



FRATERNAL LAW™

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FRATERNITY AND SORORITY COALITION ASSESSMENT PROJECT

The Greek trade associations that developed the Fraternity and Sorority Coalition Assessment Project created a process that reviews the overall health of a fraternity/sorority community at academic institutions in the U.S. and Canada. The deliverable is a report outlining the community's strengths and challenges, providing recommendations that are educational in nature and that will lead to improvement and growth of the system at the host academic institution. Every final report focuses on five key areas:

- Developing Positive Interpersonal Relationships
- Advancing Leadership Development
- Strengthening Social IQ, Citizenship, and/or Service Learning
- Assessing Graduation Rates of Members/ Advancing Academic Interest
- Effective Campus Interface To, and Support of, the Fraternity/Sorority Community

The assessment project is a joint effort involving the Association of Fraternity/Sorority Advisors (AFA), the National Association of Latino Fraternal Organizations, Inc. (NALFO), the National Panhellenic Conference, Inc. (NPC), the National Pan-Hellenic Council, Inc. (NPHC) and the North-American Interfraternity Conference, Inc. (NIC). The NIC serves as project coordinator for each assessment.

An assessment is pursuant to a request from the academic institution. The process includes the collection of information and data prior to an assessment site visit at the host academic institution, a site visit by an assessment team of professionals from the five sponsoring organizations, and the issuance of a final assessment report. Each assessment is a collaborative effort with the host institution, and each includes input from a variety of sources involved with, and who can impact the health and viability of, the fraternity/sorority community at the institution.

Following a site visit, each assessment team member is involved with the preparation of a draft report. A consensus draft is then provided to legal counsel for review. Any comments from legal counsel are provided to the team members and a final report is issued by the NIC to the academic institution. If a consensus cannot be reached with respect to any facet of the report, the report can include minority reports.

The first assessment occurred in the fall semester of 2007. To date, there have been 39 assessment reports issued, and none have included a minority report. In other words, all assessment team members involved in each assessment have to date concurred with all parts of the final report issued.

The findings and recommendations included in final reports have been varied. Examples include the following: alumni being too involved in chapter management details; a culture of hazing perceived as being acceptable through inaction by some personnel within the institution; recommendations concerning housing for Greek letter organizations; recommendations that Greek Life staff work with students to establish stronger student self-governance models within the fraternity/sorority community, and that the community establish governing councils that are similar in structure and scope, replacing structures that work in opposition to one another; the ongoing viability, or advisability, of the fraternity/sorority community on a campus; recommendations that the school and the fraternity/sorority community work together to articulate the unique relationship each has to the other, outlining the privileges and restrictions associated with it, with a goal of developing a written philosophy. Reports also have addressed student graduation rates as compared to graduation rates of fraternity and sorority members, data compilation of donors by alumni who are and are not fraternity/sorority members, and other data to help assess the impact the fraternity and sorority community has made, and is making, on the institution.

Prior to the on-campus visit by an assessment team, the process recommends the school create a Blue Ribbon Committee of faculty/staff and student life personnel, while also considering engaging alumni/house corporation members, students, neighbors, and others who can help implement the plan recommendations. The Blue Ribbon Committee is encouraged to host two sessions once the report is delivered to campus – one with students, to present the report recommendations and to take questions and provide answers, and another with faculty/staff, alumni, and other adults involved with the fraternity/sorority community. Early on, the process revealed that these two groups have very different concerns. Following both sessions, however, the host institution is encouraged to bring all participants from both groups together to prioritize the recommendations in the report and to put those priorities on a timeline/action plan so

that all invested parties understand the goals and the optimum timing to reach them.

Because the process results in improving student life as much as fraternity/sorority life, the Coalition recommends host schools view the process as an investment in their student body and, therefore, that the fee be covered by the president's or chancellor's budget. Assessment fees are based on the number of chapters a campus hosts, plus the expenses of the visiting team.

The five Coalition partners remain as engaged in the ongoing process as each school desires. Each partner offers programming and resources designed to benefit schools as they progress through their prioritized plan, and the process encourages partners to be increasingly engaged in the life of

their member organizations and of the campus communities hosting their chapters.



