newly created duties possibly overlapping with those of Phillips with regard to the President’s interaction with the Board of Trustees, communications with the Board by the President’s Office, and events under the President’s authority which involve Board members. Cowart also knew and considered that the position descriptions of the two jobs were created at different times by different persons and were supervised by different managers. It should be noted that Phillips was not involved in or privy to

the position description for the new job in the office of General Counsel created by Hagins. As a result, she did not know about any potential overlap or conflict between Bailey's duties and her duties and certainly had no ability to raise them before this point in time. In a proactive attempt to avoid future problems and conflicts between Bailey and Phillips, Cowart thought it would be wise to explore with the supervisors of those positions, namely Hagins and Phillips, whether the respective job descriptions could be clarified to avoid future conflict or concern. To evaluate this possibility, Cowart discussed this analysis with Phillips who gave Cowart her comments. Cowart met with Hagins on August 13, 2024, about reviewing the job descriptions with the intention of identifying areas to clarify and thereby avoid future conflicts or concerns between Bailey and Phillips. Hagins, on the other hand, initially refused to engage in the review and contended, as if he were Bailey's counsel, that [remainder of sentence redacted based on the attorney-client privilege].⁹ What can be said outside the privilege is that Cowart's intended review of position descriptions to clarify roles and avoid unnecessary conflict between Bailey and Phillips did not take place due to Hagins' refusal to cooperate as Bailey's supervisor.

Out of the blue, on August 15, 2024¹⁰, Hagins sent an unsolicited email containing a "memorandum" dated August 14, 2024 to Cowart. That memorandum was [redacted]. Hagins concluded it with the statement: [redacted] He also copied that [redacted] email to his Winthrop email address (the same one he sent it from) and, as it was later discovered, blind copied it to his personal "iCloud" email address. Despite requests by Winthrop to preserve attorney-client privileged and confidential University information, it is unknown what Hagins did from his personal "iCloud" email address or indeed from his Winthrop email address, much of which was deleted by Hagins. During this time, it was discovered that Hagins had previously given "read" and "manage" permissions for his Winthrop email account (haginst@winthrop.edu) to Bailey, such that as of August 15, 2024, Bailey had access to his Winthrop email account which would include his inbox and sent items, including but not limited to the August 15, 2024 "legal opinion memorandum" that included specific information about Bailey's internal complaint. On the issue of disclosure, Hagins had never requested for President Serna to approve providing access to Bailey of attorney-client privileged and confidential communications and documents with Bailey, and the President had no knowledge of it. Serna has indicated he would never have approved it, particularly given that review of Bailey's position description (created by Hagins) did not mention anything about receiving, handling, or protecting attorney-client privileged communications or documents. Hagins was informed immediately to discontinue Bailey's access to his email account

⁹ All redactions in this document are similarly based on the attorney-client privilege.

¹⁰ Winthrop submits that Hagins knew when he drafted his August 15 memorandum on August 14, 2024, that he would likely be discharged from employment as a result of his actions up to and following August 15, 2024. The basis for this lies not only in the unquestionable significance of a General Counsel acting so cavalierly about, and possibly waiving, the attorney-client privilege and his blatant advocacy and bias in favor of Bailey, but also the fact that Hagins went to great lengths on August 14, 2024 to litter his email inbox, sent items, and archived items with many hundreds of fictitious emails under the guise of "new calendar invites" to make it extremely time-consuming and difficult for anyone to go back through his email account to determine what he had sent, what he had deleted, what he was working on, what had not been done, what was due and when, etc.

and any ability to send documents from that account. On August 27, Hagins stated to the President that he had removed authorizations from his “inbox to read, organize, address or directly schedule any matters from the hagin@winthrop.edu email account.” It is important to note that he did not mention anything about changing access to his “sent items.” It was not until September 5 that Bailey’s access was fully discontinued. However, at the same time, Hagins created a “legal@winthrop.edu” account and sent notice to all Winthrop personnel to send all legal inquiries there. In establishing this account, however, it was discovered that Hagins also gave Bailey access to that account, negating entirely the President’s direction to cease any access Bailey had to confidential and privileged communications and documents. Particularly for in-house General Counsel, these actions alone warrant significant mistrust and loyalty and ethical concerns and demonstrate insubordination, misconduct, deceit, obfuscation, and disregard of a direct request by the President of the University with regard to important confidential, legal, and privileged communications and documents.

The August 15, 2024, legal memorandum email from Hagins was sent despite his recusal and apparent conflict of interest, was sent without request, advocated the interests of his direct report, and [redacted] clarifying job duties, [redacted] reviewing job descriptions could remedy issues or conflict between the job duties of Bailey’s position and Phillips’ position going forward. Needless to say, Cowart and the President disagreed with Hagins’ August 15, 2024, memorandum and were very concerned about Hagins’ improper conduct. As noted above, Hagins was not involved in the investigation or privy to the information actually obtained during the investigation due to his conflict of interest and recusal. Consistent with President Serna’s grievance decision, the University at this time is not going to waive any attorney-client privilege which remains with regard to Hagins’ ill-conceived August 15 memorandum by producing a copy to the EEOC with this Position Statement but believes it has presented enough of the non-privileged contents to explain Winthrop’s concerns.

President Serna met with Hagins on August 21, 2024 for a regular “one on one” meeting which they had not had in a few weeks due to vacations and schedules. With the August 14 email fresh in his mind, the President informed Hagins that, at this point (after communicating his initial concerns), he needed to separate his role as supervisor and as General Counsel from his aggressive legal advice to and advocacy on behalf of Bailey. He was also told he had interfered in the investigation by failing to provide material information, making material misrepresentations and omissions, offering his input while recused from involvement, and lacking knowledge of all the facts. He was asked to repair his relationship with Cowart and to refrain from interfering with the University’s handling of Bailey’s complaint and the actions taken by the University. Hagins responded to President Serna by refusing to do these things. Hagins said this would be leaked to the media, that Bailey would sue the University, that “we” would all lose “our” jobs, that Cowart specifically would lose her job, and that [redacted]. Hagins then asked if anything about Bailey and Hagins having a relationship was mentioned that could damage him in his divorce proceedings.

He further stated that there was no personal relationship between him and Bailey. The President indicated that this topic was not a part of the investigation but that, among other things, Hagins' evasiveness in responding to questions about the author of the April email to the Board of Trustees raised concerns for him and Cowart.

