

AGENDA

Council on Postsecondary Education
Wednesday, July 18, 2018
10:00 AM
CPE Offices, Conf Rm A

1. Welcoming and roll call 2
2. Action: Respondent Bearden's request for stay of proceedings 4
3. Discussion: Findings from investigation conducted by staff on behalf of CPE
4. Action: Recommendation to Governor regarding Kentucky State University Board 37 of Regent's petition to remove Regent Dr. Karen Bearden
5. Adjournment

SPECIAL-CALLED MEETING

STAY CONNECTED TO THE CPE!



RESOLUTION

AT A MEETING OF THE KENTUCKY STATE UNIVERSITY BOARD OF REGENTS,
HELD AT KENTUCKY STATE UNIVERSITY, ON JUNE 7, 2018

RESOLUTION – KENTUCKY STATE UNIVERSITY BOARD OF REGENTS PURSUANT to KRS 63.080(2)(c)(1) hereby formally provides written notice to the Council for Post-Secondary Education that board member Dr. Karen Bearden has created an impermissible conflict of interest by filing a lawsuit against Kentucky State University and that said conduct may warrant removal from the Kentucky State University Board of Regents.

WHEREAS, Kentucky State University Board of Regents (the Board), does hereby states as follows:

WHEREAS, Dr. Karen Bearden, hereinafter referred to as “Dr. Bearden,” is a Board of Regents member of Kentucky State University (KSU).

WHEREAS, Dr. Bearden has created a conflict of interest by filing a lawsuit against KSU. (Attached: Civil Complaint)

WHEREAS, Dr. Bearden is pursuing the aforementioned lawsuit while maintaining her position on the Board of Regents and continues to insist, through Counsel, that KSU should not be dismissed as a party from the KSU lawsuit. (Attached: Video – Defendant’s Motion to Dismiss)

WHEREAS, the Board acknowledges that Dr. Bearden’s lawsuit presents a significant conflict of interest which negatively affects KSU and the Commonwealth of Kentucky,

WHEREAS, KRS 63.080(2)(a) provides the Governor with the authority to remove Board of Regent members through an executive order so long as cause is met.

WHEREAS, KRS 63.080(2)(c) provides the procedures for which a member of a board of regents may be removed.

WHEREAS, pursuant to KRS 63.080(2)(c)(1), to initiate the removal process, “[t]he Governor...or the Board of Regents, as applicable, shall notify, in writing”, to the conflicted “board member and the Council on Postsecondary Education, that the member should be removed for cause and shall specify the conduct warranting removal.”

WHEREAS, the board member then has “seven (7) days to voluntarily resign or provide evidence to the Council on Postsecondary Education that the member’s conduct does not warrant removal.” KRS 63.080(2)(c)(2)

WHEREAS, “[w]ithin thirty (30) days of receipt of the Board’s written notice, the Council on Postsecondary Education shall review the written notice, investigate the

member and the alleged conduct, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed. A copy of the recommendation shall be provided to the Legislative Research Commission” (LRC). KRS 63.080(2)(c)(3)

WHEREAS, pursuant to KRS 63.080(2)(c)(4), “[t]he Governor shall make the determination, in writing, whether the member should be removed and shall notify the member, the board, the Council on Postsecondary Education, and the LRC of the determination.

WHEREAS, “[i]f the Governor’s determination is to remove the member, the Governor shall remove the member by executive order...” KRS 63.080(2)(c)(5)

WHEREAS, through the statutory removal process, Dr. Bearden will have an opportunity to rebut any action taken against her.

WHEREAS, the Board asserts that the aforementioned conflict of interest fulfills the requirement of proper cause for removal, pursuant to KRS 63.080(2)(d).

WHEREAS, the Board, believing removal to be in the best interest of KSU, requests that the Council for Post-Secondary Education investigate Dr. Bearden and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor concerning removal of Dr. Bearden from the Kentucky State University Board of Regents.

NOW, THEREFORE, BE IT HEREBY RESOLVED KENTUCKY STATE UNIVERSITY BOARD OF REGENTS hereby formally provides written notice pursuant to KRS 63.080(2)(c)(1) to the Council for Post-Secondary Education that board member Dr. Karen Bearden has created an impermissible conflict of interest by filing a lawsuit against Kentucky State University and that said conduct may warrant removal from the Kentucky State University Board of Regents.

Elaine Ferris
Chair, Kentucky State University Board of Regents

Dated: 6/7/18

Kentucky State University Request to Remove Regent Dr. Karen Bearden – Dr. Bearden’s Request for Stay

ACTION: Respondent Dr. Bearden has requested a stay of the proceedings pending her formal request for an Attorney General Opinion on legal issues concerning the following: (1) Whether the Council on Postsecondary Education (“Council” or “CPE”) has a conflict of interest disqualifying it to investigate and oversee the removal process for Dr. Bearden; and (2) Whether KRS 63.080(2)(c)(3) violates Dr. Bearden’s rights to due process by not providing an opportunity for an evidentiary hearing. Council staff recommends that Dr. Bearden’s request be denied.

Alleged Disqualifying Conflict of Interest

Dr. Aaron Thompson, Executive Vice President of the Council and former Interim President of Kentucky State University (KSU), was named in his individual capacity in the lawsuit filed by Dr. Bearden that provides the KSU board’s basis for petitioning her removal.

In support of her claim that the Council has a conflict on interest in “determining whether to remove Dr. Bearden from the Kentucky State University Board of Regents,” Dr. Bearden argues that “CPE serves as the trier of fact” and that “CPE would be investigating and reviewing the actions and conduct of one of its own executives in determining the fate of Dr. Bearden’s removal.” *Id.* at Page 3. First, the Council is not charged as a “trier of fact” but rather as an investigator who, after investigation, provides a nonbinding recommendation to the Governor within 30 days of receipt of notice of request for removal. KRS 63.080(2)(c)3. In carrying out that responsibility, CPE staff gathered information and provided it to the Council along with a recommendation for board action. As discussed with the Council at its last meeting, Dr. Thompson has been recused from any involvement in the investigation. The investigation has been conducted solely by General Counsel and Associate Vice President Travis Powell and President Bob King. Mr. Powell reports directly to President King. While Dr. Thompson is clearly well respected by the Council and a valued member of staff, all Council staff work at the pleasure of the Council president. The only personnel decision made by the Council is that of President. KRS 164.013.

Second, the ultimate recommendation to the Governor is made by the Council board, not Council staff. Dr. Thompson is not a member of the Council board, but even if he

were, he would simply recuse himself from participating in that decision just as he has done as a member of staff. Recusal is the mechanism by which individual conflicts are managed in board decisions every day. There is no reason why this matter should be treated any differently.

KRS 63.080(2)(c)3. and Violation of Due Process Through Failure of an Opportunity for an Evidentiary Hearing.

KRS 63.080(2)(a) provides that individual members of public university and community college systems boards of trustees or boards of regents shall not be removed except for cause. Subsection (3) states that a member may be removed for cause for conduct, including but not limited to, malfeasance, misfeasance, incompetence, or gross neglect of duty. As stated above, subsection (2)(c)3. requires that within thirty (30) days from when the Council receives a request for removal it “shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed.”

Until legally directed otherwise, the Council has no authority to postpone the making of its recommendation. The statute clearly directs it to provide a recommendation to the Governor within thirty (30) days of receipt of notice of the request for removal, and there is no basis upon which it should ignore that statutory obligation.

As for the process for making the determination, again, KRS 63.080(2)(c)3. requires that the Council “investigate the member and the conduct alleged to support removal.” As the nature of the conduct alleged will inevitably differ with each petition for removal, the Council must possess the flexibility to determine the most appropriate investigatory process for each unique set of circumstances. In this instance, the petition for removal centers solely on Dr. Bearden filing a complaint against the institution and how its filing “created an impermissible conflict of interest” See Exhibit A. At issue here is not whether the factual allegations made by Dr. Bearden are true, but rather whether the act of filing the complaint with the requested compensation including punitive damages constitutes “cause” for removal. The underlying facts supporting KSU’s claim are not at issue.

While the facts are undisputed, the Council has provided KSU with the opportunity to further flesh out its argument for removal and Dr. Bearden with the opportunity to respond as to why her actions should not constitute cause for removal. Both KSU and Dr. Bearden have complied, all materials have been provided to the Council members for consideration in making their determination, and the proposed recommendation was crafted after close review of those submissions and review of applicable law. The

Franklin Circuit Court dismissed her complaint based on the rule of law and the factual allegations made were not adjudicated. KSU's basis for petitioning Dr. Bearden's removal has no relation to the veracity of the factual allegations made by Dr. Bearden; thus, there is no reason for the Council to evaluate them in making its recommendation.

Conclusion

Without any legal direction otherwise, the Council must fulfill its responsibilities set forth in KRS 63.080(2) and make a recommendation to the Governor as to KSU's request for Dr. Bearden's removal from its board within the thirty (30) day time frame. In addition, as to the underlying issues raised by Dr. Bearden, the recusal from this process by Executive Vice President Dr. Thompson eliminates any concerns raised that the decision made by the Council could be made with unfair bias against her. The statute provides appropriate latitude for the Council to perform investigations into claims made by institutional boards or the Governor for removal of a board member depending on the particular facts and circumstances at hand. Considering that the underlying facts of this case are not in dispute, the Council's investigation process appropriately addresses any due process concerns Dr. Bearden may have in its making of a non-binding recommendation to the Governor.

COMMONWEALTH OF KENTUCKY
KENTUCKY COUNCIL ON POSTSECONDARY EDUCATION

KENTUCKY STATE UNIVERSITY
BOARD OF REGENTS

PETITIONER

v.

REQUEST FOR STAY
PENDING ATTORNEY GENERAL OPINION AND
FORMAL REQUEST FOR HEARING
Electronically Submitted

KAREN W. BEARDEN, PH.D.

RESPONDENT

Respondent, Karen W. Bearden, Ph.D. (“Dr. Bearden”), by and through counsel, hereby submits this Request for a Stay pending her formal request for an Attorney General Opinion on legal issues concerning the following: (1) Whether the CPE has a conflict of interest disqualifying it to investigate and oversee the removal process for Dr. Bearden; and (2) Whether KRS 63.080(2)(c)(3) violates Dr. Bearden’s rights to due process by not providing an opportunity for an evidentiary hearing. (*See Request for Attorney General Opinion attached hereto*).

Accordingly, the CPE should stay the proceedings pending Dr. Bearden’s request for an Attorney General’s opinion. The Attorney General has been charged with reviewing the legality of KRS 63.080(2)(c)(3), determining if the CPE has a conflict of interest and requested to issue an opinion concerning Dr. Bearden’s due process rights. Because the Attorney General’s opinion directly impacts the direction of CPE’s role, responsibilities and duties in the investigation and course of the proceedings against Dr. Bearden, Dr. Bearden respectfully requests a stay to allow the Attorney General to weigh in on these pertinent legal issues. Indeed, to move forward would run the risk of having any decisions or actions reversed or nullified.

Moreover, Dr. Bearden alternatively requests an evidentiary hearing to allow her the opportunity to present evidence, call witnesses on her behalf and cross-examine adverse witnesses. Indeed, much of the evidence in this matter resides in witness testimony. Therefore, Dr. Bearden seeks an evidentiary hearing to present her defense.

Respectfully Submitted,

/s/ Kimberly L. Bunton

KIMBERLY L. BUNTON
1238 EAST BROADWAY, 2ND FLOOR
LOUISVILLE, KENTUCKY 40204
502.208.1037
kimberly@kimberlybuntonlaw.com

ATTORNEY FOR RESPONDENT

Certificate of Service

I hereby certify that on this 10th day of July, 2018 the foregoing has been submitted via electronic mail.

Stephen L. Baker
Joshua M Salsburey
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Counsel for Petitioner

/s/ Kimberly L. Bunton

ATTORNEY FOR RESPONDENT

Honorable Andy Beshear
July 10, 2018
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Kimberly L. Bunton
Attorney at Law
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Louisville, Kentucky 40204
kimberly@kimberlybuntonlaw.com
502.208.1037

July 10, 2018

Hon. Andy Beshear
ATTN: OPINIONS
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601

RE: **FORMAL REQUEST FOR ATTORNEY GENERAL OPINION**

Dear Attorney General Beshear:

Pursuant KRS 15.025(4), I make a formal request for an Attorney General opinion determining the whether the correct interpretation and enforcement of following questions of law:

A. Questions of Law

1. Whether the Council on Postsecondary Education (“CPE”) has a conflict of interest in determining whether to remove Dr. Karen Bearden (“Dr. Bearden”) from the Kentucky State University Board of Regents where the alleged basis for the recommended removal involves a lawsuit Dr. Bearden filed against Kentucky State University (“KSU”) and other defendants, including but not limited to, CPE’s current executive vice president and chief academic officer, Dr. Aaron Thompson. (*See Resolution and Complaint attached hereto as Exhibit A*)
2. Whether KRS 63.080(2)(c)(3) provides due process for a university board member recommended for removal by not allowing the board member the opportunity for an evidentiary hearing and witness testimony in support of their defense.