FRATERNITY & SORORITY COALITION
ASSESSMENT PROJECT

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Assessment Project
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CENSUS BUREAU STARTS COUNTING

Between April 1st and May 21st, the United States Census Bureau will be conducting the portion of its Census enumeration that concentrates on counting college students living on or around campus. This will be the final step in the Census Bureau's count of students living in "Group Quarters." Group Quarters include on-campus college and university residence halls, dorms, and fraternities and sororities. The Bureau defines Group Quarters as "places where people live or stay in group arrangements that are owned or managed by an entity or organization (such as a college or university) providing housing and/or services for the residents." Off-campus residences where students live are not considered Group Quarters.

Individuals are to be counted where they are living on April 1, 2010. That is the official census day. Even though a college student's permanent home may still be where their parents reside in a different state, for the purpose of the Census Bureau, they are to be counted where they are living on April 1st on campus.

In preparation for this final step, a census taker from the Bureau will have dealt with a contact person at each university. The census taker may have already visited, or soon will, the campus to work with the university's contact person and develop a method for distributing "Individual Census Reports." During the advance visit to prepare for the count of Group Quarters, the census taker may ask for information to help them identify the names of residents in group quarters, including in fraternity and sorority houses. Contrary to prohibitions against providing information on individuals under other circumstances, the Family Education Rights & Privacy Act (FERPA) permits the providing of information to census takers to assist in their completion of the Decennial Federal Census.¹

During the final phase (April 1st through May 21st) Individual Census Report forms should be provided to every

resident of a fraternity or sorority house. They may be received directly from the census taker or they may be provided by a college official or even a chapter representative who has agreed to receive the forms, from the census taker, distribute them and then collect them for later pick-up by the Census Bureau.

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There is a benefit to colleges and universities and their surrounding communities ensuring all their students are counted. The census ensures that the college community receives its fair share of political representation and governmental funding. Undercounts of individuals who are not counted when they should have been can significantly affect the amount of money local government and educational institutions ultimately receive from the federal government.

The specific questionnaire, the individual Census Report, that a student receives is short and simple. According to the Census Bureau, "the census form will take only about ten minutes to complete."

In contrast to the legal ability to provide information to the Census Bureau about who is living where, information the Census Bureau obtains from individuals who fill out a census form may not be shared by the Census Bureau with anyone. Census Bureau employees take an oath to protect confidentiality and they know that they are subject to a federal prison sentence of five years and a fine of up to \$250,000 or both for disclosing information that could identify an individual or a household.

- Timothy M. Burke

¹ 20 U.S.C. §1232g(b)(1).

SUIT AGAINST AKA, INDIVIDUALS DISMISSED; APPEAL FILED

Judge Natalia M. Combs Greene of the Superior Court of the District of Columbia dismissed the lawsuit brought by individual members of Alpha Kappa Alpha against AKA, the AKA Educational Advancement Foundation and twenty-four individuals.¹ As first discussed in the September 2009 issue of *Fraternal Law*, the plaintiffs' complaint sought damages, injunctive relief, and other equitable remedies for alleged wrongful conduct by the AKA directors and officers.

The defendants moved to dismiss the case on four grounds: 1) that the Court lacked personal jurisdiction over the individual defendants; 2) that the plaintiffs lacked standing to bring the lawsuit because they did not suffer an injury-in-fact and they failed to properly bring a derivative action; 3) that the plaintiffs could not establish irreparable harm and therefore could not receive injunctive relief; and 4) that the plaintiffs' complaint failed to state a claim upon which relief could be granted.

Look for updates in *Fraternal Law* as this case moves through the appellate process. This case covers many important issues for fraternal organizations, including procedural issues such as jurisdiction, to substantive issues such as the daily governance of organizations at the national level.

The Court's decision first addressed personal jurisdiction. There was no dispute that the Court had personal jurisdiction over AKA, as it is organized in the District of Columbia. The Foundation, however, is a private Illinois foundation. The plaintiffs argued that the Foundation established the necessary minimum contacts with the District by maintaining a website accessible in the District and because the Foundation "receives applications from and makes grants" to District of Columbia students. The Court rejected these arguments and held, "this Court cannot exercise personal jurisdiction over a private Illinois foundation with no contact with the District of Columbia other than the 'mere maintenance of a website accessible to internet users in the District.'" As for granting tuition assistance, the Court stated that such activity is not a business transaction but rather "it is a gift."

