

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

JAMES TRACY,)	
)	
Plaintiff,)	
)	Case No. 9:16-cv-80655-RLR
v.)	
)	
FLORIDA ATLANTIC UNIVERSITY)	
BOARD OF TRUSTEES, a/k/a FLORIDA)	PLAINTIFF’S FIRST SET OF
ATLANTIC UNIVERSITY, et al.)	INTERROGATORIES DIRECTED TO
)	DEFENDANT JOHN W. KELLY
)	
Defendants.)	

Plaintiff JAMES TRACY, by and through his attorneys, and pursuant to Federal Rule of Civil Procedure 33, requests that Defendant John W. Kelly fully answer the following interrogatories, under oath and in writing, within thirty (30) days.

DEFINITIONS

1. Action. The term “this action” refers to the above-captioned action.
2. All/Each. The terms “all” and “each” shall be construed as all and each.
3. And/Or. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary, in order to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
4. Any. The term “any” shall be construed to include the word “all,” and the word “all” shall be construed to include the word “any.”
5. Communication. The term “communication,” means the transmittal of information (in the form of facts, ideas, inquires, or otherwise).
6. Complaint. The term “Complaint” means the Plaintiffs’ Complaint and any future amendments thereof.

7. Defendants. The term “Defendants” means any and all Defendants named in the Complaint.

8. Document. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term. Included in this definition are: e-mail, communications, contracts, correspondence, books, records, reports, memoranda or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, calendars, schedules, graphs, charts, releases, studies, blueprints, questionnaires, financial statements, tapes, discs, tape recordings, microfilm, microfiche, videotapes, photographs, phonograph records, motion pictures, and data cards, as well as any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, on which information is recorded in writing or in sound or in any other manner.

9. Electronically stored information. The terms “Electronically stored information” and “ESI” mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including but not limited to electronic mail (sent, received, or draft), instant messaging, videoconferencing, and direct connections or other electronic correspondence (whether opened or unopened, active or deleted), word processing files, spreadsheets, databases, and sound recordings such as voicemail or recorded telephone calls, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, cell phones, Blackberry, PDA, iPhone, smartphone, or other storage media, and such technical assistance or instructions as will transform such ESI into reasonably usable form.

10. FEA. The term “FEA” means the Defendant Florida Education Association.

11. Identify (with respect to persons). When referring to a person, “to identify,” means to give, to the extent known, the person’s full name, present or last known address and when referring to a natural person, additionally, the present or last known place of employment.
12. Identify (with respect to documents). When referring to documents, “to identify,” means to give, to the extent known: (1) the type of document; (2) general subject matter; (3) date of the document; (4) author(s), addressee(s), and recipient(s); and (5) how (specifically, from whom and where) the Defendant received such document.
13. Identify (with respect to communications). When referring to communications, “to identify” means to give, to the extent known (1) the date of the communication; (2) the person(s) who initiated the communication; (3) the person(s) who received the communication; (4) the name and title of the person(s) involved in the communication; (5) the means through which the communication was made; (6) the topic(s) discussed during the communication; and (7) how (specifically, from whom and where) the Defendant received such communication.
14. Number. The use of the singular form of any word includes the plural and vice versa.
15. Person. The term “Person,” means as any natural person or any business, legal entity, or association.
16. Policy. The term “Policy” refers to Florida Atlantic University’s “Outside Activities/Conflict of Interest” Policy.
17. Relating to. The term “relating to” means concerning, evidencing, constituting, pertaining to, or in relation to.
18. Third-party. The term “third-party” means any natural person or any business, legal or governmental entity, or association that is not a named party in the Complaint.
19. UFF. The term “UFF” means the Defendant United Faculty of Florida.

20. UFF-FAU. The term “UFF-FAU” means the Florida Atlantic University Chapter of United Faculty of Florida and Florida Education Association.