B. Relevant Facts

On or about October 4, 2004, Gov. Ernie Fletcher appointed Dr. Bearden to serve on the Kentucky State University Board of Regents (“Board of Regents”). Gov. Steve Beshear then re-appointed Dr. Bearden on or about July 10, 2013. For approximately six years, Dr. Bearden served as Chairperson for the Board of Regents. Dr. Bearden’s term expires on or about June 30, 2019.

On or about February 27, 2017, the Kentucky State University of Board of Regents took a vote of “no confidence” against Dr. Bearden in her role as President of the of the Board of Regents.

The vote of “no confidence” came after a long malicious public campaign by certain members of the Board of Regents, staff and faculty and others associated (Collectively “Lawsuit Defendants”) with the KSU to discredit Dr. Bearden’s professional reputation. Specifically, allegations were made against Dr. Bearden falsely accusing her of interfering with the administration of the university, mismanaging funds in which as a Board of Regent, she didn’t have access to or control of; and ultimately, in support of these claims the Lawsuit Defendants falsely accused her of having an affair with a former KSU president which proved to be fatal to her reputation and term as chairperson for the Board of Regents. During this time, Dr. Aaron Thompson (“Dr. Thompson”) served as interim president of KSU. He also participated in the dissemination of the false information of Dr. Bearden and failed to acknowledge the formal grievance she filed with the administration.

Initially, Dr. Bearden filed a formal grievance with the KSU administration regarding the malicious distribution of false information by members of the faculty and expressly made KSU aware of the harassment and intimidation. KSU never responded to Dr. Bearden’s grievance nor expressed any concern for the harassment and intimidation Dr. Bearden experienced. Moreover, there appeared to be no process, policy or procedure, like that which exists for faculty, staff and students, to address issues and concerns of a board member.

On or about January 2, 2018, after having her concerns ignored, and experiencing a loss of business¹ due to the damage to her professional reputation, Dr. Bearden filed a lawsuit seeking damages against the Lawsuit Defendants including Dr. Thompson, in their individual capacities.

On or about June 7, 2018, Franklin Circuit Court dismissed Dr. Bearden’s lawsuit. On the same day, the Board of Regents passed a Resolution to remove Dr. Bearden from the Board of Regents for “creat[ing] a conflict of interest by filing a lawsuit against KSU.” *Id.* The Resolution was forwarded to CPE for investigation and implementation of KRS 63.080(2)(c)(3). Specifically, the associate vice president and general counsel for CPE serves as lead and facilitator of the investigation of Dr. Bearden and is responsible for facilitating the KRS 63.080(2)(c)(3) process, including but not limited to, setting deadlines, mapping the process and

¹ Dr. Bearden has served on governing boards for institutions of higher learning for over twenty-five (25) years. In addition, Dr. Bearden is a management consultant whose clients include public and private colleges and universities.

communication with the parties. CPE admits it has not yet memorialized any policies and procedures to govern the KRS 63.080(2)(c)(3) process.²

Moreover, as the first removal case under KRS 63.080(2)(c)(3), this matter presents a case of first impression. Specifically, there is no process in place, statutorily or internally, that allows for evidence to be presented by witness testimony.

In addition, Dr. Aaron Thompson, a named defendant in the lawsuit, serves as current executive vice president and chief academic officer for CPE on the executive team with the general counsel. Indeed, there appears to be a conflict of interest on behalf of CPE.

C. Discussion

1. *Whether the Kentucky Council on Postsecondary Education (“CPE”) has a conflict of interest in determining whether to remove Dr. Karen Bearden (“Dr. Bearden”) from the Kentucky State University Board of Regents where the alleged basis for the recommended removal involves a lawsuit Dr. Bearden filed against Kentucky State University and other defendants, including but not limited to, CPE’s current executive vice president and chief academic officer, Dr. Aaron Thompson.*

Pursuant to KRS 63.080(2)(c)(3), CPE plays a major role in the removal process of a member of a board of trustees. Specifically, KRS 63.080(2)(c)(3) provides:

...after receipt of notice from the Governor or the board, the Council on Postsecondary Education shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation.

Essentially, CPE serves as the trier of facts. The Resolution recommending removal of Dr. Bearden directly involves Dr. Thompson, executive vice president and chief academic officer of CPE, as a named defendant. Any evidence, witness testimony and pleadings stem from facts and circumstances surrounding the lawsuit Dr. Bearden filed against Dr. Thompson. Essentially, the CPE would be investigating and reviewing the actions and conduct of one of its own executives in determining the fate of Dr. Bearden’s removal. Moreover, should an evidentiary hearing be allowed, Dr. Thompson is subject be called a witness.³

As outlined in the email setting forth the process, CPE associate vice president and general counsel Council will conduct a special meeting to consider staff’s written recommendation on KSU’s petition for removal upon conclusion of the investigation and make a final recommendation to the Governor in accordance with KRS 61.080(2).

² CPE’s associate vice president and general counsel candidly admitted CPE has not developed policies and procedures for the implementation of KRS 63.080(2). The process was “described” to the associate vice president and general counsel at the CPE board meeting on June 22, 2018. (See Email attached hereto as Exhibit B)

³ KRS 63.080(2)(c)(3), does not expressly provide for hearings. Accordingly, Dr. Bearden has requested a hearing to present witness testimony in support of her defense.

The visual conflict of interest is obvious. The trier of facts should be removed from the facts, issues, circumstances and parties involved. Indeed, if this were a judge, the judge would have to recuse himself; likewise, a juror. The appearance of impropriety is strong.

Traditionally, a conflict of interest occurs when a public official's or employee's decisions are, or could be, influenced by personal interests. Certainly, in these situations, the matter would be assigned to a different agency to handle or a special tribunal would be assembled.

2. *Whether KRS 63.080(2)(c)(3) provides due process for a university board member recommended for removal by not allowing the board member the opportunity for an evidentiary and witness testimony to support their defense.*

Dr. Bearden has a protected property interest that requires application of procedural due process. The removal process outlined in KRS 63.080(2)(c)(3) is sparse in procedural detail. Specifically, KRS 63.080(2)(c)(3) states as follows:

A member of a board of trustees or board of regents specified in paragraph (a) of this subsection may be removed for cause as follows:

1. The Governor or the board of trustees or board of regents, as applicable, shall notify, in writing, the member and the Council on Postsecondary Education that the member should be removed for cause and shall specify the conduct warranting removal;
2. The member shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the member's conduct does not warrant removal;
3. Within thirty (30) days after receipt of notice from the Governor or the board, the Council on Postsecondary Education shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed, a copy of which shall also be provided to the Legislative Research Commission;
4. The Governor shall then make a determination, in writing, whether the member should be removed and shall notify the member, the applicable board, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and
5. If the Governor's determination is to remove the member, the Governor shall remove the member by executive order, and shall replace the member with a new appointment according to the applicable statutes for the board of trustees or board of regents.

The language of the statute is overly broad and ambiguous concerning the evidentiary phase. Specifically, Section Two only states to "provide evidence" and does not specify format

or character of the evidence. Congruently, CPE admits it does not have any policy and procedures in place to facilitate KRS 63.080(2)(c)(3). For example, CPE improvised its obligation in Section 3, by sending an email to KSU's counsel and Dr. Bearden's counsel providing KSU seven (7) days to provide "evidence" to support its petition for removal and reciprocally, Dr. Bearden seven (7) days to respond to the petition. (*See* Email Attached hereto as Exhibit C) There is no opportunity for a hearing.

First, the time frame is unreasonable considering the voluminous amount of people involved in the matter.⁴ Second, the nature of the underlying case which includes slander, requires witness testimony. As a matter of due process, Dr. Bearden should be afforded an opportunity to present evidence, call witnesses on her behalf and cross-examine adverse witnesses. Third, the lack of internal policies and procedures by CPE creates the opportunity for an arbitrary and capricious process that potentially lacks consistency, objectivity and formality.

Both the United States and Kentucky Constitutions protect a person against deprivation of his or her property interests without due process of law. Dr. Bearden has a property interest in her position on the Board of Regents. "A property interest can be created by a state statute, a formal contract, or a contract implied from the circumstances." *Singfield v. Akron Metro. Hous. Auth.*, 389 F.3d 555, 565 (6th Cir. 2004). Moreover, in a related situation, it has been determined that a property interest can arise where an individual has received express guarantee that they will not be removed from the position except for cause. *Springfield v. Graham*, 212 F. App'x 530, 537-39 (6th Cir. 2007); See also *Crosby v. Univ. of Ky., et. al.* In the instance matter, Dr. Bearden's property interest is statutorily created by KRS 63.080 which expressly states "a member of a board of trustees or board of regents specified in paragraph (a) of this subsection may be *removed for cause* as follows..."

Moreover, the Due Process Clause of the Fourteenth Amendment protects an individual's liberty interest in their "reputation, good name, honor, and integrity." *Quinn v. Shirey*, 293 F.3d 315, 319 (6th Cir. 2002) (quoting *Chilingirian v. Boris*, 882 F.2d 200, 205 (6th Cir. 1989)). "[W]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Bd. of Regents v. Roth*, 408 U.S. 564, 573 (1972) (quoting *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971)).

Therefore, in light of the fact that Dr. Bearden could only be removed from the Board of Regents "for cause" she has a legitimate property interest claim to her board position and right to an evidentiary hearing.

Accordingly, Dr. Bearden respectfully seeks a formal opinion from the Attorney General confirming the following: (1) CPE's conflict of interest of presiding over the removal process for Dr. Karen Bearden which involves a current CPE executive; and (2) Whether KRS

⁴ There are thirteen (13) individuals named in the Verified Complaint.

Honorable Andy Beshear

July 10, 2018

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63.080(2)(c)(3) provides due process for a university board member recommended for removal by not affording the board member an opportunity to present evidence, call witnesses on her behalf and cross-examine adverse witnesses.

Thank you for your prompt consideration.

Sincerely,

Kimberly L. Bunton

Kimberly L. Bunton

Attorney for Dr. Karen Bearden

RESOLUTION

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WHEREAS, Dr. Bearden has created a conflict of interest by filing a lawsuit against KSU. (Attached: Civil Complaint)

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WHEREAS, pursuant to KRS 63.080(2)(c)(4), “[t]he Governor shall make the determination, in writing, whether the member should be removed and shall notify the member, the board, the Council on Postsecondary Education, and the LRC of the determination.

WHEREAS, “[i]f the Governor’s determination is to remove the member, the Governor shall remove the member by executive order...” KRS 63.080(2)(c)(5)

WHEREAS, through the statutory removal process, Dr. Bearden will have an opportunity to rebut any action taken against her.

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WHEREAS, the Board, believing removal to be in the best interest of KSU, requests that the Council for Post-Secondary Education investigate Dr. Bearden and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor concerning removal of Dr. Bearden from the Kentucky State University Board of Regents.

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Elaine Jarvis
Chair, Kentucky State University Board of Regents

Dated: 6/7/18

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY
COMMONWEALTH OF KENTUCKY
CIVIL ACTION NO. _____

KAREN W. BEARDEN, Ph.D.

PLAINTIFF

v.

VERIFIED COMPLAINT

KENTUCKY STATE UNIVERSITY

**SERVE: M. Christopher Brown, II, Ph.D.
Kentucky State University
400 East Main Street
Frankfort, Kentucky 40601**

**SERVE: Attorney General Andy Beshear
Office of The Attorney General
710 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449**

and

**ELAINE FARRIS
In Her Individual Capacity
1006 Windsor Court
Shelbyville, Kentucky 40065**

and

**KIMBERY A. SIPES-MATTHEWS
In Her Individual Capacity
509 Oaklawn Drive
Mount Sterling, Kentucky 40353**

and

**ASHOK KUMAR
In His Individual Capacity
400 East Main Street
Frankfort, Kentucky 40601**

Presiding Judge: HON. THOMAS DAWSON WINGATE (648243)

COM: 000001 of 000013

and

CYNTHIA S. GLASS,
In Her Individual Capacity
400 East Main Street
Frankfort, Kentucky 40601

and

MARA LEE MERLINO
In her Individual Capacity
1096 Twelve Oaks Drive
Lawrenceburg, Kentucky 40342

and

TIERRA FREEMAN TAYLOR
In Her Individual Capacity
326 Cane Run Camp Road
Harrodsburg, Kentucky 40330

and

JOSEPH W MOFFET
In His Individual Capacity
8000 John Davis Drive, Apt 2901
Frankfort, Kentucky 40601

and

KENNETH ANDRIES
In His Individual Capacity
1440 Pigeon Fork Road
Lawrenceburg, Kentucky 40342

and

DANTREA HAMPTON
In her Individual Capacity
109 Schenkelwood Drive
Frankfort, Kentucky 40601

and

REBA RYE
In Her Individual Capacity
220 East Campbell Street
Frankfort, Kentucky 40601

and

PETER SMITH
In His Individual Capacity
400 East Main Street
Frankfort, Kentucky 40601

and

AARON THOMPSON
In His Individual Capacity
175 Wildcat Drive
Richmond, Kentucky 40475

and

RONALD MOORE, SR.
In His Individual Capacity
312 East Third Street
Frankfort, Kentucky 40601

DEFENDANTS

Plaintiff, Karen W. Bearden, Ph.D. ("Plaintiff"), hereby brings her Verified Complaint against Defendants, Kentucky State University ("KSU"), Elaine Farris, in her individual capacity, Kimberly Sipes-Matthews, in her individual capacity, Wilfred Reilly, in his individual capacity, Ashok Kumar, in his individual capacity, Cynthia S. Glass, in her individual capacity, Mara Lee Merlino, in her individual capacity, Joseph Moffet, in his individual capacity, Kenneth Andries, in his individual capacity, Dantrea Hampton, in her individual capacity, Reba Rye, in her individual capacity, Peter Smith, in his individual capacity, Aaron Thompson, in his individual

capacity, and Ronald Moore, Sr., in his individual capacity (Collectively "Defendants") and states as follows:

PARTIES

1. Plaintiff, Karen W. Bearden, Ph.D. ("Plaintiff") is an individual who resides in the Commonwealth of Kentucky.
2. Defendant Kentucky State University ("KSU") is a Kentucky public university located in Frankfort, Franklin County, Kentucky. It may be served through its President and the Attorney General.
3. Defendant Elaine Farris, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
4. Defendant Kimberly Sipes-Matthews, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
5. Defendant Wilfred Reilly, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
6. Defendant Ashok Kumar, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
7. Defendant Cynthia S. Glass, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

- 8. Defendant Mara Lee Merlino, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
- 9. Defendant Joseph Moffett, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
- 10. Defendant Kenneth Andries, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
- 11. Defendant Dantrea Hampton, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
- 12. Defendant Reba Rye, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
- 13. Defendant Peter Smith, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
- 14. Defendant Aaron Thompson, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

15. Defendant Ronald Moore, Sr., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

JURISDICTION AND VENUE

16. An actual and justiciable controversy exists and this Court has jurisdiction of the Defendants because Defendants work and do business in Franklin County, Kentucky and because the subject matter of this action is located in Franklin County, Kentucky.
17. The Franklin Circuit Court is the appropriate venue for this action because the Defendants may be summoned to Franklin Circuit Court and actions against a state agency is proper in Franklin Circuit Court.