The plaintiffs argued that the Court had personal jurisdiction over the individual defendants, though none of them live in the District, because the Court had jurisdiction over AKA, and by extension, AKA's defendant officers and directors. The Court denied this argument and found that the corporate shield protected AKA's officers and directors from personal jurisdiction merely because it had jurisdiction over AKA. Further, the Court held that none of the individual defendants had sufficient minimum contacts with the District for

personal jurisdiction. The plaintiffs argued that several defendants established such minimum contacts, including Judge Miles-LaGrange, a United States District Judge, who sometimes travels to the District for work.

The decision next addressed whether the plaintiffs had standing against the defendants. The Court stated that because the plaintiffs sought relief on behalf of the corporation, they should have brought the case as a shareholder derivative suit. Ultimately, the Court found that only one plaintiff had standing because her membership privileges had been suspended. None of the other plaintiffs had standing because they did not suffer concrete or particularized harm separate from the rest of the members of the corporation.

By the time it addressed the defendants' motion to dismiss for failure to state a claim, it had already dismissed the individual defendants and the Foundation because of a lack of personal jurisdiction. Further, the only plaintiff who had standing to pursue any claim against AKA was the individual who had her membership suspended. Because of that, many of the remaining counts against AKA were also dismissed. The only remaining claims concerned the one remaining plaintiff's claims for waste, *ultra vires* and breach of contract. The Court found no merit in any of the remaining claims and dismissed each count for failure to state a claim.

On February 19, 2010, the plaintiffs filed a notice of appeal with the Superior Court of the District of Columbia. The plaintiffs released a statement on their website (www.friendsoftheweepingivy.com), which stated, in part:

"We are disappointed in the Judge's decision to dismiss our case, however; we view the decision as justice taking a detour. Consequently, our resolve to return our beloved sorority to its members is undiminished, and we plan to appeal the decision. Know that this suit was never about financial gain for any of the plaintiffs. We simply want the entire membership to know how the Leadership is spending our monies. We are committed to have the books and records opened and will not rest until it is done."

Look for updates in *Fraternal Law* as this case moves through the appellate process. This case covers many important issues for fraternal organizations, including procedural issues such as jurisdiction, to substantive issues such as the daily governance of organizations at the national level.

• Daniel J. McCarthy

¹ *Joy Elaine Daley, et al. v. Alpha Kappa Alpha Sorority, Inc., et al.* Superior Court of the District of Columbia Case No. 2009 ca 004456 B.

SIGMA CHI CHAPTER AT ARIZONA STATE SUED

On February 1, 2010, a lawsuit¹ was filed against “the Sigma Chi Fraternity at Arizona State University” and that Chapter’s House Corporation, along with two specifically named members of the Chapter and 100 John Does. Because of the nature of the claims, neither the plaintiff nor the two specific defendants’ actual names are being used.

The suit alleges that the Sigma Chi Chapter organized a toga party at a local sushi restaurant. The Chapter arranged to bring members and pledges of Pi Beta Phi to the party on a bus. At the party, it is alleged that the Chapter provided alcohol to underage minors, including the plaintiff, and that one of the named defendants gave the plaintiff “an adulterated alcoholic drink that had been spiked with a drug designed to incapacitate her and impair her memory.”

While Arizona State University was not named in the litigation, the Plaintiff’s attorney has threatened to sue the Arizona Board of Regents, which oversees the University. As *Fraternal Law* was going to print, the University made a demand on Pi Beta Phi to defend and indemnify the University. More on this issue will appear in the next issue.

The suit further claims that the plaintiff’s purse, as well as several others, were removed from the bus and ultimately taken to the Sigma Chi Chapter house in order to “lure the women at the toga party ... to the Fraternity house.”

Plaintiff’s next memory is alleged to be that on the morning of February 2, 2008, she awoke in the Sigma Chi House, missing her purse and some of her clothes and in severe rectal pain. She subsequently underwent a sexual assault examination that diagnosed a sexual assault through “forced anal penetration” and possible vagina penetration. The suit claims that the assault was conducted by named defendant No. 2, who was known by the Chapter to have had a history of sexual misconduct. It is claimed that defendant No. 2 was known by the other members of Sigma Chi as “THERAPIST,” which stood for “The Rapist,” which was written on the door of his room. It is alleged that no disciplinary action was taken against either of the defendants by the Chapter.