President Serna met with Hagins again on August 27, 2024. In that meeting, Hagins continued to demand that Serna "override" Cowart. Serna responded by telling him the investigation was being conducted appropriately and that Hagins needed to allow Cowart to complete her investigation and did not send any more "aggressive" emails (referring to the August 14 email). They met a week later on September 4, 2024. Hagins asked if Serna had asked Cowart to investigate the comment about him and Bailey having a personal relationship, to which the President said "no" and indicated that he did not care about rumors. It was in this meeting that President Serna asked Hagins whether Bailey had access to his (Hagins') email account. Hagins admitted that she did have access and was told by Serna to discontinue all such access immediately, as described above.

Hagins' August 14 email, his refusal to accept the President's decision based on the investigation, and the threats Hagins made against the President and Cowart, a senior colleague, were very concerning to President Serna, Board Chair Glenn McCall, and Cowart, further straining their relationship, as well as their lack of trust and confidence in Hagins' legal ability, discernment, objectivity, skills, etc.

In separate but related events during the above time period, on or about August 16, 2024, Hagins also took aim at the authority of Cowart as Vice President of Human Resources to make discharge decisions about University employees, authority she has had for over a decade. Hagins asserted wrongfully that dismissal of University employees was solely his decision, over that of the Vice President of Human Resources and the President; however, such authority is not in his job description and has never been provided to him otherwise. In fact, Hagins went so far as to claim that his job duties had been changed in retaliation for his advocacy for Bailey when in truth he never had that authority to begin with. While Cowart often informed Hagins of her decisions, it was done as a courtesy. Cowart also wisely made it a practice to inform President Serna about employee dismissals. Hagins also made covert attempts before and on August 22, 2024, to modify an existing Winthrop HR policy concerning the Americans with Disabilities Act to remove Cowart's written authority over employee ADA complaints and making determinations of those claims. Hagins moreover attempted to take away the President's appeal authority over employee ADA complaints, all without speaking with Cowart or President Serna about it whatsoever.

The Board Chair was apprised of the situation by President Serna. The Board Chair informed the Board of the situation. Collectively, they determined that Hagins' actions violated his duties to Winthrop and further that his conduct had completely eroded any trust and confidence they had in him as General Counsel and as Board Secretary going forward. Hagins was dismissed

appropriately from the University by the President, the Chair of the Board of Trustees, and the Vice President for Human Resources in an in-person meeting on September 9, 2024.

After Hagins was dismissed from his duties at Winthrop, several failures and inadequacies have been identified which bear on his ability to do his job as General Counsel and as Board Secretary. For a first example, after his departure, it was discovered that Hagins failed as Secretary to the Board, as required by the Board's Bylaws, to "cause to be recorded and disseminated all the... Minutes" for the June 2024 Board and Board Committee meetings. It was Hagins himself who previously insisted to the Board that he be responsible personally for recording or making notes of the full Board meeting and all Board Committee meetings and to prepare the meeting minutes for each one. He did so for the April 2024 Board meeting but did not have minutes, recordings, or minutes prepared for the June 2024 Board meetings. As a second example, Hagins approved the retention of attorneys to conduct Title IX investigations and grievance hearings without submitting the required documentation to the S.C. Attorney General's office and receiving advance approval of the attorneys and their rates within S.C. guidelines, all as required by S.C. Code §1-7-170. Third, as the designated FOIA officer, Hagins did not properly supervise the area, ensure the files were complete and organized, respond to all requests, and retain sufficient documentation to ensure there was evidence that all requests, responses, and copies of documents provided were retained and preserved. Fourth, Hagins and Bailey wrongfully intended to provide (for a fee) under the FOIA the University's personnel files and confidential investigation files relating to faculty and staff personnel. These post-employment discoveries of malfeasance by Hagins during his employment and many others further support Winthrop's decision to discharge Hagins.

II. WINTHROP DID NOT RETALIATE AGAINST CHARGING PARTY

Winthrop did not fire Hagins in retaliation for Bailey's complaint of discrimination or any legitimate protected activity in lawful opposition to how Winthrop handled Bailey's claim. Winthrop asserts that it conducted a prompt and thorough investigation and took effective remedial action with regard to Bailey's complaints of a hostile work environment and retaliation.

Charging Party's retaliation claim is unsupported because it lacks the necessary causal connection between legitimate "protected activity" and the alleged adverse employment action. To establish a claim of retaliation, Charging Party must show that there was a causal connection or link between his protected activity and an adverse employment action. *See Rosier v. TargetX*, No. 2:17-CV-1306-RMG-MGB, 2017 U.S. Dist. LEXIS 64526, at *5-6 (D.S.C. Mar. 28, 2018).

Winthrop does not agree that Hagins engaged in any protected activity whatsoever under Title VII. Every single action Hagins took which he might claim was protected activity – whether to help Bailey revise her complaint, coach/support her about her actions and rights, hide the fact that Bailey made the "anonymous" complaint, advise Cowart to have outside counsel conduct the

investigation, complain about the investigation, disagree with viewing and possibly revising position descriptions, disagreeing with remedial action taken, etc. – was either wrongful in itself or was abrogated and/or superseded by Hagins’ gross incompetence, bad judgment, material omissions, deceit, obstruction, incorrect legal advice, insubordination, failing to protect the attorney-client privilege, acting in derogation of his own recusal and admitted conflict of interest, and other improper biases and actions. As President Serna evaluated the matter and concluded for himself and Chairman McCall in the grievance determination on October 18, 2024:

In our opinion, you have engaged in insubordination, jeopardized and failed to protect the University’s attorney-client privilege, acted with a conflict of interest against the University, exceeded the authority of your positions, usurped the authority of others, disrespected a fellow executive, breached the duty of loyalty, breached the duty of fidelity, misused your position of authority, failed to defer to the judgment and determination of the President despite not knowing the facts of the matter at issue, failed to assert the attorney-client privilege where required and appropriate, misrepresented facts to an executive, failed to cooperate in a human resources investigation, improperly advocated on behalf of an employee, and have lost the trust of the Administration and Board of Trustees and your fellow executives.

