



July 24, 2018

VIA E-MAIL [CARRICK.CRAIG@WMICH.EDU](mailto:CARRICK.CRAIG@WMICH.EDU)

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Carrick D. Craig  
General Counsel  
Western Michigan University  
Kalamazoo, MI 49008-5423

**Re: Engagement**

Dear Carrick:

We are writing to confirm that Western Michigan University has engaged Cozen O'Connor to provide legal advice regarding the University's policies, procedures and practices related to sexual and gender-based harassment and violence under Title IX and related provisions of the Clery Act, as amended by the Violence Against Women Reauthorization Act of 2013.

**Services to Be Provided.** The Firm will conduct an external review of the institutional response to sexual and gender-based harassment and violence under Title IX and related provisions of the Clery Act, as amended by the Violence Against Women Reauthorization Act of 2013. A Statement of Work is attached as Appendix A. You may limit or expand the scope of our representation at any time, provided that it is by mutual consent and agreed upon in writing.

**Identity of Client and Our Representation of Other Clients.** It is agreed that we are being retained as counsel solely by Western Michigan University. No other person or entity which now is, or may become, an employee, officer, director, affiliate, subsidiary, or parent of Western Michigan University will be considered to be represented by the Firm for any purpose unless this retainer agreement is expressly amended in writing, signed by Western Michigan University and Cozen O'Connor, to reflect the inclusion of any additional person or entity.

Consequently, unless the parent, subsidiary or other affiliate of Western Michigan University is clearly identified as being represented by the Firm in the Matter, you agree that the Firm may represent clients or prospective clients in matters that may be adverse to Western Michigan University's parent, subsidiary or other affiliate.

**Billing Practices and Manner of Payment and Retainer.** With respect to our fees, our billing statements include a description of work performed, the amount of time expended, and disbursements incurred on Western Michigan University's behalf.

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The Firm's charges for legal services in matters of this type are based primarily upon the hourly rates in effect at the time the services are rendered. Gina Smith's current hourly rate is \$750. Leslie Gomez current hourly rate is \$650. We will extend a courtesy discount of 10% on all hourly rates. We may, as appropriate, call on the services of other lawyers and legal assistants in the Firm. The hourly rates for members and associates who may provide assistance may range from \$375 to \$595, respectively, and paralegal assistance is billed at a lower rate per hour. Hourly rates are subject to review and change from time to time, but we do not anticipate any increase before January, 2019. We will generally include disbursements and charges, including filing fees, copying, long distance telephone charges, faxes, computerized legal research, travel, paralegal or secretarial overtime charges, messenger fees, postage and shipping charges and similar items on our invoices. In addition, we do not charge professional fees for our non-working time spent in travel. Invoices for services and disbursements will be rendered monthly, and will be payable within 30 days. If our invoices are not paid in a timely manner, we reserve the right to withdraw from the representation. Also, any objection to the invoice must be brought to our attention within 60 days of the invoice date.

**Electronic Discovery Costs.** If during the course of the Matter, or any other matter to which this retainer agreement shall apply, it becomes necessary to collect, review and potentially produce a collection of discovery or other Matter related information, additional costs will be incurred. Such information may be in hard copy form or electronically stored ("ESI"). Such costs may include, but will not be limited to, forensic investigations, information collection, hard copy document scanning, ESI processing, use of a hosted review/production platform, and encrypted storage devices (when dictated by regulatory requirements). Western Michigan University may engage third party vendors to provide any or all of these services, or the Firm can engage them on Western Michigan University's behalf, as requested. At your request, the Firm may provide such services pursuant to a separate agreement.