The plaintiff attempted to return to the ASU campus, but because of suffering from Post Traumatic Stress Disorder and extreme fear on campus, especially at night, she ultimately left the University. She is now enrolled in a community college in Tucson.

The lawsuit claims that the Sigma Chi Chapter had a long history of misconduct, which is detailed in the Complaint, including a suspension of the Chapter the day before the alleged sexual assault occurred.

The suit states 13 separate claims or causes of action, including civil conspiracy, assault, battery, negligence, negligent supervision, infliction of emotional distress, premises

liability, nuisance, joint adventure, respondeat superior and ratification and agency. Perhaps most unique is the ratification and agency claim in which it is alleged that because the Chapter took no action to discipline either of the named defendants, the Chapter essentially ratified the defendants’ conduct just as if they had authorized the actions.

By naming 100 John Does, the plaintiff’s attorneys are leaving open the likelihood of amending the lawsuit to name additional specific defendants should evidence determine that others were specifically involved. In the interim, the suit claims, in part based upon the history of misconduct both by the Chapter and by one of the named defendants, that Sigma Chi failed to adequately select, train, control, discipline and supervise its members. The suit specifically claims that the named defendants, and others, engaged in a conspiracy when two or more of them acted together to accomplish an unlawful goal, the sexual assault of the plaintiff – one member providing the adulterated drink, a member removing a purse and taking it to the house, and a member actually committing the sexual assault – all alleged to be part of the same conspiratorial misconduct.

This lawsuit is in its very early stages. At this printing, an answer has not even been filed. There may be another side to this story. But the suit should serve as a clear warning of the potential consequences of sexual misconduct in the chapter house. It may not only be the perpetrator who is sued or who is ultimately held civilly liable.

Remember, the individual members of a chapter are not the deepest pockets. A tough plaintiff’s attorney is going to look to others who are believed to be better able to pay significant financial judgments. That is why a plaintiff will look for supportable legal theories that can be used in an attempt to establish liability on the part of the fraternity, its house corporation, or its national organization.

Frequently, claims of sexual assault are met with an attempted defense that whatever occurred was consensual. It is certainly possible that that kind of a defense may be raised in this case. In past cases, there have been claims of members of an involved men’s fraternity putting pressure on members of the victims’ chapter to convince the victim to drop her claim. Such pressure only serves to endanger the men’s group further and ensnare the women’s group if they agree. The better course for a women’s chapter to follow is to provide support for the victim making it clear that the fraternity supports her and is concerned about her and will respect any decision she may make to criminally prosecute or civilly sue the perpetrators.

• Timothy M. Burke

¹ Case No. CV2010-003278, in the Superior Court of the State of Arizona, County of Maricopa.

UPDATE ON BERKELEY ZONING CASE

Editor's Note

The unprecedented case involving all of the men's fraternity chapters at the University of California Berkeley is proceeding. Jim Ewbank is co-counsel to many of the defendants in the case. What follows is a brief status update he provided on the case. This is a case that will garner much attention nation-wide as it proceeds.

After the temporary restraining order was denied, the Plaintiffs began serving summons on the Chapters and House Corporations. As of February 15, 2010, less than ½ have been properly served.

Jim Ewbank of Ewbank & Byrom, P.C. in Austin, Texas and Mike Osborne of Archer Norris, PLC in Walnut Creek, California, have been retained by approximately 30 of the 37 fraternities to vigorously defend the case under a Joint Defense Agreement. Mr. Osborne will be lead counsel and Mr. Ewbank will coordinate and provide consultation on the case. Mr. Osborne has handled several fraternity-related personal injury cases in California, and Mr. Ewbank has been active nationally in fraternity representation and risk management for over 20 years.

The Plaintiffs' Complaint contains the following causes of action: private nuisance, public nuisance under the City of Berkeley Municipal Code, public nuisance under the

California Water Code (because the defendants have allegedly "permitted, caused or threatened to cause the contamination of public waters of this state through discharge of unauthorized and illegal waste in the public waters"), public nuisance under the California Integrated Waste Management Act, unfair competition, general nuisance, violations of business and professions code, violations of the penal code, intentional tort, and for injunctive relief.

It is anticipated that the defendants will oppose certification of the class action, aggressively conduct discovery and file a series of motions designed to narrow the causes of action and reduce the number of groups currently named in the case. Privately, the Plaintiffs' attorneys have said their goal is to force each fraternity to employ a live-in adult supervisor, like many of the sororities, but the Complaint seeks to regulate or even shut down the houses. In fact, the Plaintiffs' attorneys have publicly stated their intent to use the same "public nuisance" laws used to shut down or control gangs to impose their demands on all these fraternities.