At the time of your dismissal, we had identified the following reasons for your dismissal, all of which you clearly knew about:

- Failing to provide full and accurate information to the Office of Human Resources in April regarding the email to the Board’s email address, and sanitizing the email when you sent it in June by removing the “sender” information
- Submitting a legal opinion without marking it as “attorney-client privileged” (and jeopardizing the privilege), which opinion was not requested by the Vice President of Human Resources or the President, for a matter you had recused yourself previously due to a conflict of interest, knowingly allowed the email to be accessible by the very employee involved in the investigation (further jeopardizing the privilege), and advocating the employee’s interests and plotting her legal claims in that opinion
- Disrespecting the Vice President of Human Resources by making conclusions without the benefit of all the facts obtained during the investigation for a matter in which you admitted you had a conflict of interest and had recused yourself
- Misusing your positions to falsely claim authority over the President
- Misusing your position as General Counsel to alter current HR policy without the knowledge of the VP for HR and removing the President’s authority to review appeals without advising him

- Providing personal legal advice to a direct report that included taking an adversarial role against the University
- Threats of leaking information to the Johnsonian
- Advancing threats of legal action against the University on behalf of an employee
- Inappropriately demanding the full Board be informed of an employee complaint and misusing your position as Secretary to the Board to do so
- Committing insubordination and engaging in improper conduct when asked by the President to step away from any involvement in the complaint filed by Amy, the investigation, and the path forward, stating you could not do that, despite the fact you previously admitted you had recused yourself from the matter.
- Providing biased advice to the VP of Human Resources and the President about a matter in which you recused yourself because of a conflict of interest, which advice was also contrary to proper procedure and best human resources practices
- Providing legal advice to, and having involvement in, a direct report's internal legal matters
- Refusing/failing to participate in a review of position descriptions as a proactive measure to avoid employee conflict and claims of retaliation
- Inappropriately exposing the University to legal liability
- Inappropriately exposing a subordinate employee to attorney-client privileged communications about that employee
- Failing to train a direct report regarding the proper handling of matters which are attorney-client privileged and for failing to include such duties, responsibilities, and training in the position description for that person
- Claiming inaccurately to have redressed the improper action of permitting access to attorney-client privileged information to a subordinate employee by creating a new "legal" University email address but continuing to allow the same direct report access to such attorney-client privileged information, in other words misrepresenting that the problem was fixed

The statement you read at our conference does not provide me any reason to reverse my prior decision. Essentially, you told me that because over the past year or so that I and some Board members approved of some of the work you have performed and let you know about it. However, those issues are completely disconnected from the events of the last few months, as described below. So you know, several Board members and I had concerns about your job performance. Beyond that, your actions and omissions over the past few months have eviscerated my trust and confidence in you as General Counsel and that the Board has in you as Secretary to the Board of Trustees. Without trust and confidence in your legal ability, your discretion, your judgment, and your ability to work well with others, you could not continue as General Counsel or Secretary to the Board.

I will now address some of the reasons we have no trust and confidence in your ability to perform either set of duties. First, the complaint raised by Amy Bailey was fully investigated and appropriate remedial action was taken. You do not know the information gathered in the investigation because you recused yourself due to a conflict of interest and you were not privy to the investigation contents or the remedial action taken. Your lack of knowledge about the investigation resulted from your biased advocacy on behalf of Ms. Bailey and because you had recused yourself and refused to commit in writing to maintain any information provided to you confidential, as discussed below. You were given an opportunity to be informed of the investigation, recommendations, and action taken but you refused to agree to keep the information confidential. As a result, your disagreement with the results of the investigation was made in ignorance of the facts discovered in the investigation and, as a result, were not made on the facts, were biased, and are legally deficient.

What I can tell you and your counsel is that the investigation was prompt and thorough, the recommendations were consistent with the results of the investigation, and the remedial relief was appropriate under the circumstances and has proven sufficient to prevent further concerns. The allegations of retaliation by Ms. Bailey were also investigated and found to be without merit. Those results were also communicated to Ms. Bailey. Your complaint of retaliation ... is also without merit. The action taken with regard to your employment was based solely on your job performance, your jeopardization of the attorney-client privilege, your bad judgment, your intemperate treatment of your fellow executives, your insubordination towards me and the University's reasonable requests of you, your advocacy against the interests of the University, your actions in contravention of your own determination of a conflict of interest and recusal, and your threat of going to the media.

Second, the August 15 email "memorandum" you sent to Lisa Cowart demonstrated every transgression mentioned above which led us to have no confidence and trust in you as General Counsel or Secretary to the Board. Here are the reasons: A) your "legal opinion" email memorandum and its contents were not requested by Lisa Cowart or anyone else; B) you previously stated to Lisa orally and in writing that you recused yourself from the investigation and related issues because you were a witness to be interviewed in the investigation and because of your friendship and supervisory role over Ms. Bailey; C) you first sent a draft of the email from your personal email address "toddhagins@icloud.net" to your Winthrop email account. You then sent it to Lisa from your Winthrop email address, copied yourself, and blind copied your personal email address. Unknown to me as your direct report, you had provided access to all of your haginst@winthrop.edu email to Ms. Bailey in full, including both the in-box and sent items where she could see communications like that to Ms. Cowart, and all other communications. I had no idea that you shared access to attorney-client privileged information with Ms. Bailey and would not

have approved if you had requested my approval. She is not a paralegal, and there is nothing in her position description, which you prepared, which states anything about the attorney-client privilege, requires training about the attorney-client privilege as I am told is required by counsel, or placed on her active job duties any obligation relating to the attorney-client privilege. Moreover, even if she had such authority, it would not have included a legal issue which involved her. You should have immediately discontinued the practice the very minute she submitted her first complaint and certainly were required to do so before sending the August 15 email to Lisa Cowart; D) the second paragraph of the email you sent to Ms. Cowart provided your “legal opinion” as do several continuing pages in the memorandum [redacted]. I contrast this with other emails and memoranda you sent to other university officials which [redacted]; E) you [redacted] the notes provided by Ms. Cowart to the position descriptions to be evaluated for possible changes to avoid future issues or concerns between Ms. Bailey and Ms. Phillips. Ms. Cowart told you they were notes of points to be discussed with you for discussion purposes only. Instead of meeting with Ms. Cowart as you should have done, you did not speak with her at all and instead sent this [redacted] email at 12:27AM. Your August 15 email provides several pages of suggested changes to the job descriptions, as requested by Ms. Cowart, and even admits that “clarifying these roles is crucial to ensure proper oversight and avoid potential conflicts or misunderstandings.” For reasons I do not understand or accept, you then spent the next 3 pages of your email memorandum [redacted] that the roles of Ms. Bailey and Ms. Phillips be clarified as part of your “legal opinion;”; F) further, you made your “legal opinion” despite not knowing the facts, not knowing the information provided in the investigation, and despite your prior admission that you had a conflict of interest and had recused yourself. As such, you should have declined to provide any legal analysis or conclusions even if you had been asked to do so, but no one made such a request. As a result, it is clear you acted recklessly and, in our opinions, violated your duties to me and the University and acted contrary to your legal obligations by actively supporting your friend and direct report, advocating her legal interests, [redacted], and allowing her to review sensitive, protected legal communications through access to your email (which you provided) and also by copying communications your personal email address from which you could have sent it to anyone. Your actions jeopardized the attorney-client privilege which, as you know, could affect other privileged communications. This fact alone more than justifies your dismissal...; G) you failed to cooperate with the VP of Human Resources in addressing Ms. Bailey’s concern of overlapping job duties with Ms. Phillips as to communications, for example, with Board members about the events organized by the President’s office. This was an obvious opportunity to clarify position descriptions and delineate roles so as to avoid any potential ambiguity and concern between them. As noted above, you agreed that clarifying the roles was a good idea and should be pursued. Then, you refused to participate in that effort and [redacted]. Your response and memorandum to Ms. Cowart was inappropriate, unworkable, mutually inconsistent, not based in law or best