BACKGROUND

18. Plaintiff is currently a member of the Kentucky State University Board of Regents ("Board of Regents"). Plaintiff was originally appointed by Governor Ernie Fletcher on October 4, 2004. Plaintiff was then re-appointed by Governor Steve Beshear on or about July 10, 2013. Her current term runs until June 30, 2019. There are eleven members of the Board of Regents.
19. Plaintiff has served on governing boards for institutions of higher learning for over twenty-five (25) years. In addition, Plaintiff is a management consultant whose clients include public and private colleges and universities.
20. Plaintiff served as Chairperson for the Board of Regents from 2012-2017.
21. The Kentucky State University ("KSU") is an institution of the Commonwealth of Kentucky. *See e.g.*, KRS 164.810, *et seq.* The University is governed by a Board of Regents

("Board"), the membership of which is determined by a statute that calls for most of the Board to be appointed by the Governor. KRS 164.821.

22. Defendant Farris is the current chairperson for the Board of Regents.
23. Defendant Sipes-Matthews, Defendant Reilly, Defendant Kumar, Defendant Glass, Defendant Merlino, Defendant Moffett, Defendant Rye, Defendant Smith and Defendant Andries are all members of the KSU faculty and KSU Faculty Senate.
24. Defendant Thompson is an individual and former KSU Interim President.
25. Defendant Hampton is the current president of the KSU Faculty Senate.
26. Defendant Moore is President of KSU Frankfort Alumni Chapter.

A. Misrepresentation of Plaintiff's Relationship with Former KSU President

27. During the Spring Semester of 2017, members of the KSU Faculty Senate began a campaign to have the Plaintiff removed as chairperson of the Board of Regents ("Removal Campaign").
28. Part of the Removal Campaign included the malicious distribution, dissemination, and circulation of false information alleging that Plaintiff was engaged in an "inappropriate" relationship with a former Kentucky State University President
29. This false information was distributed, disseminated and published via a thread of electronic communications shared by Defendant Sipes, Defendant Rye and Defendant Merlino.
30. This false information was also distributed, disseminated and published during Faculty Senate meetings and to the local media.

B. Misrepresentation of Plaintiff's Role in the Presidential Search Process

31. On or about February 27, 2017, Defendants continued their Removal Campaign by instituting a vote of "no confidence" against Plaintiff. Defendants fostered and created a hostile atmosphere and environment based on false accusations and allegations against the Plaintiff.
32. Defendants, specifically Defendant Farris and Defendant Sipes, publicly and falsely accused Plaintiff of improperly influencing the presidential search which was facilitated by a committee comprised of KSU Regents, members of the Frankfort community and other KSU stakeholders. Defendants statements against the Plaintiff were false and unsubstantiated.
33. Moreover, Defendants Farris and Sipes harassed and intimidated Plaintiff in an attempt to induce Plaintiff to influence the outcome of the presidential search.
34. On or about March 25, 2017, members of the Faculty Senate maliciously initiated a vote of "no confidence" against the Plaintiff as chairperson for the Board of Regents and the overall Board of Regents. Defendant members of the Faculty Senate told the local paper that the "presidential search was a tipping point." <http://www.state-journal.com/2017/03/25/facultys-vote-of-no-confidence-in-kentucky-state-university-board-of-regents-a-crossroad-for-school/>.
35. Defendants continued spreading false information regarding Plaintiff resulting in a significant economic and financial loss for Plaintiff.
36. Plaintiff filed a complaint with the KSU administration regarding the malicious distribution of false information by Defendant members of the Faculty Senate and expressly made KSU

aware of the harassment and intimidation. KSU did not respond to Plaintiff's complaints or express concerns of harassment and intimidation.

COUNT I – DEFAMATION

(All Defendants)

37. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-36 as if fully set forth herein.
38. Defendants, acting in concert, misrepresented to the public and the media false accusations that Plaintiff had an "inappropriate" relationship with a former KSU president.
39. Defendant KSU failed to investigate Plaintiff's formal complaint filed with the KSU administration alleging the conspiracy to publish false statements Defendant members of the Faculty Senate, Defendant Farris, Defendant Hampton, other members of the administrative staff and faculty. The Defendants acted in their individual capacities in doing so much as action and publications were not within their authority.
40. The aforementioned activity by all individual Defendants in this case are oral and written statements that libeled and slandered the Plaintiff.
41. Plaintiff's reputation was damaged as a direct and proximate result of individual Defendants' defamation: Plaintiff was exposed to and experienced disgrace, ridicule, and contempt in the estimation of her friends, acquaintances, colleagues and the public.

COUNT II – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(All Defendants)

42. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-41 as if fully set forth herein.
43. Defendants recklessly or intentionally inflicted emotional distress on Plaintiff through their actions beginning February 28, 2017 and thereafter.

- 44. Defendants conduct was reckless and intentional.
- 45. Defendants conduct was outrageous and intolerable in that it offends against socially accepted standards of decency and morality in society.
- 46. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT III- TORTIOUS INTERFERENCE WITH BUSINESS

(All Defendants)

- 47. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-46 as if fully set forth herein.
- 48. Plaintiff is a management consultant who is widely known for her specialized work consulting and advising institutions of higher learning.
- 49. Plaintiff had valid business relationships with and/or expecting business relationships with several institutions of high learning.
- 50. Defendants were aware of Plaintiff's business and/or expectant business relationships.
- 51. Defendants intentionally interfered with Plaintiff's business and/or expectant business relationships.
- 52. Defendants conduct caused Plaintiff special damages in the form of loss of position, reputation, existing and future business, and other loss of economic and financial advantages to the Plaintiff.

COUNT IV- HOSTILE ENVIRONMENT

(Defendant KSU)

- 53. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-52 as if fully set forth herein.

- 54. Defendant KSU conduct, and in action regarding the formal complaint filed by Plaintiff, was so severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive.
- 55. Plaintiff subjectively regarded the environment created by Defendant KSU as abusive.
- 56. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT IV- HARASSMENT AND INTIMIDATION

(All Defendants)

- 57. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-56 as if fully set forth herein.
- 58. Defendants intentionally engaged in hostile behavior to intimidate Plaintiff.
- 59. Plaintiff was subjectively regarded the Defendants behavior as abusive.
- 60. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT V- PUNITIVE DAMAGES

(All Defendants)

- 61. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-60 as if fully set forth herein.
- 62. Defendants actions vis-à-vis Plaintiff were taken with oppression and malice.
- 63. Plaintiff is entitled to punitive damages pursuant to KRS 411.184 in as amount sufficient to punish Defendants for their conduct and to discourage similar conduct in the future.

COUNT VI- ATTORNEYS FEES

(All Defendants)

- 64. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-62 as if fully set forth herein.
- 65. Plaintiff is entitled to attorney's fees, pursuant to KRS 337.385, common law and equity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Karen W. Bearden, Ph.D. prays for a judgment in her favor as follows:

- A. Compensatory damages in an amount determined by the trier of fact;
- B. Punitive Damages in the amount to be determined by the trier of fact;
- C. Liquidated damages pursuant to KRS 337.385;
- D. A reasonable award of Plaintiff's costs, and attorney's fees herein expended under KRS 337.385.
- E. Trial by jury on all counts so triable;
- F. Pre-and post-judgment interest at the legal rate; and
- G. All other relief to which Plaintiff may be entitled.

Respectfully Submitted,



KIMBERLY L. BUNTON
1238 EAST BROADWAY, 2ND FLOOR
LOUISVILLE, KENTUCKY 40204
502.554.9954
KIMBERLY@TALBOTTBUNTON.COM

Presiding Judge: HON. THOMAS DAWSON WINGATE (648243)

COM : 000012 of 000013



Kimberly Buntun <klbuntun@gmail.com>

KSU - Request for Board Member Removal

Powell, Travis (CPE) <travis.powell@ky.gov>

Mon, Jul 9, 2018 at 7:45 AM

To: "kimberly@kimberlybuntunlaw.com" <kimberly@kimberlybuntunlaw.com>

Cc: "Lisa.Lang@kysu.edu" <Lisa.Lang@kysu.edu>, "jdittert@sturgillturner.com" <jdittert@sturgillturner.com>

Good morning Kimberly,

No, we do not. At least not formally. The investigation process I outlined in my original email to you and KSU counsel was described by me to our board during its meeting June 22nd, but that and what is outlined in the statute is all we have.

Thanks,

Travis

[Quoted text hidden]



Kimberly Bunton <klbunton@gmail.com>

Kentucky State University - Request for Board Member Removal

3 messages

Powell, Travis (CPE) <travis.powell@ky.gov>

Tue, Jun 26, 2018 at 2:45 PM

To: "jdittert@sturgillturner.com" <jdittert@sturgillturner.com>, "jsalsburey@sturgillturner.com"

<jsalsburey@sturgillturner.com>, Kimberly Bunton <kimberly@kimberlybuntonlaw.com>, "Lang, Lisa" <Lisa.Lang@kysu.edu>

Cc: "King, Robert L (CPE)" <Robert.King@ky.gov>, "Faesy, Heather M (CPE)" <Heather.Faesy@ky.gov>

Good afternoon everyone,

KRS 63.080(2) provides a process for a board of trustees or regents for Kentucky's public universities and community college system to request the removal of one of its members for cause. In order to initiate this process, the board must notify the member and the Council on Postsecondary Education that the member should be removed for cause and specify the conduct warranting removal. The member shall then have seven (7) days to voluntarily resign or provide evidence to the Council that the member's conduct does not warrant removal. If the member does not resign, the Council shall investigate the member and the conduct alleged to support removal and make a nonbinding recommendation, in writing, to the Governor as to whether the members should be removed. The Governor shall then make the final determination, in writing, whether the member should be removed.

On June 18, 2018 both the Council and Dr. Karen Bearden, member of the Kentucky State University (KSU) board of regents, had received official notice that the KSU board unanimously adopted a resolution to remove Dr. Bearden from its board (attached). At close of the seven (7) day window, Monday, June 25, 2018, Dr. Bearden had not resigned. This morning I was informed by her counsel, Kimberly Bunton, of the following:

Dr. Bearden is renewing her offer to all parties to resign from the board, if she receives an apology and the board rescinds their resolution recommending removal.

She would prefer to avoid any process where sensitive information regarding both parties would be made public and cause further damage.

I am passing along this information for consideration by KSU and the parties are welcome to discuss a mutually agreeable resolution without my involvement. If at any point on or before July 18, 2018 (expiration of 30 days) the petition for removal is withdrawn by KSU and/or a resignation from Dr. Bearden is received, the Council will accept it and discontinue its investigation.

In order to complete its investigation, the Council requests that KSU provide information and discussion to support its request for removal to me and Ms. Bunton via email attachment by midnight July 3, 2018. Ms. Bearden shall then have until midnight July 10, 2018 to respond to me and KSU via email attachment. After review of correspondence from both parties, I will let the parties know if I need any further information or clarification. While an exact time has not been set, on July 18, 2018 the Council will conduct a special meeting to consider staff's written recommendation on KSU's petition for removal upon conclusion of the investigation and make a final recommendation to the Governor in accordance with KRS 61.080(2).

If you have any questions, please let me know.