21. University/FAU. The term “University”, “Defendant University” and “FAU” means Florida Atlantic University.

22. You/Your. The terms “You,” “your” refer to the Defendant John W. Kelly.

INSTRUCTIONS

1. These interrogatories are continuing in nature, thus, you must file supplemental responses when you acquire further information or documents, including ESI, within the scope of Rule 33 of the Federal Rules of Civil Procedure.

2. Answer each interrogatory separately; do not join together and give a common answer to two or more interrogatories or their separate parts. Each response should repeat the text of the interrogatory in full and be followed by your response or objection thereto.

3. Each individual interrogatory should be construed independently, without reference to any other interrogatory.

4. Answer each interrogator fully based on all information in your possession, custody or control, including that of any of your agents, accountants, attorneys, consultants, employees, or other representatives, or any person from whom you can obtain information by request or from whom you have a legal right to bring information within your possession by demand.

5. To the extent that precise and complete information cannot be furnished, you should supply such information as is available. Where first-hand knowledge is not available, you should answer to the best of your knowledge, information and belief, and such answer should be so described.

6. If an objection is made to any interrogatory, the objection shall state with specificity all grounds. All information covered by the interrogatory not subject to the objection should be disclosed.

7. Where a claim of privilege is asserted in objecting to any means of discovery or disclosure, and an answer is not produced on the basis of such assertion, you must nevertheless provide the following information, unless divulging such information would disclose the allegedly privileged information:

A. The nature of the privilege (including work product) which is being claimed and, if the privilege is governed by state law, indicate the state's privilege being invoked; and

B. The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

i. For documents, including ESI: (1) the type of document, *e.g.*, letter of memorandum; (2) the general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate: the author of the document; the addresses of the document, and any other recipients shown in the document, and where not apparent, the relationship of the author, addressees, and recipients to each other.

ii. For Oral Communications: (1) the name of the persons making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and place of communications; and (3) the general subject matter of the communication.

8. Whenever you answer any interrogatory by reference to records, including ESI, from which the answer may be derived or ascertained:

a. The specifications of documents to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought.

b. The producing party shall also make available any computerized information or summaries thereof that it either has, or can adduce by a relatively simple procedure, unless those material are privileged or otherwise immune from discovery.

c. The producing party shall also provide any relevant compilations, abstracts or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise immune from discovery.

d. Unless otherwise ordered by the Court, the documents shall be made available for inspection and copying within fourteen (14) days after service of the answer to interrogatories or at a date agreed upon by the parties.

9. The responses to these interrogatories are to be signed and certified by the person making the, and the objections signed and certified by the attorney making them. *See* Fed. R. Civ. P. 26(g) and 33(b)(2).

10. The time period covered by these interrogatories is January 2012 through the date of full and complete response.

INTERROGATORIES

Interrogatory No. 1

Set forth your current present home address, any and all email addresses you have used, your employer's name and business address, your job title and/or the capacity in which you are associated with any defendant named in the Complaint.

Interrogatory No. 2

Describe any and all documents, communications, notes or other records taken or made by you or on your behalf concerning the Plaintiff, or anything related to this action and events alleged in the Complaint.

Interrogatory No. 3

Set forth your duties and responsibilities at the University, and all powers and authority you possess over FAU officials, agents, personnel and/or faculty. If your official actions are subject to review and/or approval by any superior(s) or peer(s), please state that fact and provide the name of your superior(s), and describe the review and/or approval process.

Interrogatory No. 4

Set forth FAU's "Outside Activities/Conflict of Interest" Policy, and identify all documents and communications in your possession, custody or control, and set forth all procedures relating to FAU's "Conflict of Interest/Outside Activities" Policy. This includes but is not limited to any and all documents and/or communications concerning creation of the Policy, instructions, management, monitoring, oversight, disputes, complaints and changes to the Policy. If no such documents or communications exist, then state that fact.