**Use of Confidential Information.** The Firm recognizes its professional obligation to refrain from disclosing confidential information or using it to the disadvantage of Western Michigan University for the benefit of any other present or prospective client (which may include any affiliate, subsidiary or parent of Western Michigan University, unless Western Michigan University gives informed consent. Provided the Firm observes this professional obligation, Western Michigan University agrees that it will not for itself or any other party assert that the Firm's possession of such information, even though such information may relate to a matter as to which the Firm is representing another client, is a basis for disqualifying the Firm from representing that other client of the Firm. We will not disclose to persons outside this Firm privileged or confidential information regarding our representation of Western Michigan University's interests.

**Cooperation.** It will be our mutual responsibility to cooperate fully in meeting your expectations for work to be performed. To that end, you agree to provide us with all relevant information requested by us, known or available to you, which may aid us in representing you in the Matter.

**If You Become Dissatisfied.** The Firm recognizes that working with an attorney represents a significant investment. If at any time during this relationship you become dissatisfied with our work, we urge you to contact the undersigned or a member of the team responsible for supervising the work for which you have retained us, to seek a mutually satisfactory resolution of your concerns.

**Termination of the Relationship.** You may terminate this engagement for any reason upon written notice to the Firm. Immediately after receiving such notice, the Firm will cease to render additional services and will cooperate with Western Michigan University in facilitating the orderly transfer of files and records to Western Michigan University or Western Michigan University's new attorneys, subject to, if appropriate, resolution of any outstanding financial issues.

The Firm may withdraw from representation for good cause or with Western Michigan University's consent. If Western Michigan University fails to meet its obligations with respect to this engagement and continues to fail to do so after receiving written notice of that failure from the Firm, then the Firm shall have the right to end the relationship and this letter agreement.

Termination of our engagement does not relieve Western Michigan University of the obligation to pay all fees due for services rendered and disbursements incurred before termination and during an orderly transition of legal services. In the event Western Michigan University owes the Firm fees or costs, the Firm shall have the right to retain all files and documents related to the Matter until full, or a satisfactory agreement for, payment is received or approved.

**Return or Destruction of Files.** Upon termination of our engagement, any and all documents that you deliver to the Firm during the course of our representation will remain your property and will be returned promptly upon your request. Any and all documents generated by our Firm during the course of our representation will remain the property of the Firm (e.g., our drafts, internal administrative documents, memoranda and our Firm's other work product). We will provide you with copies of documents in our files upon payment to our Firm of the reasonable cost of reviewing our files and producing such copies. If you do not request the return of your property, we reserve the right to destroy within a reasonable time consistent with the applicable rules of professional conduct and without further notice any items described in this paragraph that are retained by us.

This letter constitutes the understanding entered into by Western Michigan University and the Firm with respect to the Matter and supersedes all prior understandings, written or oral. If you find this agreement to be acceptable, please sign the enclosed original of this agreement in your capacity as an authorized representative of Western Michigan University and return it to the undersigned at your earliest convenience. Please contact the undersigned if you need any clarification of the foregoing provisions.

This letter agreement will take effect when you execute and return it. However, the effective date of this letter agreement will be retroactive to the date the Firm first performed services for or on behalf of Western Michigan University. The date at the beginning of this letter agreement is for reference only. Alternatively, this letter agreement will take effect two weeks after receipt by you, if you do not notify us in writing of your objection to any term in this letter agreement, and you permit us to perform legal services on your behalf. Even if this letter agreement does not take effect, Western Michigan University will be obligated to pay the Firm for the reasonable value of any services the Firm may have rendered to or on behalf of Western Michigan University. In such event, the Firm reserves the right to assert that the reasonable value of its services is higher than the rate provided by this letter agreement as a courtesy to Western Michigan University.

We appreciate the confidence you have shown in us by selecting us to provide legal advice. We look forward to a mutually satisfactory and productive professional relationship.

Sincerely,

COZEN O'CONNOR



By: Gina Maisto Smith



By: Leslie M. Gomez

AGREED TO and ACCEPTED

this 25<sup>th</sup> day of July

2018

Western Michigan University

By:   
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## **Appendix A Statement of Work**

We understand that the purpose of the engagement is to conduct an external review of Western Michigan University's policies, procedures and practices related to sexual and gender-based harassment and violence under Title IX and related provision of the Clery Act, as amended by the Violence Against Women Reauthorization Act of 2013.