Sincerely,

Travis Powell

General Counsel and

Associate Vice President

Council on Postsecondary Education

1024 Capital Center Dr., Suite 320

Frankfort, KY 40601

(502) 573-1555

Travis.Powell@ky.gov

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2 attachments



2018_06_13_KSU Resolution_Bearden_Karen.pdf

61K



2018_06_13_KSU Verified Complaint_Bearden_Karen.pdf

280K

Joshua Salsburey <JSalsburey@sturgillturner.com>

Tue, Jun 26, 2018 at 2:48 PM

To: "Powell, Travis (CPE)" <travis.powell@ky.gov>, Jamie Wilhite Dittert <jdittert@sturgillturner.com>, Kimberly Bunton <kimberly@kimberlybuntonlaw.com>, "Lang, Lisa" <Lisa.Lang@kysu.edu>

Cc: "King, Robert L (CPE)" <Robert.King@ky.gov>, "Faesy, Heather M (CPE)" <Heather.Faesy@ky.gov>

Thank you. My office acknowledges its receipt of this message and its attachments.

Joshua M. Salsburey

Member

jsalsburey@sturgillturner.com



Sturgill, Turner, Barker & Moloney, PLLC

[333 West Vine Street, Suite 1500](#)

Lexington, KY 40507

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From: Powell, Travis (CPE) [mailto:travis.powell@ky.gov]
Sent: Tuesday, June 26, 2018 2:46 PM
To: Jamie Wilhite Dittert; Joshua Salsburey; Kimberly Bunton; Lang, Lisa
Cc: King, Robert L (CPE); Faesy, Heather M (CPE)
Subject: Kentucky State University - Request for Board Member Removal

[Quoted text hidden]

Kimberly Bunton <kimberly@kimberlybuntonlaw.com> Tue, Jun 26, 2018 at 5:59 PM
To: Joshua Salsburey <jsalsburey@sturgillturner.com>, "Powell, Travis (CPE)" <travis.powell@ky.gov>, Jamie Wilhite Dittert <jdittert@sturgillturner.com>, Kimberly Bunton <kimberly@kimberlybuntonlaw.com>, "Lang, Lisa" <lisa.lang@kysu.edu>
Cc: "King, Robert L (CPE)" <robert.king@ky.gov>, "Faesy, Heather M (CPE)" <heather.faesy@ky.gov>

I am in receipt of the email and attached documents.

Kimberly

Kimberly L. Bunton, Attorney
1238 East Broadway, 2nd Fl
Louisville, Kentucky 40204
502.208.1037 | 866.512.1068 (fax)

From: Joshua Salsburey <jsalsburey@sturgillturner.com>
Sent: Tuesday, June 26, 2018 2:49 PM
To: 'Powell, Travis (CPE)'; Jamie Wilhite Dittert; Kimberly Bunton; Lang, Lisa
Cc: King, Robert L (CPE); Faesy, Heather M (CPE)
Subject: RE: Kentucky State University - Request for Board Member Removal

[Quoted text hidden]

COMMONWEALTH OF KENTUCKY
KENTUCKY COUNCIL ON POSTSECONDARY EDUCATION

KENTUCKY STATE UNIVERSITY
BOARD OF REGENTS

PETITIONER

v.

**PETITIONER’S RESPONSE OPPOSING RESPONDENT’S REQUEST FOR
STAY PENDING ATTORNEY GENERAL OPINION AND HEARING**

Electronically Submitted

KAREN W. BEARDEN, Ph.D.

RESPONDENT

* * * * *

Petitioner, the Kentucky State University Board of Regents (the “Board”), by and through counsel, hereby requests that the Kentucky Council on Postsecondary Education (“CPE”) deny Respondent Dr. Karen Bearden’s (“Dr. Bearden”) request for a stay pending an Attorney General Opinion and for an evidentiary hearing.

First, KRS 63.080(2)(c)(3) does not permit the CPE to grant a stay. Rather, it mandates “[w]ithin thirty (30) days after receipt of notice from . . . the board, [the CPE] shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed.” KRS 63.080(2)(c)(3) (emphasis added). The statute does not provide for a stay or extension pending a decision by another agency or a court.

Second, the CPE’s procedure provides due process via a pre-removal name clearing opportunity for Dr. Bearden. Initially, Dr. Bearden had seven (7) days after receiving formal notice of the Board’s Resolution submitting this matter to the CPE to decide whether to voluntarily resign. *See* Respondent’s Motion for Stay at Exhibit C, previously submitted. After that period passed, each party was given seven (7) days to submit information regarding their

respective positions. *Id.* The Board submitted its request for removal and supporting documentation to the CPE and Dr. Bearden on July 3, 2018. *See* Petitioner's Submission in Support of Removal, previously filed. Dr. Bearden then had an opportunity to review the Board's submission and documentation and to provide her own a written response and documentation to be considered by the CPE in making its recommendation by July 10, 2018. *See* Respondent's Response to Petitioner's Submission, previously filed. Under this procedure, Dr. Bearden has the last word. Moreover, throughout this process, Dr. Bearden has been represented by counsel. This procedure provides Dr. Bearden with adequate due process.

Third, an Attorney General Opinion is an advisory opinion; it is not binding on the CPE and affects neither the constitutionality of the statute at issue here nor the Board's obligation to adhere to the procedures provided by the statute. Therefore staying this matter pending an Attorney General Opinion is unnecessary.

Finally, 63.080(2)(c)(3) requires the CPE to investigate and make a **nonbinding** recommendation to the Governor as to whether the member should be removed. This statute neither authorizes nor requires CPE to hold an evidentiary hearing like the one Respondent is requesting.¹

CONCLUSION

For the foregoing reasons, the Board respectfully requests that Dr. Bearden's request for a stay pending an Attorney General Opinion and her alternative request for an evidentiary hearing be denied.

¹ Indeed, Dr. Bearden's requested evidentiary hearing appears to be nothing more than an attempt to re-litigate her unsuccessful lawsuit.

Respectfully Submitted,

s/ Joshua M. Salsburey

Stephen L. Barker

Joshua M. Salsburey

Jamie W. Dittert

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

Telephone: 859-255-8581

Facsimile: 859-231-0851

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2018, a true and accurate copy was served via email and/or U.S. mail, first class, postage prepaid, upon:

Kimberly L. Bunton

1238 East Broadway, 2nd Floor

Louisville, KY 40204

kimberly@kimberlybuntonlaw.com

Counsel for Respondent

/s/ Joshua M. Salsburey

ATTORNEYS FOR PETITIONER

x:\wdox\clients\65554\0010\pleading\00987607.docx

Council on Postsecondary Education
July 18, 2018

Kentucky State University Request to Remove Regent Dr. Karen Bearden

ACTION: In accordance with KRS 63.080(2), the Kentucky State University (KSU) Board of Regents petitions for the removal of Regent Dr. Karen Bearden from the board due to the conflict of interest created by the filing of a lawsuit against KSU. Based on the following, staff recommends that the Council submit a recommendation to the Governor that Dr. Bearden be removed.

Council staff provides the attached for Council adoption in support of its recommendation for Dr. Bearden's removal from the KSU Board.

**KENTUCKY STATE UNIVERSITY BOARD OF REGENTS
REQUEST TO REMOVE REGENT DR. KAREN BEARDEN**

BACKGROUND

Kentucky State University, like the five (5) other public comprehensive universities in Kentucky, is governed by an eleven (11) member board of regents comprised of eight (8) citizen members appointed by the Governor, one (1) member of the teaching faculty, one (1) member of the university non-teaching personnel, and one (1) member of the university's student body. Members shall serve no more than two (2) full six (6) year consecutive terms. KRS 164.321.

KRS 63.080(2)(a) provides that individual members of public university and community college systems boards of trustees or boards of regents shall not be removed except for cause. Subsection (3) states that a member may be removed for cause for conduct, including but not limited to, malfeasance, misfeasance, incompetence, or gross neglect of duty.

The process for public university and community and technical college system board member removal was revised in 2017 through the adoption of Senate Bill 107. Previously, a board member could be removed for cause by the Governor after being afforded a hearing with counsel before the Council on Postsecondary Education (Council) and a finding of fact by the Council. 2017 Ky. Acts. Chapter 101. Now, in order to initiate the removal of a board member, the Governor or the board of trustees or board of regents, as applicable, shall notify, in writing, the member and the Council that the member should be removed for cause and shall specify the conduct warranting removal. The member shall then have seven (7) days to voluntarily resign or to provide evidence to the Council that the member's conduct does not warrant removal. Within thirty (30) days after receipt of notice from the Governor or the board, the Council on Postsecondary Education shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed, a copy of which shall also be provided to the Legislative Research Commission. KRS 63.080(2)(c). This is reiterated in KRS 164.020(38), which lists the following as one of the Council's duties and responsibilities:

Review written notices from the Governor or from a board of trustees or board of regents concerning removal of a board member or the entire appointed membership of a board, investigate the member or board and the conduct alleged to support removal, and make written recommendations to the Governor and the Legislative Research Commission as to whether the member or board should be removed.

The Governor then makes a determination, in writing, whether the member should be removed and notifies the member, the applicable board, the Council, and the Legislative Research Commission of the determination. If the Governor's determination is to remove the member, the Governor shall remove the member by executive order, and shall replace the member with a new appointment according to the applicable statutes for the board of trustees or board of regents. *Id.*

On June 18, 2018, both the Council and Dr. Karen Bearden, member of the Kentucky State University (KSU) board of regents, had received official notice that the KSU board unanimously

adopted a resolution on June 7, 2018 to remove Dr. Bearden from its board. See Exhibit 1. In its resolution, KSU argues that Dr. Bearden “created an impermissible conflict of interest by filing a lawsuit against Kentucky State University and that said conduct may warrant removal from the Kentucky State University Board of Regents.”

At its regular business meeting on June 22, 2018, General Counsel and Associate Vice President Travis Powell briefed the Council on the receipt of the resolution and stated that if Ms. Bearden did not resign on or before June 25, 2018, staff would commence an investigation as directed in the statute. KSU would be asked to submit a brief providing detail as to why it believes the filing of the lawsuit by Dr. Bearden against the institution is cause for removal. KSU would serve a copy of its brief to Mr. Powell and Dr. Bearden, and Dr. Bearden would then submit her response. CPE staff would review each submission, request any further information it deemed necessary, and provide a recommendation to the Council for board action on or before July 18, 2018. The Council would review the materials submitted, the staff’s recommendation, and then make its nonbinding recommendation to the Governor in a specially called meeting.

On June 25, 2018, Dr. Bearden, through counsel, indicated to Mr. Powell that she would not resign from her board position. The following day, Mr. Powell contacted counsel for Dr. Bearden and KSU to provide a briefing schedule as part of its investigation. KSU was instructed to provide information and discussion to support its request for removal to Mr. Powell and Dr. Bearden’s counsel by midnight July 3, 2018. Dr. Bearden would then have until midnight July 10, 2018, to provide her response. Both parties complied with the briefing schedule and each submission has been reviewed and considered. See Exhibits 2 and 3.

FINDINGS

On September 28, 2004, Governor Ernie Fletcher appointed Karen W. Bearden, Ed. D. to replace Ishmon Farley Burks on the Kentucky State University Board of Regents and serve the remainder of his unexpired term ending June 30, 2007. Executive Order 2004-1062. On August 1, 2007, Governor Fletcher appointed Dr. Bearden to her first full term as a member on the KSU Board of Regents expiring June 30, 2013. Executive Order 2007-634. On July 26, 2013, Governor Steven L. Beshear reappointed Dr. Bearden to the board for a term expiring June 30, 2019. Executive Order 2013-529. Dr. Bearden served as chair of the KSU Board of Regents from 2012 to 2017.

On January 2, 2018, Dr. Bearden filed a lawsuit in Franklin Circuit Court against KSU and several individuals with current or former ties to the university alleging defamation, intentional infliction of emotional distress, tortious interference with business, hostile environment, and harassment and intimidation. Dr. Bearden sought compensatory damages, punitive damages, liquidated damages, and costs and attorney’s fees from all defendants. See Verified Complaint as Exhibit 4; Amended Complaint as Exhibit 5.

Dr. Bearden alleged that as part of a campaign to have her removed as board chair, members of the KSU Faculty Senate, many of whom were named defendants, publicly circulated false information that Dr. Bearden was engaged in an “inappropriate” relationship with a former KSU President. This campaign also included a “malicious” vote of “no confidence” by the Faculty

Senate against her as chair and the entire Board of Regents. She also alleged that defendants publicly and falsely accused her of improperly influencing KSU's presidential search process.

After the filing of the lawsuit, Dr. Bearden attended and participated in board meetings held on March 1 and April 16, 2018. No recusals by Dr. Bearden were recorded in the approved minutes. See Exhibit 6.

KSU and the other named individual defendants filed a Motion to Dismiss the complaint. The motion was argued on May 16, 2018, and on June 7, 2018 the Franklin Circuit Court granted the defendants' motion. The Court dismissed all claims against KSU and the other named defendants. In its Order, the Court determined that the claims against KSU and defendants who were employees or board members of the institution were barred by sovereign immunity and qualified sovereign immunity. For the remainder of the defendants, Dr. Bearden failed to meet the pleading standards for any of the claims made. See Opinion and Order, Exhibit 7. The Circuit Court's Order was not appealed and thus is now final.