Interrogatory No. 5

Identify all persons, including but not limited to FAU officials, employees, agents and University faculty members involved in the enforcement of FAU's "Outside Activities/Conflict of Interest" Policy, and with respect to each individual identified pursuant to this interrogatory, set forth their responsibilities and duties relating to the Policy.

Interrogatory No. 6

Set forth the date of all meetings (including telephonic meetings) relating to the Plaintiff, FAU's "Conflict of Interest/Outside Activities" Policy, and any disciplinary action involving Plaintiff, or any University employee or faculty member for violations of the Policy; identify all persons who attended such meetings, and identify any and all persons involved in investigating or addressing any complaints relating to the Plaintiff, the Policy, and any disciplinary action sought against any other person pursuant to the Policy.

Interrogatory No. 7

Identify any allegation, inquiry, complaint, investigation, regulatory proceeding, official action, or litigation by any third party, including but not limited to any individual, non-governmental agency, advocacy group, municipal, state, or federal entity, relating to the Plaintiff, FAU's "Conflict of

Interest/Outside Activities” Policy, and/or the constitutional rights of any of FAU faculty members, including but not limited to freedom of speech, due process and academic freedom; identify all documents concerning, and set forth steps taken by FAU, you, and/or any person working at your direction to investigate the merits of any such allegation, inquiry, complaint, investigation, regulatory proceeding, official action, or litigation.

Interrogatory No. 8

Describe when and how you first learned about Plaintiff’s personal blogging, and set forth any and all actions, official or otherwise, undertaken after you learned about the blog.

Interrogatory No. 9

Explain why FAU threatened disciplinary action against Plaintiff in 2013.

Interrogatory No. 10

Explain why FAU’s Notice of Discipline dated March 28, 2013 was not removed from Plaintiff’s personnel file pursuant to the University’s 9/26/13 Settlement Agreement.

Interrogatory No. 11

Explain why, in 2013, FAU did not request “Outside Activities/Conflict of Interest” forms for Plaintiff’s personal blogging for the 2013-2014 school year.

Interrogatory No. 12

Explain why, in 2014, FAU did not request “Outside Activities/Conflict of Interest” forms for Plaintiff’s personal blogging.

Interrogatory No. 13

Set forth any and all conduct of Plaintiff which you believe violated FAU’s policies, describing for each alleged action or omission which policy was violated by Plaintiff, when each policy was violated and how.

Interrogatory No. 14

Describe any and all potential, actual or perceived conflicts of commitment or interest you believe existed, or otherwise resulted from Plaintiff’s personal blogging and online speech, and set forth the basis for your beliefs.

Interrogatory No. 15

Set forth any and all blogs of University personnel (including but not limited to officers, employees, agents and faculty members) which have been

disclosed, monitored, or otherwise subjected to the University's "Outside Activities/Conflict of Interest" Policy.

Interrogatory No. 16

Describe the University's "progressive" disciplinary process.

Interrogatory No. 17

Identify all persons involved in the decision to discipline and/or terminate the Plaintiff.

Interrogatory No. 18

Set forth any and all arrangements or agreements concerning the Plaintiff, Professor James Tracy that were made concerning the discipline and/or termination of Professor Tracy; identify all persons involved in, and identify all documents concerning such arrangements or agreements, including but not limited to any communications, correspondence, e-mails, text messages or notes of conversations.

Interrogatory No. 19

Set forth any and all meetings with UFF, FEA, and/or UFF-FAU officers, agents, representatives and employees, telephonic or otherwise, which you participated in since January of 2013, and identify the subject of each meeting, and all persons who participated in such meetings, and any documents or communications concerning the meetings.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July 2016, I caused a copy of the Plaintiff's First Set of Interrogatories Directed to Defendant John W. Kelly to be served via electronic mail to counsel for Defendant Kelly: Keith Sonderling (ksonderling@gunster.com).

/s/ Louis Leo IV

Louis Leo IV, Esq.

FL Bar No. 83837

**FLORIDA CIVIL RIGHTS
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