### **Phase One: Review of Written Policies and Procedures** **Time Frame: Fall 2018**

Phase One encompasses our gathering and initial review of written policies and procedures, as well as the infrastructure and systems for implementation. In Phase One, we work together to identify the universe of documents for review in order to provide an assessment of all policies related to sexual and gender-based harassment and violence, as well as antidiscrimination policies based on protected categories other than gender. As a priority in Phase One, we will review the relevant policies to evaluate compliance with the law and guidance, including for example, Title IX, its implementing regulations, and evolving guidance from the Office for Civil Rights; the Clery Act, Section 304 of the Violence Against Women Reauthorization Act of 2013, and the revised Clery Handbook (June 2016); and other relevant authority. Our audit will consider the context of recent enforcement actions by the Office for Civil Rights and the Clery Compliance Division.

In addition, as part of our document review and subsequent implementer and stakeholder discussions, we review prior cases of sexual and gender-based harassment and violence handled by the university to identify key issues arising out of current policies and procedures and propose solutions to improve current practices.

Based on our review of those documents, we will assist the university in identifying relevant stakeholders and community members who will be asked to participate in individual and group meetings. The review of documents in Phase One will be prioritized in order to ensure informed interviews of stakeholders in Phase Two.

### **Phase Two: Implementation Assessment** **Time Frame: Fall 2018**

In Phase Two, we will meet with and interview the university's Title IX team, student affairs, human resources personnel, Provost, campus police, counseling and health services, university counsel and other key constituents to learn more about the culture of the campus and the current processes for reporting, investigation and resolution of reports involving students, employees and faculty. During Phase Two, we meet with administrators individually and collectively to process map a typical case and create a flow chart that helps to identify the key stages in the institution's response.

We also seek to meet with students, faculty and other interested stakeholders. We work with the institution to draft language to invite stakeholders to speak with our team or provide their written comments to a secure firm website. We recommend offering the opportunity to former complainants and respondents to provide feedback about their experiences. This community engagement phase is critical to our assessment of systems and will allow the university community members the opportunity to develop confidence and understanding of the goals of the external review and provide opportunities for constructive engagement

This phase could also be expanded to include a more detailed assessment of the university's reporting responsibilities under the Clery Act, the implementation of the protection of minors policies across university programs (summer camps, study abroad, recruits, daycare programs, etc.), and other athletics considerations (e.g., serious misconduct reporting and privilege to play policies) as agreed upon by the University and the Firm.

Phase Two typically involves a two or three-day campus visit, with the opportunity for follow up interviews as necessary.

**Phase Three: Synthesis of Information/Recommendations**

**Timeframe: Fall or  
Spring 2018**

In Phase Three, we will synthesize the information learned to date and benchmark the university's policies, procedures and practices against compliance requirements and effective practices nationally.

We will provide our observations and findings in the format agreed upon by the university. The outcome will include informed recommendations about federal compliance requirements, including the University's notice of non-discrimination; the role and functioning of the Title IX Coordinator; prompt and equitable grievance procedures, as written; and, prompt and equitable grievance procedures, as applied. The outcome may include recommendations about the coordination of policies (including recommended revisions to current language), the structure of institutional response, roles and responsibilities of implementers, the institutional sequence, the coordination of information, first responder protocols, investigator protocols, and educational programming and resources. We will reach a mutual agreement as to the format of our recommendations, including whether they will be presented orally, in written outline format or in a formal report (either as a public document or a document limited to legal advice subject to the attorney-client privilege). We will also evaluate and reach a mutual written agreement about the scope of any further engagement, which may include revision of policies and procedures, advice regarding implementation of compliance mandates, and the presentation of training and educational programming.