On May 15, 2018, the KSU Board wrote to Dr. Bearden's counsel requesting her resignation in light of her lawsuit filed against the institution and how it "unquestionably juxtaposed her own self-interests against that of KSU's interests, thereby creating a clear, impermissible, and irremediable conflict of interest." If it did not receive her resignation by May 31, 2018, the Board advised that it would have no choice but to initiate board removal proceedings. See letter, Re: Dr. Karen Bearden, Exhibit 8. The Board did not receive the requested resignation, and thus it adopted a resolution on June 7, 2018 initiating removal proceedings against Dr. Bearden for "creating an impermissible conflict of interest by filing a lawsuit against Kentucky State University."

ANALYSIS

This is an instance of first impression for the Council. Not only is the statutory process outlined for board member removal extremely new, but the prior responsibility for removal decisions afforded to the Council was never initiated. Many institutional board members have resigned in the past, but there have been no prior removal proceedings. As such, there is little guidance beyond the plain language of the statute.

As stated above, KRS 63.080(2)(a) provides that a member of a public university and Kentucky Community and Technical College System board of regents or trustees shall not be removed except for cause. Subsection (d) states that "a member may be removed for cause for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty." While a non-exclusive list, it provides a general direction as to what constitutes conduct warranting removal.

The KSU board's resolution adopted on June 7, 2018 petitioning the Council to recommend Dr. Bearden's removal from the board to the Governor focuses solely on the "impermissible conflict of interest" created "by filing a lawsuit against Kentucky State University." The truth or veracity of the claims in the lawsuit are not at issue. Dr. Bearden's claims failed on the pleadings and

through examination of questions of law, not fact. As such, it would be inappropriate to evaluate those factual claims here as they have no bearing on the Council's recommendation.

As discussed above, that lawsuit was dismissed and is now final. Dr. Bearden has chosen not to appeal. The question before the Council is therefore whether or not Dr. Bearden's actions of filing this lawsuit naming KSU and various board colleagues as defendants and asserting these particular failed claims intending to punish those defendants, constitutes sufficient cause for removal.

KSU is accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC). According to its mission statement, the purpose of SACSCOC is to assure the educational quality and improve the effectiveness of its member institutions. In order to maintain accreditation, KSU must comply with SACSCOC's *Principles of Accreditation: Foundations for Quality Enhancement* and its related policies and procedures. Section 4.1.b. of those *Principles* states that the governing board must "exercise fiduciary oversight of the institution." According to the Association of Governing Boards of Universities and Colleges (AGB), as fiduciaries university board members "must act in accordance with the fiduciary duties of care, loyalty, and obedience..." *AGB Board of Directors' Statement on the Fiduciary Duties of Governing Board Members* at 2 (July 24, 2015). Fiduciaries have special responsibilities in the administration of all assets of the institution and not just tangible assets, but also intangible assets like the reputation of the institution and its role in the community. *Id.*

With regard to the duty of loyalty, board members are required "to act in good-faith and in a manner that is reasonably believed to be in the interests of the college or university and its nonprofit or public purposes rather than their own interests or the interests of another person or organization. The fiduciary must not act out of expedience, avarice, or self-interest." *Id.* at 6.

Kentucky courts have defined fiduciary duty as "a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Steevest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 485 (Ky. 1991). This duty, when applied to the KSU board, is essential to the effective and successful operation of the institution. University and community and technical college system boards have "close to plenary power of the operation of their respective institutions." *Commonwealth, Ex Rel. Beshear v. Commonwealth, Office of the Governor, Ex Rel. Bevin*, 498 S.W.3d 355, 380 (Ky. 2016).

As a threshold matter, the filing of a lawsuit by a board member against the institution for which it serves as a fiduciary does not in and of itself constitute cause for removal. In order to bring a legitimate claim, a board member should not have to choose between his or her service on a board and recovery in order to make himself or herself whole. Furthermore, one could envision an instance in which a board member might need to invoke the courts assistance in asserting his or her rights to act as a fiduciary if somehow prohibited by the board from doing so.

However, the complaint filed by Dr. Bearden does not fall within those parameters. She only sought monetary damages against the institution to compensate her for claims based on barebones allegations that completely failed to meet the legal standards for pleadings. Most

egregiously, both Dr. Bearden's initial complaint and first amended complaint sought punitive damages against all defendants, including KSU, the institution to which she owes a duty of loyalty. See Exhibits 2 and 3. She states that KSU and the other defendants' actions were "intentional" and "undertaken with oppression and malice" and therefore she sought to "punish Defendants for their conduct and to discourage similar conduct in the future." Id.

Filing a claim for punitive damages against the institution one serves is contrary to the "special confidence" required in a fiduciary as it puts the interests of the individual above the interests of the institution he or she serves. Steele, 807 S.W.2d at 485. Regardless of the efficacy of her claims, Dr. Bearden put herself personally at odds with KSU, so much so that she wanted it punished. And not just punished generally, but by her directly and for her sole direct benefit. Any vote taken after the filing of the lawsuit must be questioned as to whether or not she has the best interest of the institution in mind. In no way does this embody the duty of loyalty required of a fiduciary and its requirement that the individual put the interests of the institution above her own. The issue of assignment of blame and the efficacy of the underlying facts are irrelevant. If a member initiates a lawsuit alleging that a board upon which he or she serves has committed multiple torts against him or her and should be punished for those actions, he or she cannot at the same time act as its fiduciary. The action and the role are incongruent.

Institutional board members will inevitably disagree on issues that substantially impact the institution. The culture of a board should invite healthy debate and respectable discourse on those issues so that the board can take action in the best interest of the institution for which it governs. In no way can filing a lawsuit for monetary and punitive damages against the institution and individual members of the board be considered healthy discourse. In fact, this would most certainly have an opposite and negative impact on board culture and on the ability of the board to govern effectively, which is at odds with the fiduciary duties expected of its members.

KRS 63.080(2)(d) provides guidance as to what constitutes "cause" for the removal of a university or community and technical college system board member and, again while instructive, that list is not exhaustive. The act of filing a lawsuit against the institution upon which board a member serves and seeking not to be made whole or direct certain conduct, but to harm and penalize the institution through monetary damages is an intentional and wrongful act at the core of malfeasance by a fiduciary, or "wrongful conduct that affects, interrupts, or interferes with the performance of official duties." Black's Law Dictionary, (6th ed. 1990). The Council believes that the blatant and public violation of fiduciary duty, the threshold virtue of service on any board, constitutes the cause sufficient to remove a member in order to allow the KSU board to properly function.

CONCLUSION

In conformance with KRS 61.080(2)(c)3. and based on the analysis provided above, the Council hereby provides its recommendation that Dr. Karen Bearden be removed from the Kentucky State University Board of Regents.

RESOLUTION

AT A MEETING OF THE KENTUCKY STATE UNIVERSITY BOARD OF REGENTS,
HELD AT KENTUCKY STATE UNIVERSITY, ON JUNE 7, 2018

RESOLUTION – KENTUCKY STATE UNIVERSITY BOARD OF REGENTS PURSUANT to KRS 63.080(2)(c)(1) hereby formally provides written notice to the Council for Post-Secondary Education that board member Dr. Karen Bearden has created an impermissible conflict of interest by filing a lawsuit against Kentucky State University and that said conduct may warrant removal from the Kentucky State University Board of Regents.

WHEREAS, Kentucky State University Board of Regents (the Board), does hereby states as follows:

WHEREAS, Dr. Karen Bearden, hereinafter referred to as “Dr. Bearden,” is a Board of Regents member of Kentucky State University (KSU).

WHEREAS, Dr. Bearden has created a conflict of interest by filing a lawsuit against KSU. (Attached: Civil Complaint)

WHEREAS, Dr. Bearden is pursuing the aforementioned lawsuit while maintaining her position on the Board of Regents and continues to insist, through Counsel, that KSU should not be dismissed as a party from the KSU lawsuit. (Attached: Video – Defendant’s Motion to Dismiss)

WHEREAS, the Board acknowledges that Dr. Bearden’s lawsuit presents a significant conflict of interest which negatively affects KSU and the Commonwealth of Kentucky,

WHEREAS, KRS 63.080(2)(a) provides the Governor with the authority to remove Board of Regent members through an executive order so long as cause is met.

WHEREAS, KRS 63.080(2)(c) provides the procedures for which a member of a board of regents may be removed.

WHEREAS, pursuant to KRS 63.080(2)(c)(1), to initiate the removal process, “[t]he Governor...or the Board of Regents, as applicable, shall notify, in writing”, to the conflicted “board member and the Council on Postsecondary Education, that the member should be removed for cause and shall specify the conduct warranting removal.”

WHEREAS, the board member then has “seven (7) days to voluntarily resign or provide evidence to the Council on Postsecondary Education that the member’s conduct does not warrant removal.” KRS 63.080(2)(c)(2)

WHEREAS, “[w]ithin thirty (30) days of receipt of the Board’s written notice, the Council on Postsecondary Education shall review the written notice, investigate the

member and the alleged conduct, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed. A copy of the recommendation shall be provided to the Legislative Research Commission” (LRC). KRS 63.080(2)(c)(3)

WHEREAS, pursuant to KRS 63.080(2)(c)(4), “[t]he Governor shall make the determination, in writing, whether the member should be removed and shall notify the member, the board, the Council on Postsecondary Education, and the LRC of the determination.

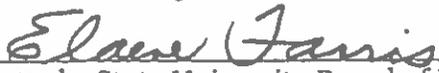
WHEREAS, “[i]f the Governor’s determination is to remove the member, the Governor shall remove the member by executive order...” KRS 63.080(2)(c)(5)

WHEREAS, through the statutory removal process, Dr. Bearden will have an opportunity to rebut any action taken against her.

WHEREAS, the Board asserts that the aforementioned conflict of interest fulfills the requirement of proper cause for removal, pursuant to KRS 63.080(2)(d).

WHEREAS, the Board, believing removal to be in the best interest of KSU, requests that the Council for Post-Secondary Education investigate Dr. Bearden and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor concerning removal of Dr. Bearden from the Kentucky State University Board of Regents.

NOW, THEREFORE, BE IT HEREBY RESOLVED KENTUCKY STATE UNIVERSITY BOARD OF REGENTS hereby formally provides written notice pursuant to KRS 63.080(2)(c)(1) to the Council for Post-Secondary Education that board member Dr. Karen Bearden has created an impermissible conflict of interest by filing a lawsuit against Kentucky State University and that said conduct may warrant removal from the Kentucky State University Board of Regents.



Chair, Kentucky State University Board of Regents

Dated: 6/7/18

COMMONWEALTH OF KENTUCKY
KENTUCKY COUNCIL ON POSTSECONDARY EDUCATION

KENTUCKY STATE UNIVERSITY
BOARD OF REGENTS

PETITIONER

v. PETITIONER'S SUBMISSION IN SUPPORT OF REMOVAL

KAREN W. BEARDEN, Ph.D.

RESPONDENT

* * * * *

Pursuant to the briefing schedule issued June 26, 2018, Petitioner, Kentucky State University Board of Regents (“Board”), by counsel, submits the following information and discussion in support of its request for the removal of Respondent Karen W. Bearden, Ph.D. (“Dr. Bearden”) from the Board:

INTRODUCTION

Pursuant to KRS 63.080(2)(c)(1), the Board asks the Council for Postsecondary Education (CPE) to issue a written recommendation to Governor Bevin that Dr. Bearden be removed from the Board. In filing a lawsuit against Kentucky State University (the “University”) and fourteen individual defendants with a demand for compensatory and punitive damages, *Bearden v. Kentucky State University, et al.*, Franklin Circuit Court Civil Action No. 18-CI-00003 (“Dr. Bearden’s Suit”), Dr. Bearden has materially breached her fiduciary duties and created an impermissible conflict of interest. The broad-based allegations of Dr. Bearden’s Suit adversely impact the University’s shared governance, finances, constituent support, and, potentially, accreditation, such that Dr. Bearden can no longer effectively participate as a Board member. As such, Dr. Bearden has engaged in conduct requiring removal before the expiration of her Board term on June 30, 2019.

The Board does not contend *any* lawsuit a board member may file against its own institution is *per se* a breach of fiduciary duties or conflict of interest that merits removal. However, the specific allegations of Dr. Bearden's Suit support removal, including the wide-ranging conflict it creates, its pervasive impact on the University's operations, Dr. Bearden's request for punitive damages against the University and individual Defendants, the lack of a prior notice and opportunity to resolve the dispute before suit was filed, and Dr. Bearden's insistence that the University remain a party notwithstanding the University's sovereign/governmental immunity as recognized by the Franklin Circuit Court.

STATEMENT OF THE CASE

I. The parties.

The University is a public university in the Commonwealth governed by a board of regents. KRS 164.321. Members appointed to the Board by the Governor serve six-year terms and may serve two consecutive terms. KRS 164.321(2). The Board has eight members appointed by the Governor, one member of the teaching faculty, one member of the university's nonteaching personnel, and one member of the student body. KRS 164.321(1)(a). Respondent Dr. Karen Bearden's current appointment to the Board expires June 30, 2019. *See* Commission, attached as Exhibit 1.

