

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-CV-80655-ROSENBERG/HOPKINS

JAMES TRACY,

Plaintiff,

v.

FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES a/k/a FLORIDA
ATLANTIC UNIVERSITY; et al.,

Defendants.

**NOTICE OF SERVING ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO JOHN W. KELLY**

Defendant, JOHN W. KELLY ("Kelly"), pursuant to Rule 33 of the Federal Rule of Civil Procedure, hereby gives notice of service of Kelly's Answers to Plaintiff's First Set of Interrogatories served on July 22, 2016.

/s/ Keith E. Sonderling

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Attorneys for FAU Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by email on this 10th day of February, 2017, on all counsel or parties of record on the below Service List.

/s/ Keith E. Sonderling
Keith E. Sonderling

SERVICE LIST

Tracy v. Florida Atlantic University Board of Trustees, et al.
Case No. 16-cv-80655-ROSENBERG/HOPKINS

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Plaintiff,

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FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES a/k/a FLORIDA
ATLANTIC UNIVERSITY; et al.,

Defendants.

RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Defendant, JOHN W. KELLY (“Kelly”), pursuant to Rule 33 of the Federal Rule of Civil Procedure, hereby serves his Response to Plaintiff’s First Set Interrogatories served on July 22, 2016.

Defendant John W. Kelly is responding in his personal capacity, only with information of which he has personal knowledge.

INTERROGATORIES

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.

ANSWER: Defendant Kelly objects to this request to the extent it asks for irrelevant personal information regarding Defendant Kelly, including his personal address and personal email address. Without waiving this objection, Defendant Kelly may be reached care of Gunster, Yoakley & Stewart, P.A. at 777 South Flagler Drive, Suite 500

East, West Palm Beach, Florida 33401. Defendant Kelly's FAU email addresses include: president@fau.edu and jkelly@fau.edu.

Defendant Kelly was appointed President of FAU on or about January 1, 2014.

Defendant Kelly is associated with the Defendants named in the Second Amended Complaint as follows:

Defendant FAU is Defendant Kelly's employer;

Defendant Alperin is an employee of FAU;

Defendant Coltman is an employee of FAU;

Defendant Zoeller is an employee of FAU and a UFF representative;

UFF represents the unionized faculty at FAU;

FEA represents the unionized faculty at FAU;

Defendant Moats is a representative of UFF.

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.

ANSWER: Objection, this request is vague, overbroad, and seeks discovery which is not proportional to the needs of the case. Plaintiff is seeking any and all communications, including email communications, which concern the Plaintiff "or anything related to this action and events alleged in the Complaint" for a period spanning more than five years, including for a time period prior to any of the allegations in the Second Amended Complaint.

With respect to Plaintiff's request to identify documents, communications, notes or other records made by Defendant Kelly or on his behalf related to this action and the events alleged in the Second Amended Complaint, pursuant to a public records request

issued outside the scope of this litigation, Plaintiff has been provided with approximately 2800 pages of documents for September through December 2015, which encompass documents responsive to this request, to the extent that any such documents exist. Finally, Defendant Kelly objects to this request to the extent that it seeks identification of documents, communications or notes which are protected by the attorney-client privilege or work product doctrine.

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.

ANSWER: In response to this interrogatory and in compliance with Rule 33 of the Federal Rules of Civil Procedure, Defendant Kelly is producing copies of the following business records which are responsive to this Request: FAU Board of Trustees Board Operations Policies and Procedures.

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.

ANSWER: Defendant Kelly objects to this request for interrogatory as it is overbroad and not proportional to the needs of this case. The interrogatory asks President Kelly to "identify all documents and communications in your possession, custody or control." This is clearly overbroad, as it seeks all documents and communications in

Defendant Kelly's possession, custody or control for the last 5 years without qualification or relevance to this case.

In response to this interrogatory's request for Defendant Kelly to set forth FAU's Conflict of Interest/Outside Activities Policy and the request for Defendant Kelly to set forth all procedures relating to FAU's Conflict of Interest/Outside Activities Policy, and in compliance with Rule 33 of the Federal Rules of Civil Procedure, Defendant Kelly is producing copies of the following business records which are responsive to this Request: FAU's Policies and Procedures, Policy Number 7.5 Personnel, Section 8: Employee Ethical Obligations and Conflict of Interest; Florida Atlantic University Guidelines on Conflict of Interest, Conflict of Commitment and Outside Activities, Including Financial Interests; and the Florida Atlantic University Board of Trustees and The United Faculty of Florida Collective Bargaining Agreement 2012-2015.