practice, and not helpful to Winthrop University in the least. I agree it could have helped to clarify the roles and duties, could avoid problems in the future which you should have pursued as a member of management and the University's legal counsel who should be looking to help minimize the University's legal issues and risk by mitigating and avoiding employee issues, not stirring the pot of employee discord, supported remedial efforts, and avoided disrespecting fellow executives in the process. There is no reasonable way you thought your actions were for the benefit of Winthrop. Your actions appear to be clearly driven to fan the flames of potential lawsuits by you and others and that some other motive drove your actions and inaction; H) you admitted to me that the real reason you did not want Ms. Cowart to conduct the investigation of Ms. Bailey's allegations and wanted outside counsel to conduct it was because you wanted the investigation to be attorney-client privileged so your wife would not find out about any allegations about your relationship with Ms. Bailey. It had nothing to do with how to properly conduct this investigation, which was clearly within the purview of Ms. Cowart's responsibilities and which she carried out as a best practice in the area of human resources; I) you provided what I am informed was bad legal advice to Ms. Cowart regarding whether she or outside counsel should conduct the investigation, whether, as you contend, the investigation should have been attorney-client privileged, and whether the University's ADA policy should be changed to alter the determination and appeal processes. You claimed Ms. Cowart should not conduct the investigation despite the uncontroverted fact that Ms. Cowart and Ms. Phillips are not personal friends outside of work. As noted above, you admitted to me you had a personal ulterior motive in your "legal" recommendation to Ms. Cowart. Title VII allegations, as you should know, are the "bread-and-butter" of human resources. So it was obviously fitting for Ms. Cowart as the VP of Human Resources to take on this investigation herself. There was no need for outside counsel to be involved, unless of course it was to cloak it from public view as you sought. I am informed that you were incorrect in your premise – once an outside counsel takes on the role of investigator, he or she is not acting as counsel but instead as an investigator for the purpose of conducting the investigation and preparing an investigation file if need be for the court subsequently to adjudicate the matter and demonstrating Winthrop's fulfillment of its Title VII obligations. If the investigation file is privileged, it cannot be used as evidence for the University in any subsequent litigation. Your advice, as a result, was faulty for these reasons and should not have been followed. Ms. Cowart was wise to make her own decision. You, as General Counsel, had no authority to dictate her actions. I would direct you to your position description which does not allow you any sort of decision-making authority over employee matters. Ms. Cowart made the right decision. You did not, and I believe your personal bias was the reason; J) after your August 15 email that Ms. Bailey could have accessed, you changed this to delete her access upon my direct requirement. However, at that same time, you created a "legal@winthrop.edu" account and sent notice to all Winthrop personnel by daily digest to send all inquiries there. In establishing this account, however, we discovered

you also gave Ms. Bailey access to that account, negating entirely my direction for you to cease any access Ms. Bailey had to confidential and privileged General Counsel communications and documents, including but not limited to the attorney-client privilege. As a result, it is clear you engaged in misconduct, deceit, obfuscation, and disregarded my expectation for you to prevent access to confidential and privileged communications which could have been viewed by Ms. Bailey who has no training or experience and legal and privileged communications and also has a conflict of interest with regard to communications and documents involving her which were transpiring at the very same time and with your knowledge. In other words, your representation to me and others that you fixed the problem we identified was completely false. No General Counsel or Secretary to the Board of Trustees can be permitted to continue in employment while acting with such callous disregard of authority and subversion of confidentiality, discretion, and the attorney-client privilege.

Third, when the complaint was first made about a hostile work environment anonymously to the Board of Trustees email address, you gave it to Ms. Cowart as VP of Human Resources as a WORD document. In fact, it came in as an email. When Ms. Cowart pressed you about its origin, you admitted it came in as an email. Ms. Cowart asked you to send her the full email. Instead of providing the full email, you improperly excised the sender's information. Why did you go to these measures to conceal the sender's information? After this delay, you finally gave Ms. Cowart the full email. She tried to contact the sender to no avail. I will tell you it bears a striking resemblance to the same complaint of a hostile work environment made by Ms. Bailey a few months later. Regardless of whether Ms. Bailey made the anonymous complaint and whether you knew about its actual origin, the fact is that you engaged in deceitful and/or uncooperative acts and omissions with regard to a complaint of a Title VII violation and failed to timely, accurately, and fully cooperate with the Title VII report and investigation, conduct which cannot be condoned at the executive level and particular not from a general counsel.

Fourth, you failed and refused to move on with your job after I heard your opinion about the outcome of the investigation of Ms. Bailey's complaint. I pointed out that you did not know the whole story and were acting as an advocate for Ms. Bailey. You refused my request to move on and also to repair the relationship with Ms. Cowart and to accept my decision. [In fact, not only did Hagins disagree with Serna's decision, he responded to Serna with a veiled threat to go to the media and the threat that Serna, Phillips, and Cowart would all lose their jobs.]

Fifth, you claimed in our conference that part of your retaliation claim was based upon your job duties being changed. When you were asked about what duties were changed, you said that you were no longer able to make decisions about discipline or discharge of

Winthrop employees. To be clear, there was no change in your job duties. You have never had authority over discipline and discharge of employees. I would refer you to your position description. Also, Ms. Cowart has authority over employee discipline and discharge and also the discretion to consult with you or outside counsel with regard to employment issues. But the decision is clearly hers, not yours. It never has been your decision. In fact, the ultimate authority over discharge decisions rests with me. I turn this issue around and conclude that your statements to Ms. Cowart and to me that you were the one to determine employee discharge and discipline exceeded your authority and usurped your decision-making ability over Ms. Cowart and me. You acted this way with regard to Ms. Bailey's employment, and you also did so with regard to another employee who raised ADA concerns to Ms. Cowart. You overstepped your authority and usurped Ms. Cowart's, Amber Slack's, and my authority by attempting to revise the University's ADA policy without notice to me or Ms. Cowart that you were supplanting our authority.