II. Dr. Bearden's lawsuit.

While a member of the Board, Dr. Bearden filed a lawsuit against the University in Frankfort Circuit Court on January 2, 2018, seeking compensatory, liquidated and punitive damages from the University, as well as her attorney fees. *See* Verified Complaint, attached as Exhibit 2; Amended Complaint as Exhibit 3. In addition to the University, Dr. Bearden sought

compensatory, liquidated and punitive damages and attorney fees from fourteen defendants in their personal capacities:

- (1) Eleven (11) University faculty employees and members of the University Faculty Senate, Kimberly A. Sipes-Matthews, Ph.D., Ashok Kumar, Ph.D., Cynthia S. Glass, Ph.D., Mara Lee Merlino, Ph.D., Tierra Freeman Taylor, Ph.D., Joseph W. Moffet, Ph.D., Kenneth Andries, Ph.D., Dantrea Hampton, Reba Rye, Peter Smith, Ph.D., and Wilfred Reilly, Ph.D.;
- (2) The current Chairperson of the Board, Elaine Farris, Ph.D.;
- (3) The former interim President of the University, Aaron Thompson, Ph.D.; and
- (4) The Chair of the University's Frankfort Alumni Chapter, Ronald Moore, Sr.

Id.

Dr. Bearden's Verified Complaint is entirely personal in nature, with nothing that even purports to advance the interests of the University's mission or otherwise further the needs of public higher education in the Commonwealth. It alleges that during her tenure as Chair of the Board in the spring of 2017, the named defendants circulated false information that she engaged in an "inappropriate" relationship with a former University President and instituted a "no confidence" vote against her. *See* Verified Complaint, attached as Exhibit 2. Dr. Bearden's Suit asserts she is entitled to compensatory and punitive damages from the University and the fourteen individual named defendants under the following causes of action: (1) defamation, (2) intentional infliction of emotional distress, (3) tortious interference with business, (4) hostile environment, (5) harassment and intimidation, and (6) punitive damages.¹ *Id.* Moreover, the lawsuit seeks unspecified "liquidated damages" under KRS 337.385, which is a wage and hour

¹ The Franklin Circuit Court's Opinion and Order is attached for reference as Exhibit 4. As set forth therein, Dr. Bearden's stated "hostile environment," "harassment," and "intimidation" claims are not cognizable claims under Kentucky law. *Id.* at 10.

law applicable only to employees, and “attorney’s fees.” *Id.* The Court gave Dr. Bearden a chance to amend her Complaint, but she refused to narrow the named defendants or reduce the types of damages she sought from all defendants. *See* Amended Complaint, attached as Exhibit 3.

The defendants moved to dismiss Dr. Bearden’s claims against the University, citing sovereign immunity. *See* Opinion and Order at 3, attached as Exhibit 4. Dr. Bearden did not dispute the University is an agency of the Commonwealth entitled to sovereign/governmental immunity. *Autry v. Western Kentucky University*, 219 S.W.3d 713, 717-18 (Ky. 2007). Indeed, Kentucky law is well-established this immunity can only be waived by an express and specific waiver from the General Assembly; courts do not have the ability to “refuse to apply it or abrogate the legal doctrine.” *Withers v. Univ. of Kentucky*, 939 S.W.2d 340, 344 (Ky. 1997) (citing *Fryman v. Harrison*, 896 S.W.2d 908 (Ky. 1995); *Calvert Investments, Inc. v. Louisville & Jefferson Metropolitan Sewer District, Ky.*, 805 S.W.2d 133 (Ky. 1991)); *Com. v. Whitworth*, 74 S.W.3d 695, 699 (Ky. 2002). Dr. Bearden expressly acknowledged no existing law waived the University’s sovereign/governmental immunity for her claims, but nonetheless inexplicably asked the Franklin Circuit Court to take the extraordinary – and unauthorized step - of creating a judicial exception to sovereign/governmental immunity for claims brought by board members against universities so she could maintain her money damage claims against the University - relief that sovereign/governmental immunity squarely prohibits. *See* Hearing on Motion to Dismiss, previously submitted with Resolution. Even at the hearing of the University’s motion to dismiss, Dr. Bearden repeatedly and expressly insisted the University stay a Defendant to the lawsuit. *Id.*

III. The Board's efforts to avoid Dr. Bearden's removal.

Four months after Dr. Bearden's Suit was filed, on May 15, 2018, the Board wrote to Dr. Bearden's counsel, explaining it believed it had an obligation to seek her removal from the Board in light of the conflict created by the lawsuit and asking that she voluntarily resign from the Board by May 31, 2018. *See* May 15, 2018 Letter attached as Exhibit 5. Dr. Bearden agreed to not attend the June Board meeting but did not resign by the deadline. *Id.* Subsequently, the Franklin Circuit Court entered an Order dismissing Dr. Bearden's Suit; Dr. Bearden's time to appeal this decision has not yet run. *See* Opinion and Order, attached as Exhibit 4. After Dr. Bearden declined to voluntarily resign, the Board passed its Resolution submitting this matter to the CPE. *See* Resolution, attached as Exhibit 6.

SUMMARY OF ARGUMENT

The specific facts and circumstances of this case require removal. By filing her lawsuit against the University, another Board member, a former University President, eleven members of the faculty, and a president of an alumni association of the University, and by seeking punitive damages from all Defendants, Dr. Bearden has breached her fiduciary duties and created an irredeemable conflict that materially impairs her ability to participate as a member of the Board with respect to the internal operations of the University. In other words, by filing and pursuing her lawsuit, Dr. Bearden has engaged in malfeasance, gross neglect of duty, and other impermissible conduct. Thus, while not every lawsuit by a board member against her own entity may require removal, Dr. Bearden's Suit does.

ARGUMENT

By filing a suit against the University that is personal in nature, seeks monetary damages to punish the defendants, and names representatives from each component of the University's

shared governance as defendants in their personal capacities, Dr. Bearden has breached her fiduciary duties as a Board member. Dr. Bearden's breach of fiduciary duty is *per se* irreparable. Even if Dr. Bearden does not appeal the circuit court's dismissal or if the dismissal is affirmed by a higher court on appeal, the breach of duty will not be alleviated.

There is a dearth of case law addressing when a suit by a sitting board member against the entity she is charged with protecting constitutes cause for the removal. Generally, KRS 63.080 provides for removal of the University's Board "for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty." KRS 63.080(2)(d). The governing standards of the University provide more detail regarding the duties owed by members of the Board to the University and demonstrates how Dr. Bearden's lawsuit plainly constitutes the kind of malfeasance, gross neglect of duty, and other impermissible conduct the statute was created to eradicate.²

I. Dr. Bearden is bound by fiduciary duties she cannot breach.

The University is accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC). See <https://kysu.edu/academics/accreditation/reaffirmation-updates/> (last accessed June 29, 2018). Reaffirmation of accreditation occurs every ten (10) years, and the University's next reaffirmation will occur in 2018-2019. *Id.* Maintaining this accreditation requires compliance with the *Principles of Accreditation: Foundations for Quality Enhancement* and the policies and procedures of the SACSCOC. Under these standards, the Board members "exercise fiduciary oversight of the institution." *Principles of Accreditation: Foundations for Quality Enhancement*, Section 4, Standard 1(b) (Dec. 2017)

² In relevant part, Black's Law Dictionary has defined "malfeasance" as a "[c]omprehensive term including any wrongful conduct that affects, interrupts or interferes with the performance of official duties." See MALFEASANCE, Black's Law Dictionary (6th ed. 1990)

available at <http://www.sacscoc.org/pdf/2018PrinciplesOfAcreditation.pdf> (last accessed June 29, 2018). *Id.*

The Association of Governing Boards of Universities and Colleges (AGB) establishes the interests a Board member – like Dr. Bearden - must protect as a “fiduciary”:

A fiduciary is someone who as special responsibilities in connection with the administration, investment, monitoring, and distribution of property – in this case, the charitable or public assets of the institution. These assets include not just the buildings, but also intangibles, such as the reputation of the institution and its rule in the community.

AGB Board of Directors’ Statement on the Fiduciary Duties of Governing Board Members at 2 (2015), https://www.agb.org/sites/default/files/u27174/statement_2015_fiduciary_duties.pdf (last accessed June 29, 2018). The particular duties are “the fiduciary duties of care, loyalty, and obedience. Taken together, they require board members to make careful, good-faith decisions in the best interest of the institution consistent with its public or charitable mission, independent of undue influence from any party or from financial interests.” *Id.* The duties may, but are not required to be described in more detail in a particular institution’s bylaws, policies, codes, and procedures. *Id.* In particular, the duty of loyalty:

Requires officers and board members to act in good-faith and in a manner that is reasonably believed to be in the interests of the college or university and its nonprofit or public purposes rather than their own interests or the interests of another person or organization. The fiduciary must not act out of expedience, avarice, or self-interest.

Id. at 6. While the impact of this duty depends on the facts and circumstances of each particular case, a board member should act “independently of any personal relationship he or she may have with the president or senior leaders of the college or university or with other board members.” *Id.*

II. Dr. Bearden's Suit is an irreparable breach of her fiduciary duties.

Dr. Bearden's Suit breaches her fiduciary duty of loyalty and good faith to the University, as it is decidedly personal and targeted to punish the University and representatives of each part of the University's shared governance for alleged personal slights, *not* an action taken to advance the University's interests and mission. Prior to filing suit, Dr. Bearden did not provide notice to the University of her claims or give the University an opportunity to resolve the claims short of litigation. Instead, the University was blindsided. Articles regarding the suit were published the same day Dr. Bearden's Suit was filed, and Dr. Bearden has used her access to the press throughout the litigation to curry sympathy for herself and to cast a negative light on the University. *See* Articles attached as Exhibit 7.

As the suit progressed, Dr. Bearden insisted the University remain a party while providing no legal basis for avoiding the University's sovereign/governmental immunity. Dr. Bearden admitted she had no authority for a waiver of immunity during circuit court litigation. Nevertheless, Dr. Bearden, through counsel, repeatedly insisted the University needed to be a defendant during the hearing on the motion to dismiss her amended complaint. *See* May 16, 2018 Hearing, previously submitted.

In addition to the University, Dr. Bearden named eleven faculty members, a former University President, a fellow Board member, and the President of the University's Frankfort alumni association in their *individual* capacities and sought *punitive* damages from each. "[T]he purpose of punitive damages is to punish." *Phelps v. Louisville Water Co.*, 103 S.W.3d 46, 55 (Ky. 2003). A board member breaches her duty of good faith and loyalty by using a perceived legal right to *punish* the entity for which she is a fiduciary. A partner's enforcement of a legal right against his partnership breaches the fiduciary duty of good faith if the rights are asserted in

“bad faith” – that is, “where a primary motivation of his or her conduct is to injure either the firm/venture or his or her business partners.” *Clancy v. King*, 405 Md. 541, 954 A.2d 1092, 1104-08 (2008). For example, the *Clancy* court remanded the matter to the trial court for a determination on whether author Tom Clancy acted in bad faith towards a partnership with his ex-wife when he impaired the value of a book franchise by removing his name and desired to “spite or punish” his partner/ex-wife. *Id.* at 1109-10. By acting to punish the entity, rather than to advance its mission and purpose, a fiduciary breaches her duty of good faith and loyalty.

Dr. Bearden’s Suit appears to have been filed out of spite, not a good faith attempt to enforce a legal right. Her effort to punish the University (as well as its faculty, former President, a fellow Board member, and the President of its Frankfort alumni association) with punitive damages, insistence on keeping the University in the lawsuit despite no authority for a waiver of the University’s sovereign/governmental immunity, and lack of pre-suit notification to the University that she believed she possessed these claims against the Defendants indicate the suit was filed out of spite, rather than good faith.

In short, Dr. Bearden has breached her fiduciary duty of loyalty and good faith to the University. Her suit subverts the University’s interests to Dr. Bearden’s personal vendettas. This breach is irreparable and irreversible.

III. Dr. Bearden’s Suit creates a conflict that requires removal.

Unquestionably, Dr. Bearden’s Suit places her personal interests in direct conflict with the University’s interests. Even if the mere filing of a lawsuit may not require a Board member’s removal in all cases, the relief requested and defendants named in Dr. Bearden’s Suit conflict with a wide-range of the University’s interests and such that her continued service is no longer feasible.

The Board's Bylaws, effective January 23, 2015, provide the following:

Section 11.2: A conflict of interest occurs when any Board member has existing or potential interests that compete or could compete with the interests of the University or any directly affiliated organization, or which impairs or might reasonably impair such Board members' independent, unbiased judgment in the discharge of one's responsibility. Board members shall avoid entering into or maintaining any business or financial interests, transactions, acquisition or sale of property interest which are or may be in conflict with those of the University. . . .

Section 11.4: Whenever any conflict of interest appears to exist after taking the oath of office, the Board member shall immediately fully disclose that conflict to the Executive Committee and to the President of the University. . . .

In short, board members like Dr. Bearden are obligated to act in the University's best interest, upholding their fiduciary duties and foregoing actions that place (or even appear to place) their personal interests ahead of the University they serve. Subsequent court action, if any, will not alleviate the numerous conflicts present here.

The lawsuit undoubtedly puts Dr. Bearden's personal financial interests in direct conflict with the financial interests of the University because she seeks compensatory and punitive damages. In addition to addressing the substance of her claims, the University has been forced to incur expenses in litigating the suit until it reaches its insurance retention point. As long as the suit is pending, Dr. Bearden will not be able to vote on financial decisions that would impact any money available to pay lawsuit expenses or judgments.

