

RE: Tracy v. FAU, et al - FAU Defendants' Amendment to Answer & Affirmative Defenses - Meet & Confer

Griffin, Holly [HGriffin@gunster.com]

Sent: 4/6/2017 4:57 PM

To: "joel@medgebowlaw.com" <joel@medgebowlaw.com>, "Sonderling, Keith" <KSonderling@gunster.com>

Cc: "Curley, G. Joseph" <GCurley@gunster.com>, "Huff, Sara" <SHuff@gunster.com>, louis@medgebowlaw.com, louis@floridacivilrights.org, "St. George, Cheryl" <cstgeorge@gunster.com>

Good afternoon Joel,

In light of the Court's March 31, 2017 order, the FAU Defendants will not be amending their affirmative defenses.

Regards,

Holly



Holly Griffin | Attorney
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From: joel@medgebowlaw.com [mailto:joel@medgebowlaw.com]

Sent: Thursday, April 06, 2017 4:36 PM

To: Sonderling, Keith; Griffin, Holly

Cc: Curley, G. Joseph; Huff, Sara; louis@medgebowlaw.com; louis@floridacivilrights.org; St. George, Cheryl

Subject: RE: Tracy v. FAU, et al - FAU Defendants' Amendment to Answer & Affirmative Defenses - Meet & Confer

Importance: High

Holly,

As you are aware, the Court's deadline on our Motion to Strike is quickly approaching, so we need to know your Clients' position as soon as possible, as previously requested. I attempted to reach you by phone earlier this afternoon, but Cheryl told me you were unavailable.

Very Truly,

Joel Medgebow, ESQ.
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----- Original Message -----

Subject: RE: Tracy v. FAU, et al - FAU Defendants' Amendment to Answer & Affirmative Defenses - Meet & Confer

From: "Louis Leo IV, Esq." <louis@floridacivilrights.org>

Date: 4/5/17 1:37 pm

To: "Sonderling, Keith" <KSonderling@gunster.com>, "Griffin, Holly" <HGriffin@gunster.com>

Cc: "Medgebow, Joel" <joel@medgebowlaw.com>, "Curley, G. Joseph" <GCurley@gunster.com>, "Huff, Sara" <SHuff@gunster.com>

Keith/Holly,

See below. I did not intend to copy your firm on this draft but no need to retract.

If Matt or Joel have anything to add they will let you know.

If you have any questions or concerns feel free to call me at the office tomorrow AM.

----- Original message -----

From: "Louis Leo IV, Esq." <louis@floridacivilrights.org>

Date: 04/05/2017 12:42 PM (GMT-05:00)

To: "Joel Medgebow, Esq." <Joel@medgebowlaw.com>, Benzion Matt <mab@benzionlaw.com>

Cc: "Medgebow, Joel" <joel@medgebowlaw.com>, "Curley, G. Joseph" <GCurley@gunster.com>, "Huff, Sara" <SHuff@gunster.com>, Benzion Matt <mab@benzionlaw.com>

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Proposed depo follow up / requests to FAU.. thoughts? Anything to add?:

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Keith/Holly,

I didn't see a response to my message below.

Just to follow up on the Motion to Strike, in light of what has been discovered this past week, and anticipated discovery, we will likely need to amend the Complaint to re-add claims for procedural due process violations.

However, to preserve Plaintiff's rights and given the Court's ruling, we must move to strike your clients' Answer and Affirmative Defenses once more, absent your agreement to amend by the deadline Friday.

As explained previously, nearly all of the defenses asserted by your clients have no possible relation to this controversy or Plaintiff's claims, necessitating voluntary withdraw or striking by the Court.

For example, your clients have pled that Plaintiff's failure to exhaust administrative remedies (i.e. grieving) somehow bars Plaintiff's recovery against the Defendants for violations of his First Amendment right to freedom of speech. This is absurd.

Even if Plaintiff did fail to grieve due to his union representative's deception and obstruction, this would not be a lawful defense to the allegations against your clients. We now have on record UFF-FAU President/FAU employee Zoeller admitted to another FAU employee and union official that he conspired with FAU's general counsel Larry Glick to end Professor Tracy's employment in retaliation for his constitutionally protected speech.

The first four depositions have only confirmed much of what we already knew. Your clients singled out and fired Professor Tracy for his blogging about matters of public concern.

Another example of a frivolous defense mounted by your clients is their claim that the "Outside Activity" Policy was somehow "neutral".

Every single faculty member who has testified so far has confirmed the Policy on its face and as applied was not neutral. It was unlawfully used to target constitutionally protected speech and eliminate Professor Tracy's tenured employment in retaliation for his protected speech.

Not one faculty member who has testified thus far has indicated that they are required to submit forms to FAU for their online speech. Moreover, nobody has ever been disciplined or terminated for not turning in "Outside Activity" forms for personal blogging or other uncompensated online personal activity.

I trust you will carefully review the record gathered thus far with your clients, and the records pertaining to the schools "Outside Activities" Policy (which we're still waiting for) before continuing to maintain or prosecute any frivolous affirmative defenses in this matter.

We have ordered the videos of the first four FAU faculty members and will send courtesy copies as soon as we obtain them. In the meantime, please let us know when we can expect to receive your clients' first waves of production.

Please let your clients know that we will be sending out requests shortly for all records pertaining to the November 30, 2015 "Consultation" between Defendant Kelly and union officials.

If you would like to have a call to discuss any of the above, I'm on daddy day care duty today but tomorrow morning we can discuss.

In any event, please respond to this message no later than close of business Thursday, indicating whether your clients will agree to withdraw their frivolous, scandalous, redundant and impertinent defenses as outlined in our previous correspondences and motion to strike.

Please also let us know the status of the public records request, which to date we have not received a response to.

Thanks,

Louis Leo IV, Esq.



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