Sixth, your discharge from employment is also supported by matters discovered after you left employment. I will list a few of these reasons for you. First, with regard to the FOIA, you were the University's FOIA officer. However, it appears you had little if any involvement in this area, the files were disorganized, requests were not responded to, and there is inadequate documentation of the responses made to FOIA requests so that we can determine whether the University acted in compliance with that statute. Also, it appears from a draft document that you and Ms. Bailey were in the process of changing University practice and planning to improperly produce personnel files and investigation files upon any request. I should also mention that you had not prepared any minutes or notes of Board minutes for the June 2024 Board of Trustees' meeting and you also did not prepare them for the Board's Committee meetings, which you undertook specifically as your responsibility. It is my understanding that you have been asked to provide your notes and any draft minutes since your departure, but you have provided none and also that none have been located on your Winthrop-provided computer or shared drives. I should also note that many contract reviews were behind and/or were not being addressed timely. And I should mention again as a separate issue that you allowed access to confidential Board and administration emails, including many which are attorney-client privileged, without express approval by me or the Board of Trustees to a person who is not been trained to understand and protect the attorney-client privilege, without authority in the position description you prepared for Ms. Bailey to have any access to confidential and/or attorney-client privileged information and documents, and failed to discontinue that access after you became conflicted and recused yourself from a legal matter raised by Ms. Bailey.

The Board Chair and I concurred with your discharge as we have no trust and confidence in your abilities, the manner in which you have exercised your duties, and in the discretion and judgment you have executed or would exercise in the future.

Your dismissal had nothing to do with Ms. Bailey's report of a hostile work environment or your purported "report" of alleged wrongdoing, as explained herein.

Winthrop respectfully submits the EEOC should conclude likewise. An employee fails to satisfy the *prima facie* test under Title VII where the employee "failed to demonstrate that she was performing her job duties at a level that met [the employer's] legitimate expectations." *Warch v. Ohio Cas. Co.*, 435 F.3d 510, 514 (4th Cir. 2006); *Casey v. Balog*, 162 F.3d 795, 803 (4th Cir. 1998). In analyzing whether the employee met legitimate job expectations, the Fourth Circuit has made it clear that the relevant perspective for this determination is that of the employer, not the self-assessment of the plaintiff/employee. *King v. Rumsfeld*, 328 F.3d 145, 149 (4th Cir. 2003). Based on the factual circumstances described above, Hagins' charge fails to meet this burden as he failed to meet the legitimate expectations of Winthrop University. While he may disagree or want to critique the decisions of President Serna, Ms. Cowart, or Chairman McCall, he misses the point - much as he did during his employment. It seems at every juncture in his employment Hagins chose the wrong path. And he pursued that path regardless of his common law and legal duties to Winthrop, regardless of his lack of knowledge or skills, and regardless of his colleagues' efforts to help him find the right path. As the case law cited above reflects, the most senior Winthrop officials believed fully that their job performance expectations for Hagins were not being met on numerous fronts. The law gives the deference to them in their pursuit of their job duties as President, Chair, and VP of HR.

Even if the EEOC were to conclude somehow that Hagins met the initial *prima facie* test, Winthrop has certainly met its burden of offering a legitimate, nondiscriminatory explanation for his dismissal from employment. Under applicable law, after the employer offers a legitimate, nondiscriminatory explanation for the adverse employment action, the plaintiff must demonstrate the reason offered by the employer is pretextual, meaning the employment decision is unworthy of credence or that the employer's explanation is demonstrably false. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 (2000). The employer's reason does not have to be "wise, fair, or even correct... so long as it truly was the reason for the action taken," *Hawkins v. PepsiCo, Inc.*, 203 F.3d 274, 279 (4th Cir. 2000), and regardless of whether it is viewed as good "business judgment," *Jimenez v. Mary Washington College*, 57 F.3d 369, 383 (4th Cir. 1995). Charging party must establish "both that the [employer's] reason was false and that [retaliation] was the real reason for the challenged conduct." *Id.*, at 378. Hagins has no evidence, nor could he, that the job performance concerns of Serna, McCall, and Cowart were unworthy of credence. Their

concerns were, in fact, obvious, objectively and subjectively reasonable, and are common sense reactions to very improper actions and omissions by a Cabinet-level General Counsel and Secretary to the Board. However, even if there were grounds for reasonable minds to differ, Hagins' Charge still fails the Title VII test because, right or wrong, they were the real reasons for Hagins' discharge. Winthrop deserved to have a General Counsel and Secretary to the Board in whom it had trust and confidence, could rely on to safeguard the attorney-client privilege, treated all colleagues with dignity and respect, possessed and practiced legal competence at all times, exercised good judgement and sound employment practices, etc. In the judgment of Serna, McCall, and Cowart, Hagins proved he had not done so and, as a result, those are the reasons he was dismissed. On this record, there is no basis for the EEOC to conclude anything except that Hagins' improper conduct caused his dismissal. Quite simply, Hagins cannot show that his supposed protected activity was the "but for" reason he was discharged from employment, as he is required to demonstrate by law. *See Univ. of Texas Sw. Med. Ctr. v. Nassar*, ___ U.S. ___, 133 S. Ct. 2517, 2534 (2013).

An employee's conduct is not entitled to Title VII protection if the employee did not "engage reasonably in activities opposing discrimination" or where the activities did not take place in "an orderly and non-disruptive manner." *Kubicko v. Ogden Logistics Servs.*, 181 F.3d 544, 551 (4th Cir. 1999). Title VII was "not intended to immunize insubordinate, disruptive, or non-productive behavior at work." *Laughlin v. Metropolitan Washington Airports Auth.*, 149 F.3d 253, 260 (4th Cir. 1998) (citing and quoting *Armstrong v. Index Journal Co.*, 647 F.2d 441, 448 (4th Cir. 1981)). The Fourth Circuit has explained that a balancing of interests is required because, in enacting Title VII, Congress had "an equally manifest desire not to tie the hands of employers in the objective selection and control of personnel." *Id.* Where an employee's "reaction to the situation is disproportionate or unreasonable," that person is not entitled to protection by Title VII, fails to satisfy the *prima facie* test, and is subject to the employer's appropriate discipline or dismissal. *Laughlin*, 149 F.3d at 260.