Dr. Bearden's Suit also creates divisions and distrust within the University's shared governance, as she has sued authorized representatives of each component of the shared governance in their individual capacities, including the former President of the University and current CPE administrator (Dr. Aaron Thompson), the present Board Chair (Dr. Elaine Farris), and the present and former faculty senate presidents (Ms. Hampton and Dr. Moffett). She cannot appear to be impartial in voting on the interests of these groups and individuals going forward.

Four named defendants (Drs. Glass, Freeman-Taylor, Merlino, and Reilly) are faculty members who are currently up for tenure or promotion. These defendants' promotion and tenure applications require Board approval, thus creating the untenable situation in which these defendants' careers will rest in the hands of a board member who cannot possibly act impartially on their applications.

Finally, Dr. Bearden's Suit creates a conflict between Dr. Bearden and the University's alumni support. She named the President of the University's Frankfort alumni association as a defendant in his individual capacity and seeks punitive damages from him. Dr. Bearden cannot possibly decide matters involving the alumni chair and his group's requests with the objectivity and impartiality her role requires.

Taken together, the claims Dr. Bearden has asserted, the relief she seeks, and the number of departments involved create a swath of conflicts so broad and ongoing it will preclude her effective participation as a member of the Board. Dr. Bearden can certainly maintain a suit and assert these claims if she believes they are proper. She cannot, however, continue to serve on the Board under these circumstances.

IV. The adverse impact of Dr. Bearden's Suit on the University is wide-ranging and long-lasting.

Dr. Bearden's Suit affects the University's shared governance, faculty participation and advancement, finances, relationships with constituents and alumni, and accreditation.

First, the lawsuit hinders and fosters distrust among the University's shared governance. Shared governance is critical to any university, and it is impossible for shared governance to function effectively when there is a lack of trust and shared purpose. Dr. Bearden's Suit creates divisions and distrust within the University's shared governance, as she has sued authorized representatives of each component of the shared governance in their *individual* capacities, thus

detering service on the Board and the University Faculty Senate, as these are voluntary positions. If potential members fear that they will be exposed to monetary damages – including punitive damages – simply because of personal conflicts with colleagues, they will be deterred from service. And since Dr. Bearden’s Suit concerns alleged happenings during the search for a University President, it will have an ongoing impact on individuals’ willingness to volunteer for University governance if they believe they may be subject to personal lawsuits and potential damage awards for sharing their opinions and participating in University activities.

Dr. Bearden’s Suit also discourages faculty advancement and service to the University. She named four faculty defendants who are currently up for tenure or promotion. These defendants’ promotion and tenure applications require Board approval, thus creating the untenable situation in which these defendants’ careers be jeopardized by a board member who cannot possibly act impartially. Such a prospect undoubtedly deters faculty members from serving in roles such as Faculty Senate when they know doing so may well land them in the cross-hairs of a Board member with whom they must work. This prospect is intolerable, particularly in a profession where tenure depends in part on service to the University.

In addition to the immediate financial impact of the lawsuit, an ongoing effect of Dr. Bearden’s Suit is to serve as a claim against the University, which may make it more difficult for the University to obtain affordable and financially responsible insurance coverage, even if the suit is ultimately dismissed.

The lawsuit also impacts constituent and alumni relationships. Dr. Bearden has used her access to the press to take the focus away from where it should be - the University’s students and its service to the Commonwealth. Moreover, she has sued – and seeks compensatory and punitive damages from – the president of a local alumni group. Universities depend on support

for alumni, both nationally and locally, and a lawsuit by a member of a university's governing body against the president of an alumni group adversely impacts that support, undoubtedly deterring alumni from serving the University's mission who otherwise would but for the personal and financial risk of offending a board member.

Finally, as discussed above, the lawsuit fosters distrust within the University's shared governance system and functions as a deterrent to service on the Board and the University Faculty Senate. Shared governance is a requirement of the University's SACSCOC accreditation. Taking an action that impairs the University's shared governance system endangers the University's accreditation. This impairment will not be resolved by a full and final dismissal of Dr. Bearden's Suit.

There may be scenarios in which a board member's lawsuit against a University would not create a conflict requiring that member's removal from the board. This matter, however, does not present such a scenario.

V. Dr. Bearden's case does not qualify for the only "safe harbor" from removal recognized by law.

While Kentucky does not have any judicial decisions that address this situation, case law from other jurisdictions reflects important factors in determining whether a member of a governing body can continue to serve on that body when pursuing an individual interest that is at odds with the entity's interests. A key factor is whether the board member gave the entity prior notice of her intent to file a lawsuit and an opportunity to act in defense of its own interests prior to filing. *E.g., Storetrax.com, Inc. v. Gurland*, 397 Md. 37, 915 A.2d 991 (2007). In *Storetrax.com*, a director of a corporation brought suit against the corporation for breach of contract in connection with his termination from the corporation in his capacity as an employee. *Id.* at 42-46. Prior to filing his breach of contract suit, the director sent a letter to the corporation

and its board outlining his severance payment claim and advising he would take legal action if the matter was not resolved prior to a certain date. *Id.* at 44. Subsequent negotiations failed, and the director then filed suit. *Id.* at 45. In considering whether the director could stay on the corporation's board, the court recognized "there existed a conflict between [the director's] interests as an aggrieved former employee and his duty as a director of the corporation" and that his lawsuit seeking severance "clearly was not in the corporation's best interests. *Id.* at 59. It recognized a "safe harbor," however, under which interested transactions (i.e., the lawsuit) did not constitute a breach of a director's fiduciary obligations to the corporation "as long as the interested director informs the corporation and its directors of the conflicting interests and gives the board an opportunity to approve the transaction, i.e., protect the corporation's interests." *Id.* at 58. In the *Storetrax.com* case, the director gave the board advance notice of (1) his claims and (2) his intention to file a lawsuit, and the company responded by stating it would be prepared to defend itself in the suit. *Id.* Accordingly, the interested transaction fell within the safe harbor, and the suit was filed with the full knowledge and concurrence of the company. *Id.*

Here, Dr. Bearden did *not* give the University the requisite notice of her intent to file a lawsuit seeking compensatory and punitive damages against the University and fourteen individuals, including a fellow Board member, a former President, the president of the Frankfort alumni association, and several faculty members. The only grievance received from Dr. Bearden in the time leading up to the lawsuit was against a *different* Board member in which Dr. Bearden asked that certain assessments be conducted internally. *See* Email attached as Exhibit 8. It provided no notice that Dr. Bearden intended to file or was even contemplating filing a lawsuit or felt she had any claims against the University or any of the fourteen individual defendants she ultimately sued. *Id.* Dr. Bearden provided no notice of her intent to sue and no opportunity for

the University to resolve her claims or ratify her ability to assert a lawsuit that unquestionably constitutes a conflict, as described above in Section III.

CONCLUSION

While not every suit by a board member against its own entity may require removal, removal is required here. Dr. Bearden's lawsuit impacts the University's governance, finances, ability to maintain constituent support, and potentially its accreditation. She did not provide the University with notice of the claims she asserted in the suit and an opportunity to address her concerns short of litigation. Her request for punitive damages, decision to name fourteen individual defendants in their personal capacities, and insistence on keeping the University as a party despite no legal basis for waiving the University's sovereign/governmental immunity indicate the suit was filed out of spite, not good faith. For these reasons, Dr. Bearden has engaged in malfeasance, gross neglect of duty, and other impermissible conduct; her continued service on the Board is no longer appropriate; and removal is appropriate.

STURGILL, TURNER, BARKER

& MOLONEY, PLLC

BY: */s/ Joshua M. Salsburey*

Stephen L. Barker

Joshua M. Salsburey

Jamie W. Dittert

333 West Vine Street, Suite 1500

Lexington, Kentucky 40507

Telephone: 859-255-8581

Facsimile: 859-231-0851

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2018, a true and accurate copy was served via email and/or U.S. mail, first class, postage prepaid, upon:

Kimberly L. Bunton
1238 East Broadway, 2nd Floor
Louisville, KY 40204
kimberly@kimberlybuntonlaw.com
Counsel for Plaintiffs

/s/ Joshua M. Salsburey
ATTORNEYS FOR PETITIONER

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EXHIBIT 1



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

2013 – 529
July 26, 2013

Secretary of State
Frankfort
Kentucky

By virtue of the authority vested in me by Section 164.321 of the Kentucky Revised Statutes, I, Steven L. Beshear, Governor of the Commonwealth of Kentucky, do hereby reappoint Karen W. Bearden, 1345 Equestrian Way, Frankfort, Kentucky 40601, as a member of the Kentucky State University Board of Regents, to serve for a term expiring June 30, 2019.

Please issue a commission to her.

A handwritten signature in black ink, appearing to read "Steven L. Beshear".

STEVEN L. BESHEAR, GOVERNOR
COMMONWEALTH OF KENTUCKY

A handwritten signature in black ink, appearing to read "Alison Lundergan Grimes".

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE

RECEIVED AND FILED

DATE 7/26/13

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY *A. Grimes*

EXHIBIT 2

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY
COMMONWEALTH OF KENTUCKY
CIVIL ACTION NO. _____

KAREN W. BEARDEN, Ph.D.

PLAINTIFF

v.

VERIFIED COMPLAINT

KENTUCKY STATE UNIVERSITY

**SERVE: M. Christopher Brown, II, Ph.D.
Kentucky State University
400 East Main Street
Frankfort, Kentucky 40601**

**SERVE: Attorney General Andy Beshear
Office of The Attorney General
710 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449**

and

ELAINE FARRIS
In Her Individual Capacity
1006 Windsor Court
Shelbyville, Kentucky 40065

and

KIMBERY A. SIPES-MATTHEWS
In Her Individual Capacity
509 Oaklawn Drive
Mount Sterling, Kentucky 40353

and

ASHOK KUMAR
In His Individual Capacity
400 East Main Street
Frankfort, Kentucky 40601

Presiding Judge: HON. THOMAS DAWSON WINGATE (648243)

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and

CYNTHIA S. GLASS,
In Her Individual Capacity
400 East Main Street
Frankfort, Kentucky 40601

and

MARA LEE MERLINO
In her Individual Capacity
1096 Twelve Oaks Drive
Lawrenceburg, Kentucky 40342

and

TIERRA FREEMAN TAYLOR
In Her Individual Capacity
326 Cane Run Camp Road
Harrodsburg, Kentucky 40330

and

JOSEPH W MOFFET
In His Individual Capacity
8000 John Davis Drive, Apt 2901
Frankfort, Kentucky 40601

and

KENNETH ANDRIES
In His Individual Capacity
1440 Pigeon Fork Road
Lawrenceburg, Kentucky 40342

and

DANTREA HAMPTON
In her Individual Capacity
109 Schenkelwood Drive
Frankfort, Kentucky 40601

and

REBA RYE
In Her Individual Capacity
220 East Campbell Street
Frankfort, Kentucky 40601

and

PETER SMITH
In His Individual Capacity
400 East Main Street
Frankfort, Kentucky 40601

and

AARON THOMPSON
In His Individual Capacity
175 Wildcat Drive
Richmond, Kentucky 40475

and

RONALD MOORE, SR.
In His Individual Capacity
312 East Third Street
Frankfort, Kentucky 40601

DEFENDANTS

* * * * *

Plaintiff, Karen W. Bearden, Ph.D. (“Plaintiff”), hereby brings her Verified Complaint against Defendants, Kentucky State University (“KSU”), Elaine Farris, in her individual capacity, Kimberly Sipes-Matthews, in her individual capacity, Wilfred Reilly, in his individual capacity, Ashok Kumar, in his individual capacity, Cynthia S. Glass, in her individual capacity, Mara Lee Merlino, in her individual capacity, Joseph Moffet, in his individual capacity, Kenneth Andries, in his individual capacity, Dantrea Hampton, in her individual capacity, Reba Rye, in her individual capacity, Peter Smith, in his individual capacity, Aaron Thompson, in his individual

capacity, and Ronald Moore, Sr., in his individual capacity (Collectively “Defendants”) and states as follows:

PARTIES

1. Plaintiff, Karen W. Bearden, Ph.D. (“Plaintiff”) is an individual who resides in the Commonwealth of Kentucky.
2. Defendant Kentucky State University (“KSU”) is a Kentucky public university located in Frankfort, Franklin County, Kentucky. It may be served through its President and the Attorney General.
3. Defendant Elaine Farris, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
4. Defendant Kimberly Sipes-Matthews, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
5. Defendant Wilfred Reilly, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
6. Defendant Ashok Kumar, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
7. Defendant Cynthia S. Glass, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

8. Defendant Mara Lee Merlino, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
9. Defendant Joseph Moffett, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
10. Defendant Kenneth Andries, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
11. Defendant Dantrea Hampton, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
12. Defendant Reba Rye, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
13. Defendant Peter Smith, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
14. Defendant Aaron Thompson, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

15. Defendant Ronald Moore, Sr., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

JURISDICTION AND VENUE

16. An actual and justiciable controversy exists and this Court has jurisdiction of the Defendants because Defendants work and do business in Franklin County, Kentucky and because the subject matter of this action is located in Franklin County, Kentucky.
17. The Franklin Circuit Court is the appropriate venue for this action because the Defendants may be summoned to Franklin Circuit Court and actions against a state agency is proper in Franklin Circuit Court.