It is important that this case be defended and defeated to protect the fraternities' First Amendment rights of assembly and association, and be narrowed down to what is essentially a neighborhood dispute between a few neighbors. If this method of control/regulation is allowed in Berkeley, the same approach can be used in every neighborhood that has a high concentration of fraternity houses.

• Jim Ewbank

SIX SORORITY MEMBERS AT RUTGERS ARRESTED FOR HAZING

Six members of the Sigma Gamma Rho chapter at Rutgers University were arrested and charged with aggravated hazing in January. According to published reports, members of the chapter beat and belittled pledges for a period of eight days in an off-campus dorm. After enduring the hazing for over a week, and no longer able to sit down because of welts and clots on her buttocks, one of the pledges finally went to the hospital and reported the hazing to the university.

Rutgers police quickly arrested Vanessa Adegbite, Kesha Cheron, Ilana Warner, Joana Bernard, Marie Douglass and Shawna Ebanks and charged them with aggravated hazing. New Jersey law provides that, "[a] person is guilty of hazing, a disorderly persons offense, if, in connection with initiation of applicants to or members of a student or fraternal organization, he knowingly or recklessly organizes, promotes, facilitates or engages in any conduct, other than competitive athletic events, which places or may place another person in danger of bodily injury."¹ The possible punishment for hazing carries the possibility of imprisonment of up to six months and a fine of up to \$1,000.

However, if the hazing "results in serious bodily injury to another person," the crime increases from a disorderly persons offense to a crime in the fourth degree. The possible punishment for a crime in the fourth degree is imprisonment of up to 18 months and a fine of up to \$10,000.

The defendants in this case have all been charged with the elevated crime of aggravated hazing. The defendants have all denied the allegations and have pleaded not guilty to the charges and all are out on \$1,000 bail.

Both the university and the Sigma Gamma Rho national organization suspended the chapter. Sigma Gamma Rho also issued a statement on the incident, with the headline "Sorority leadership reports alleged acts of hazing at Rutgers are against all organization guidelines." Sigma Gamma Rho's international president, Joann Loveless emphasized that, "hazing is illegal and barbaric and it will not be tolerated by Sigma Gamma Rho Inc."

Look for updates in future editions of *Fraternal Law* as this case progresses.

• Daniel J. McCarthy

¹ NJ Crim. Statutes §2C:40-3.

**FRATERNAL LAW CONFERENCE
NOVEMBER 5-6, 2010**

Please return this form to Bonnie Hill, Fraternal Law, 225 West Court Street, Cincinnati, Ohio. The full day session will begin at 9:00 on Friday and the half-day session on Saturday ends at Noon.

Who should attend?

Fraternity officers, council members, administrators, students, school officials, attorneys and anyone involved with Greek organizations. We offer a substantial discount to students.

CLE credit is available from the State of Ohio and many other states. We are happy to cooperate in providing you or your state CLE Board with conference information.

The **general registration** fee is \$375.00 per participant; the **student fee** is \$275.00. Included in the conference fee is a continental breakfast on Friday and Saturday, lunch on Friday and a reception to be held Friday evening. Parking is not included but is available at the Westin for \$15 per day for self parking, and also available at several garages nearby.

A block of rooms has been reserved at the Westin Hotel. Hotel reservations may be made by calling the Westin Hotel toll free at (800) 937-8461. Ask for the Fraternal Law Conference rates when making your reservation. For further information contact Bonnie Hill at (513) 721-5525.

Name: _____ **Title:** _____

I am a/an: **Attorney** **Fraternity/Sorority Leader** **Student/University Official**

CLE credit requested? **YES** **NO** **If yes, what state** _____

E-mail address: _____

Affiliation: _____

Address: _____

City/State/Zip: _____

Phone: _____ **Amount Enclosed:** _____

Please send a separate form for each person attending the conference.

May we have your permission to publish this information in our handout materials? Your signature on the line below indicates your approval.

Signature

Refund Policy: Full refund for cancellations received on or before October 22, 2010. Refund minus \$50 for cancellation received between October 23 and October 29. No refunds after October 29.

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The Goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

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