Examples of conduct held by federal Courts of Appeals not to be entitled to protection include:

- "Frequent, voluminous and sometimes specious complaints." *Robbins v. Jefferson County Sch. Dist.*, 186 F.3d 1253, 1259 (10th Cir. 1999)
- Antagonistic behavior towards supervisors. *Id.*
- Failure to follow prescribed routes for lodging complaints. *Rollins v. State of Florida Dept. of Law Enf.*, 868 F.2d 397 (11th Cir. 1989)
- Where the employee's manner of complaining had a "damaging effect on morale." *Hochstadt v. Worcester Found. for Exper. Biology*, 545 F.2d 222, 224 (1st Cir. 1976)
- Where the employee's job performance demonstrated that colleagues could not work successfully with her because the employee's "behavior impeded their" work. *Id.*

- Where the employee disclosed confidential records to another employee. *Laughlin*, 149 F.3d at 260
- Where the employer's interest in maintaining security and confidentiality of sensitive personnel documents outweighs the "employee's interest in providing those documents to [another employee]," calling this a "breach of trust." *Id.*

In *Laughlin*, the Fourth Circuit held the employer "had a reasonable and significant interest in preventing the dissemination of confidential... records" and concluded as a matter of law the employee was not engaging in protected activity "and, therefore, did not establish a *prima facie* case of retaliatory discharge." *Id.*

The Fifth Circuit Court of Appeals has ruled on two strikingly similar cases involving in-house counsel, and both have resulted in rulings which fully support Winthrop in this matter. In *Douglas v. DynMcDermott Petroleum Operations Co.*, 144 F.3d 364 (5th Cir. 1998), Douglas was an in-house counsel for DynMcDermott Petroleum, a company which managed the United States DOE's strategic petroleum reserves. Douglas's duties involved reviewing contracts, overseeing ongoing litigation, and assisting the company's human resources department with legal issues. Douglas reported to the General Counsel, John Poindexter. In a meeting of Poindexter, Douglas, and a DOE attorney, they discussed in very general terms employee concerns at DynMcDermott's sites. Following the meeting, Douglas disclosed to the DOE attorney additional information, including confidential information about one employee's claim. The DOE's contract with DynMcDermott was noted by the court as "arm's length" meaning they were, and operated as, completely separate legal entities with no common ownership. Two weeks later, after Douglas discussed her performance evaluation with Poindexter, she composed a 5-page letter in which she complained about "racial and sexual discrimination." Douglas sent that letter to Poindexter and also copied "three other DynMcDermott employees and an official with the DOE." When DynMcDermott learned of the outside communications, its officials met and discussed the concerns about "Douglas's attorney-client duties of loyalty and confidentiality and the company's duties under the antidiscrimination statutes." The company terminated Douglas's employment as a result.

Following an EEOC charge and right to sue notice, Douglas filed a lawsuit. The federal district court denied DynMcDermott's pre-trial motions to dismiss the case as a matter of law, and the case proceeded to a jury trial. The jury returned a verdict for Douglas and awarded damages. On appeal, the Fifth Circuit Court of Appeals reversed, set aside the jury verdict, and ordered the district court to enter a judgment of dismissal. In so doing, the Fifth Circuit evaluated Douglas's legal duties as a member of the Louisiana Bar "not to disclose her client's confidences without authorization and loyalty to serve the interests of her client." South Carolina has virtually identical rules of professional conduct. The court also observed that the ethical duty of "loyalty is an essential element in the lawyer's relationship to a client. The duty of loyalty to the client, with which the duty of confidentiality is inherently intertwined, is one of the basic tenets of the legal

profession.... These duties – confidentiality and loyalty – serve to fortify the client’s trust placed with the attorney and to ensure the public’s confidence in the legal system as a reliable and trustworthy means of adjudicating controversies.” The court held “Douglas cannot ethically justify her disclosure of client confidences to the DOE... because DynMcDermott was her sole client and DynMcDermott did not consent to the disclosures.” The court further held Douglas had breached her duty of confidentiality “[b]ecause she revealed to third parties information relating to her representation of DynMcDermott.”

While recognizing that employees have protection under Title VII for activities in opposition to discriminatory practices, the court in *Douglas* noted well-accepted case law which holds that “[n]ot all activities taken in opposition to an employer’s perceived discriminatory practices, however, remain insulated from reprisal under Title VII’s shield.” The court also considered a prior similar decision involving an in-house attorney in *Jefferies v. Harris County Community Action Ass’n.*, 615 F.2d 1025 (5th Cir. 1980). The plaintiff, Jefferies, copied and disseminated confidential employment records which she believed supported her claim of discrimination. The court held that “Jefferies’s conduct was clearly unreasonable in light of the circumstances and her employer legitimately discharged her because of it.” *Jefferies*, 615 F.2d at 1036.

The above analysis and holdings are crucial to an understanding of the significant and patently unreasonable conduct by Hagins against his client, Winthrop University. The *Douglas* decision provides a roadmap to a determination on the errors by Hagins as General Counsel (not a subordinate legal counsel like in the Fifth Circuit cases cited above) which crossed the line by a mile in breaching the common law duties of employees as well as ethical duties of lawyers to their clients. The appellate court in *Douglas* at 374-377 said it this way:

These precedents bring us to the immediate case we consider today. They serve to illustrate that employee conduct, although fairly characterized as protest of or opposition to practices made unlawful by Title VII, may nevertheless be so detrimental to the position of responsibility held by the employee that the conduct is unprotected. Douglas's behavior fits into this general category.

Furthermore, Douglas's conduct not only undermined her effectiveness as an employee, but her actions also violated the ethical rules of the legal profession. Here, while employed as in-house counsel for DynMcDermott, Douglas breached her professional duties of confidentiality and of loyalty when she revealed to a third party information relating to the representation of her client. She took no precautions [footnote omitted] to preserve the attorney- client relationship and instead acted with thoughtless indiscretion, demonstrating little regard for the ethical obligations inherent in the legal profession. This dereliction of professional duties meant that DynMcDermott could no longer place full trust in her to keep confidences that she may acquire as its attorney. In short, the trust undergirding the

attorney-client relationship was broken and Douglas could no longer function in her role as in-house counsel. See *Rosser*, 616 F.2d at 223 (noting that employee's conduct can so malign the relationship that continued employment is impossible). Her conduct, on the whole, also reflected poorly on the legal profession and its obligation to maintain standards of trust and loyalty.