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.

ANSWER: Defendant Kelly objects to this request on the grounds that it is overbroad and unduly burdensome. All FAU employees, including all faculty and staff, are required to comply with the Outside Activities/Conflict of Interest Policy and are therefore involved, along with Supervisors, Department Chairs, Directors and Deans, in the policy's "enforcement." Without waiving this objection, in response to this interrogatory and in compliance with Rule 33 of the Federal Rules of Civil Procedure, Defendant Kelly is producing copies of the following business records which are responsive to this Request: FAU's Policies and Procedures, Policy Number 7.5 Personnel, Section 8: Employee Ethical

Obligations and Conflict of Interest; Florida Atlantic University Guidelines on Conflict of Interest, Conflict of Commitment and Outside Activities, Including Financial Interests; and the Florida Atlantic University Board of Trustees and The United Faculty of Florida Collective Bargaining Agreement 2012-2015.

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.

ANSWER: Defendant Kelly objects to this request as it is overbroad and not proportional to the needs of this case. Plaintiff is requesting information regarding any meetings relating to: 1) Plaintiff; 2) FAU's Conflict of Interest/Outside Activities Policy; 3) disciplinary action taken involving Plaintiff; and 4) disciplinary action taken against any University employee or faculty member for violations of the Conflict of Interest/Outside Activities Policy, spanning a five year period of time. It would be unduly burdensome to require Defendant Kelly to identify all "meetings (including telephonic meetings)" which have occurred during this five year period with respect to these four categories of topics.

Further, to the extent this Request seeks disclosure of "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, Defendant Kelly objects to the Request as overbroad, vague, and unduly burdensome. The Request is unclear as to the types of "complaints" the Request seeks information relating to.

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.

ANSWER: Defendant Kelly objects to this Request as it is overbroad and not proportional to the needs of this case. This request asks Defendant Kelly to identify any allegation, *inquiry, complaint, investigation, regulatory proceeding, official action, or litigation by any third party relating to: 1) Plaintiff; 2) FAU's Conflict of Interest/Outside Activities Policy; and 3) the constitutional rights of any FAU faculty members, including but not limited to freedom of speech, due process and academic freedom. As Plaintiff is aware from documents produced pursuant to a public records request issued to FAU, FAU received hundreds of complaints relating to Plaintiff within the last five years. It is unduly burdensome for Defendant Kelly to identify each individual complaint received herein. Additionally, complaints related to "the constitutional rights of any FAU faculty members, including but not limited to freedom of speech, due process and academic freedom," if any, are not relevant to this proceeding and would not be proportional to the needs of this case.*

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.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts. Additionally, the request is vague, as it fails to identify or define “actions, official or otherwise” for which Plaintiff seeks disclosure.

9. Explain why FAU threatened disciplinary action against Plaintiff in 2013.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts.

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.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts.

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.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts.

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

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts.

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.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts.

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.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts.

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.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts.

16. Describe the University's "progressive" disciplinary process.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts.

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

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts.

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.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts. Further, the request is vague, as it fails to define “arrangements or agreements” for which Plaintiff seeks disclosure.

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.

ANSWER: Objection, Plaintiff has exceeded the limitations of Rule 33, Federal Rules of Civil Procedure, as his requests for interrogatories exceed 25 written interrogatories, including all discrete subparts. Additional, the request is overbroad, requesting identification of meetings with UFF, FEA, and/or UFF-FAU officers, agents, representatives and employees on any subject spanning a four year period.

John W. Kelly
John W. Kelly

STATE OF FLORIDA)
COUNTY OF Palm Beach) ss:

Before me, the undersigned authority, appeared John W. Kelly, who is personally known to me or _____ as identification executed the foregoing and who did/did not take an oath on this 10th day of February, 2017.



(Notary Seal)

[Signature]
NOTARY PUBLIC
State of Florida
My Commission Expires: _____