We therefore turn to the weighing process that our precedents have employed in other similar contexts. We first weigh the importance of the employer's reasonable expectation that its in-house counsel abide by the profession's ethically imposed duties of confidentiality and loyalty. Corporations hire in-house counsel specifically with the expectation that the attorney's loyalty may be fully relied upon. A corporate lawyer is expected to defend her employer-client when adversary proceedings arise and may not, with *very* limited and specified exceptions, act detrimentally to the employer-client's interests. In fact, by accepting employment, a lawyer chooses to place his loyalties with his employer-client and agrees to act as its confidant and advocate. An in-house attorney enjoys a unique position of special trust, and her employer-client necessarily occupies a concomitant position of vulnerability with respect to its relationship with its counsel. The ethical precepts of confidentiality and loyalty serve to assure that that trust is not misplaced and to shield the employer-client from an abuse of the power that the attorney has acquired as a result of her unique position of confidence. The employer-client's reasonable expectation that its attorney will abide by the profession's ethical edicts is thus entitled to great weight.

In addition to weighing the interests of the employer in determining whether unethical conduct should be protected under Title VII, we, as a court, must also consider the interests of the legal profession, whose members' ethical conduct is critical to the integrity and reputation of the courts and their processes. It is axiomatic that the legal profession has a vital interest in promoting the ethical conduct of its members, and as strong an interest in discouraging unethical conduct. These interests would be struck a damaging blow if the law afforded some safe harbor for unethical conduct. To forgive a breach by allowing the legal protections sought in this case obviously would have repercussions beyond this one case because such a ruling would carve out a class of individual rights that trump professional ethical considerations--and, by extrapolation, could lead to further tolerances with unanticipated consequences to the profession, and thus become yet another *bissagiatt*.¹¹ The particular duties at stake here--confidentiality and loyalty--are of indisputable importance to the attorney-client relationship itself, as this opinion has repeatedly pointed out. Furthermore, they instill a faith in the system necessary for the

¹¹ William Raspberry, *Defining Deficiency Down*, The Washington Post, May 29, 1998, at A27 (coining the acronym "bissagiatt" from the phrase "But It Seemed Such a Good Idea at the Time").

public to trust our legal system in the resolution of its disputes--again, as we have made abundantly clear in this opinion.

As we have noted, when Douglas became an attorney, she became bound to abide by the ethical rules of the profession. When she was hired as an attorney by DynMcDermott, she became its defender and advocate. Although she surely did not surrender her Title VII rights when she signed on with DynMcDermott as its in-house counsel--and no one is suggesting that she did-- she did in fact assume professional responsibilities that constrained her exercise of those rights.

We therefore conclude that when an attorney's Title VII right to oppose her employer-client's allegedly discriminatory practices by disclosing confidential information contrary to the ethical obligations of the profession is balanced against her employer-client's right to ethical representation and the profession's interest in assuring the ethical conduct of its members, the employer's and the profession's interests must prevail. Given the obligations to which an attorney agrees when she joins the profession and when she accepts employment, and the importance of the duties of confidentiality and loyalty to the employer-client and to the integrity of the profession, we hold as a matter of law that conduct that breaches the ethical duties of the legal profession is unprotected under Title VII. [footnote omitted]

In reaching this holding, we are aware that the trial court determined that there was "minimal disclosure of any substantive information" and, therefore, that any indiscretion on Douglas's part did not warrant much consideration. This conclusion was error because, as we hold today, *any* betrayal of a client's confidences that breaches the ethical duties of the attorney places that conduct outside Title VII's protection. The employer-client need not tolerate baby steps of unethical conduct while anxiously wondering when and if the giant step will occur, and with what consequences. Once the trust between attorney and client is breached in violation of professionally sanctioned duties, Title VII provides no shield from retaliation.

Hagins' conduct was clearly more egregious and violative of the duties owed by employees and legal counsel than the conduct at issue in *Douglas* and *Jefferies*. Notably, Hagins admitted to giving legal advice to his direct report (Bailey) against the interests of Winthrop – despite knowing he was conflicted and would be recusing himself as legal counsel; failed to provide full and accurate information during an internal human resources investigation of Bailey's complaint; provided biased and legally incorrect advice about cloaking the internal investigation in the attorney-client privilege; exposed his administrative assistant (Bailey) to attorney-client privileged

and confidential Winthrop information without including such authority in her position description (which he created) and without experience or training¹²; engaged in insubordination and intentional deception when Winthrop demanded that he discontinue Bailey's access to email and its highly confidential and privileged information; disrespected executive colleagues by, among other things, acting to covertly revise a Winthrop ADA policy for employees to delete the authority of the VP of HR and the President of the University; made false and insubordinate statements by misrepresenting that only he had the institutional authority to fire or discipline personnel; threatening the VP of HR and the President with dismissal and media exposure to achieve his desired result for Bailey's internal complaint despite being ignorant of the facts compiled in the internal investigation, the remedial measures taken, and being recused from the matter; refused to engage properly as a manager to evaluate job descriptions with the intent of avoiding overlap, confusion, and future concerns; and the *coup de grâce*: the August 15, 2024 email memorandum which violated not only the confidentiality of personnel information at issue in *Douglas* and *Jeffries*, but so much more: exposing his attorney work product and attorney-client privileged analysis and advice to disclosure to Bailey (and others) which might waive the attorney-client privilege of this and potentially other matters, arguably jeopardizing the attorney-client privilege by [redacted], issuing a "legal opinion" not requested by anyone and despite his prior self-recusal, and refusing to discontinue his crusade for Bailey after making his opposition known. If, as stated in the comparatively minor breach of confidentiality at issue in *Douglas*, an "employer-client need not tolerate baby steps of unethical conduct," Winthrop certainly was not required to endure the giant leap of unprofessional breaches of common law and legal duties by Hagins and "anxiously wonder" what improper action, bad advice, and breach of trust and confidence would come next. Under the law, Winthrop was not required to do so and was entitled to have competent counsel in whom it had trust and confidence. Hagins was properly dismissed on September 9, 2025, shortly after the incredulous August 15 email, and his Charge fails as a matter of law.

III. ADDITIONAL BASES DEMONSTRATING THAT WINTHROP DID NOT RETALIATE AGAINST CHARGING PARTY IN VIOLATION OF TITLE VII

For Charging Party to base his claim of retaliation on Bailey's complaints of a hostile work environment and retaliation begs the question of whether Bailey has a bona fide Title VII claim in the first place. If Bailey has no legitimate Title VII claim of a hostile work environment harassment or retaliation, then Hagins could not be engaged in protected activity by Title VII. As noted in Winthrop's Position Statement in response to Bailey's EEOC Charge, Bailey's claim fails for five separate and distinct reasons.

¹² Had Hagins proposed to Human Resources (Coward) or the President that Hagins' administrative assistant would have access to attorney-client privileged information as well as other confidential information of the Board of Trustees and the President, neither Coward nor President Serna would have approved the position.

First, Bailey cannot establish a *prima facie* case under *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973) because Bailey does not belong to the racial minority about whom the alleged comment was made or referenced. See “Enforcement Guidance on Harassment in the Workplace,” EEOC, issued 4-29-24, at 51 of 190 (harassing conduct not directed at the employee is not probative of a hostile work environment if not directed at the employee or persons of the employee’s race, sex, etc.).

Second, the conduct alleged of Phillips was never identified to Phillips as unwelcome by Bailey or Hagins and therefore cannot serve as a basis for a hostile environment claim under the *prima facie* elements required by *McDonnell Douglas*, *supra*.

Third, Bailey’s allegations which she submits in support of her claim of a hostile work environment do not violate Title VII because the conduct was not severe and pervasive based on an objective standard. Of the three instances Bailey claims the “N” word was mentioned in her presence, only one was substantiated by the investigation. None of the allegations involved a racial comment about Bailey or by Phillips about any person directly. The statements supposedly relayed by Phillips, which were allegedly made by a co-employee about his wife and by Phillips’ brother-in-law, remain unsubstantiated despite Bailey’s unfounded contention that there was a witness to them. “Whether an environment is objectively hostile or abusive is judged from the perspective of a reasonable person in [claimant’s] position.” *Boyer-Liberto v. Fontainbleau Corp.*, 786 F.3d 264, 277 (4th Cir. 2015). Courts look at the frequency, severity, whether it is physically threatening or a mere offensive utterance, and whether it unreasonably interferes with an employee’s work performance. *Compare Carter v. Ball*, 33 F.3d 450 (4th Cir. 1994) (single placement of guerrilla poster or offhand comment in a race case is insufficient as a matter of law to support a hostile environment claim) *with Boyer-Liberto* (plaintiff subjected to shouting, berating, and threatening behavior by a supervisor, being called a porch monkey (the plaintiff was a black female) on two occasions, and the threatening of her job was sufficient to state a claim for hostile work environment). Thus, under the Fourth Circuit’s analysis, an allegation of three inappropriate words (only one of which was corroborated) used not about the complaining person (who is, by the way, a white female) but relayed by third-parties about fourth-parties cannot satisfy the severe and pervasive standard. This is particularly true where Bailey first raised the issue with Phillips about mixed-race relationships involving her daughter and Bailey inquired about those issues in follow-up conversations. Certainly, one confirmed inappropriate racial statement made in the presence of a person who is not black by a third person about a fourth person is insufficient as a matter of law. Moreover, there has been no showing by Bailey that the alleged comments were sufficiently severe or pervasive to alter her conditions of employment or create an abusive environment. In fact, from the time of Bailey’s now-admitted non-anonymous complaint to the complaint she admittedly made two months later in her own name, there is no alleged action by Phillips as Bailey’s supervisor of any tangible employment action against Bailey. Bailey continued to do her job in the Office of the President unabated. In Bailey’s words, what Phillips said: “made me feel very

uncomfortable.” (Bailey’s Charge §7) What the law requires, however, is proof of an “abusive working environment,” determined from a “reasonable person” perspective, which resulted in “subjective emotional impact” *Boyer-Liberto*, 786 F.3d at 277; *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 183-6 (4th Cir. 2001); *Jordan v. Alternative Resources Corp.*, 458 F.3d 332, 339 (4th Cir. 2006). Bailey has not claimed any emotional impact and told the investigators that she merely wanted to report it so it could be placed in a file in the event anything happened in the future and that she did not want anything to happen to Phillips. Bailey’s hostile environment claim fails as a matter of law.

Fourth, once Bailey finally came forward with her complaint, a prompt and thorough investigation took place, and remedial action was taken against Phillips who acknowledged using an insensitive racial reference in an effort to help Bailey overcome her concerns or fears about her daughter’s mixed-race dating and future relationships. The fact that the remedial action was effective is confirmed by the fact that neither Bailey nor anyone else has made a further report of any inappropriate conduct by Phillips.

Fifth, Bailey has failed to indicate any damages she sustained as a result of the allegedly hostile work environment created by her private, casual conversations with Phillips in which she alleges a racially insensitive word was used three times (which did not involve Bailey’s race). Bailey fails in her Charge to identify any medical or mental health treatment, and Winthrop undertook no punitive measure whatsoever toward Bailey for her complaint. Bailey was treated with dignity and respect in the process and apparently has suffered no damages as a result. Likewise, Bailey’s subsequent claims of retaliation were investigated and found to be without merit. The investigation into her claims that Phillips retaliated against her included interviews with coworkers named to be witnesses by Bailey, none of whom corroborated her claims. Her subsequent claim following Hagins’ dismissal that the university retaliated against her by relocating her to another job on campus was determined to be unfounded. In fact, the job she held prior to Hagins’ termination ceased to exist when Hagins’ employment ended and there was no General Counsel for Bailey’s position to support. Hagins’ position has not been filled. The university determined that relocating Bailey to a position at a similar level reporting to a Cabinet-level employee with the same pay was a better alternative than terminating Bailey due to the elimination of her position in the General Counsel’s office. The duties performed by Bailey other than those assisting Hagins with his duties did not comprise a full-time position and were separated and assigned to four or more other Winthrop employees.

Since Bailey has no *prima facie* or bona fide claim of a Title VII violation, Hagins cannot claim he engaged in protected activity for supporting her non-Title VII complaints.

IV. CONCLUSION

Winthrop does not discriminate, allow a hostile work environment, or retaliate in its employment practices. Charging Party's unsubstantiated allegations that he was discharged from employment for any reason other than legitimate non-retaliatory reasons have no merit. In light of the forgoing evidence and case law support, Winthrop respectfully submits that the Charge be dismissed without further proceedings and the Commission issue a determination of "no cause."

Sincerely,

A handwritten signature in blue ink, appearing to read "Ashley B. Abel". The signature is fluid and cursive, with the first name being the most prominent.

Ashley B. Abel

Exhibits

EC: Lisa Cowart, Vice President of Human Resources, Winthrop University (w/o Exhibits)