BACKGROUND

18. Plaintiff is currently a member of the Kentucky State University Board of Regents (“Board of Regents”). Plaintiff was originally appointed by Governor Ernie Fletcher on October 4, 2004. Plaintiff was then re-appointed by Governor Steve Beshear on or about July 10, 2013. Her current term runs until June 30, 2019. There are eleven members of the Board of Regents.
19. Plaintiff has served on governing boards for institutions of higher learning for over twenty-five (25) years. In addition, Plaintiff is a management consultant whose clients include public and private colleges and universities.
20. Plaintiff served as Chairperson for the Board of Regents from 2012-2017.
21. The Kentucky State University (“KSU”) is an institution of the Commonwealth of Kentucky. *See e.g.*, KRS 164.810, *et seq.* The University is governed by a Board of Regents

(“Board”), the membership of which is determined by a statute that calls for most of the Board to be appointed by the Governor. KRS 164.821.

22. Defendant Farris is the current chairperson for the Board of Regents.
23. Defendant Sipes-Matthews, Defendant Reilly, Defendant Kumar, Defendant Glass, Defendant Merlino, Defendant Moffett, Defendant Rye, Defendant Smith and Defendant Andries are all members of the KSU faculty and KSU Faculty Senate.
24. Defendant Thompson is an individual and former KSU Interim President.
25. Defendant Hampton is the current president of the KSU Faculty Senate.
26. Defendant Moore is President of KSU Frankfort Alumni Chapter.

A. Misrepresentation of Plaintiff’s Relationship with Former KSU President

27. During the Spring Semester of 2017, members of the KSU Faculty Senate began a campaign to have the Plaintiff removed as chairperson of the Board of Regents (“Removal Campaign”).
28. Part of the Removal Campaign included the malicious distribution, dissemination, and circulation of false information alleging that Plaintiff was engaged in an “inappropriate” relationship with a former Kentucky State University President
29. This false information was distributed, disseminated and published via a thread of electronic communications shared by Defendant Sipes, Defendant Rye and Defendant Merlino.
30. This false information was also distributed, disseminated and published during Faculty Senate meetings and to the local media.

B. Misrepresentation of Plaintiff's Role in the Presidential Search Process

31. On or about February 27, 2017, Defendants continued their Removal Campaign by instituting a vote of "no confidence" against Plaintiff. Defendants fostered and created a hostile atmosphere and environment based on false accusations and allegations against the Plaintiff.
32. Defendants, specifically Defendant Farris and Defendant Sipes, publicly and falsely accused Plaintiff of improperly influencing the presidential search which was facilitated by a committee comprised of KSU Regents, members of the Frankfort community and other KSU stakeholders. Defendants statements against the Plaintiff were false and unsubstantiated.
33. Moreover, Defendants Farris and Sipes harassed and intimidated Plaintiff in an attempt to induce Plaintiff to influence the outcome of the presidential search.
34. On or about March 25, 2017, members of the Faculty Senate maliciously initiated a vote of "no confidence" against the Plaintiff as chairperson for the Board of Regents and the overall Board of Regents. Defendant members of the Faculty Senate told the local paper that the "presidential search was a tipping point." <http://www.state-journal.com/2017/03/25/facultys-vote-of-no-confidence-in-kentucky-state-university-board-of-regents-a-crossroad-for-school/>.
35. Defendants continued spreading false information regarding Plaintiff resulting in a significant economic and financial loss for Plaintiff.
36. Plaintiff filed a complaint with the KSU administration regarding the malicious distribution of false information by Defendant members of the Faculty Senate and expressly made KSU

aware of the harassment and intimidation. KSU did not respond to Plaintiff's complaints or express concerns of harassment and intimidation.

COUNT I – DEFAMATION

(All Defendants)

- 37. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-36 as if fully set forth herein.
- 38. Defendants, acting in concert, misrepresented to the public and the media false accusations that Plaintiff had an "inappropriate" relationship with a former KSU president.
- 39. Defendant KSU failed to investigate Plaintiff's formal complaint filed with the KSU administration alleging the conspiracy to publish false statements Defendant members of the Faculty Senate, Defendant Farris, Defendant Hampton, other members of the administrative staff and faculty. The Defendants acted in their individual capacities in doing so much as action and publications were not within their authority.
- 40. The aforementioned activity by all individual Defendants in this case are oral and written statements that libeled and slandered the Plaintiff.
- 41. Plaintiff's reputation was damaged as a direct and proximate result of individual Defendants' defamation: Plaintiff was exposed to and experienced disgrace, ridicule, and contempt in the estimation of her friends, acquaintances, colleagues and the public.

COUNT II – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(All Defendants)

- 42. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-41 as if fully set forth herein.
- 43. Defendants recklessly or intentionally inflicted emotional distress on Plaintiff through their actions beginning February 28, 2017 and thereafter.

- 44. Defendants conduct was reckless and intentional.
- 45. Defendants conduct was outrageous and intolerable in that it offends against socially accepted standards of decency and morality in society.
- 46. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT III- TORTIOUS INTERFERENCE WITH BUSINESS

(All Defendants)

- 47. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-46 as if fully set forth herein.
- 48. Plaintiff is a management consultant who is widely known for her specialized work consulting and advising institutions of higher learning.
- 49. Plaintiff had valid business relationships with and/or expecting business relationships with several institutions of high learning.
- 50. Defendants were aware of Plaintiff's business and/or expectant business relationships.
- 51. Defendants intentionally interfered with Plaintiff's business and/or expectant business relationships.
- 52. Defendants conduct caused Plaintiff special damages in the form of loss of position, reputation, existing and future business, and other loss of economic and financial advantages to the Plaintiff.

COUNT IV- HOSTILE ENVIRONMENT

(Defendant KSU)

- 53. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-52 as if fully set forth herein.

- 54. Defendant KSU conduct, and in action regarding the formal complaint filed by Plaintiff, was so severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive.
- 55. Plaintiff subjectively regarded the environment created by Defendant KSU as abusive.
- 56. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT IV- HARASSMENT AND INTIMIDATION

(All Defendants)

- 57. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-56 as if fully set forth herein.
- 58. Defendants intentionally engaged in hostile behavior to intimidate Plaintiff.
- 59. Plaintiff was subjectively regarded the Defendants behavior as abusive.
- 60. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT V- PUNITIVE DAMAGES

(All Defendants)

- 61. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-60 as if fully set forth herein.
- 62. Defendants actions vis-à-vis Plaintiff were taken with oppression and malice.
- 63. Plaintiff is entitled to punitive damages pursuant to KRS 411.184 in as amount sufficient to punish Defendants for their conduct and to discourage similar conduct in the future.

Presiding Judge: HON. THOMAS DAWSON WINGATE (648243)

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COUNT VI- ATTORNEYS FEES

(All Defendants)

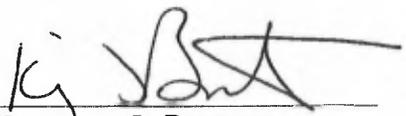
- 64. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-62 as if fully set forth herein.
- 65. Plaintiff is entitled to attorney's fees, pursuant to KRS 337.385, common law and equity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Karen W. Bearden, Ph.D. prays for a judgment in her favor as follows:

- A. Compensatory damages in an amount determined by the trier of fact;
- B. Punitive Damages in the amount to be determined by the trier of fact;
- C. Liquidated damages pursuant to KRS 337.385;
- D. A reasonable award of Plaintiff's costs, and attorney's fees herein expended under KRS 337.385.
- E. Trial by jury on all counts so triable;
- F. Pre-and post-judgment interest at the legal rate; and
- G. All other relief to which Plaintiff may be entitled.

Respectfully Submitted,



 KIMBERLY L. BUNTON
 1238 EAST BROADWAY, 2ND FLOOR
 LOUISVILLE, KENTUCKY 40204
 502.554.9954
 KIMBERLY@TALBOTTBUNTON.COM

Presiding Judge: HON. THOMAS DAWSON WINGATE (648243)

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EXHIBIT 3

2. Defendant Kentucky State University (“KSU”) is a Kentucky public university located in Frankfort, Franklin County, Kentucky. It may be served through its President and the Attorney General.
3. Defendant Elaine Farris, Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
4. Defendant Kimberly Sipes-Matthews, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
5. Defendant Wilfred Reilly, Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
6. Defendant Ashok Kumar, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
7. Defendant Cynthia S. Glass, Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
8. Defendant Mara Lee Merlino, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

9. Defendant Joseph Moffett, Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
10. Defendant Kenneth Andries Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
11. Defendant Dantrea Hampton, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
12. Defendant Reba Rye, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
13. Defendant Aaron Thompson, Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
14. Defendant Ronald Moore, Sr., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

JURISDICTION AND VENUE

15. An actual and justiciable controversy exists and this Court has jurisdiction of the Defendants because Defendants work and do business in Franklin County, Kentucky and because the subject matter of this action is located in Franklin County, Kentucky.

16. The Franklin Circuit Court is the appropriate venue for this action because the Defendants may be summoned to Franklin Circuit Court and actions against a state agency is proper in Franklin Circuit Court.

BACKGROUND

17. Plaintiff is currently a member of the Kentucky State University Board of Regents (“Board of Regents”). Plaintiff was originally appointed by Governor Ernie Fletcher on October 4, 2004. Plaintiff was then re-appointed by Governor Steve Beshear on or about July 10, 2013. Her current term runs until June 30, 2019. There are eleven (11) members of the Board of Regents.
18. Plaintiff has served on governing boards for institutions of higher learning for over twenty-five (25) years. In addition, Plaintiff is a management consultant whose clients include public and private colleges and universities.
19. Plaintiff served as Chairperson for the Board of Regents for approximately six years.
20. The Kentucky State University (“KSU”) is an institution of the Commonwealth of Kentucky. *See e.g.*, KRS 164.810, *et seq.* The University is governed by a Board of Regents (“Board”), the membership of which is determined by a statute that calls for most of the Board to be appointed by the Governor. KRS 164.821.
21. Defendant Farris is the current chairperson for the Board of Regents.
22. Defendant Sipes-Matthews, Defendant Reilly, Defendant Kumar, Defendant Glass, Defendant Merlino, Defendant Moffett, Defendant Rye and Defendant Andries are all members of the KSU faculty and KSU Faculty Senate.
23. Defendant Thompson is an individual and former KSU Interim President.

24. Defendant Hampton is a current president of the KSU Faculty Senate on the Board of Regents.
25. Defendant Moore is a member of the Executive KSU Frankfort Alumni Chapter.
- A. Misrepresentation of Plaintiff's Relationship with Former KSU President**
26. During the Spring Semester of 2017, Defendants intentionally started a public campaign to discredit and malign Plaintiff's personal and professional reputation for the purpose of provide a basis to remove Plaintiff as chairperson of the Board of Regents ("Removal Campaign").
27. Part of the Removal Campaign included the malicious distribution, dissemination, and circulation of false information alleging that Plaintiff engaged in an "inappropriate" relationship with a former Kentucky State University President. Each Defendant falsely asserted, confirmed and/or shared allegations that Plaintiff engaged in a sexual relationship with a former Kentucky State University president.
28. The Defendant Sipes-Matthews, Defendant Reilly, Defendant Kumar, Defendant Glass, Defendant Merlino, Defendant Moffett, Defendant Rye and Defendant Andries verbally spread false information regarding Plaintiff during one or more KSU Faculty meetings and through casual conversations with other University employees by expressly stating Plaintiff had an "inappropriate relationship" with a former KSU president.
29. Defendant Sipes-Matthews, Defendant Farris, Defendant Hampton falsely and maliciously, stated to other employees and board members, that Plaintiff "had an affair" with a former Kentucky State University president.
30. Defendant Sipes-Matthews, Defendant Rye and Defendant Merlino distributed, disseminated and published intentionally and maliciously shared the false information

accusing Plaintiff of having an “inappropriate relationship” and “affair” with a former KSU president, via a thread of electronic communications.

31. Defendant Sipes-Matthews also distributed, disseminated and published false statements alleging Plaintiff had an “inappropriate relationship” with a former KSU president to the local media.

B. Misrepresentation of Plaintiff’s Role in the Presidential Search Process

32. On or about February 27, 2017, Defendants continued their Removal Campaign by instituting a vote of “no confidence” against Plaintiff. Defendants, in bad faith, fostered and created a hostile atmosphere and environment based on false accusations and allegations about the Plaintiff.
33. Defendants, specifically Defendant Farris and Defendant Sipes-Matthews, publicly and falsely accused Plaintiff of improperly influencing the presidential search which was facilitated by a committee comprised of KSU Regents, members of the Frankfort community and other KSU stakeholders. Defendants’ statements against the Plaintiff were false and unsubstantiated.
34. Moreover, Defendants Farris and Sipes verbally harassed and intimidated Plaintiff in an attempt to induce Plaintiff to influence the outcome of the presidential search.
35. On or about March 25, 2017, maliciously initiated a vote of “no confidence” against the Plaintiff as chairperson for the Board of Regents and the overall Board of Regents. Defendant members of the Faculty Senate told the local paper that the “presidential search was a tipping point.” <http://www.state-journal.com/2017/03/25/facultys-vote-of-no-confidence-in-kentucky-state-university-board-of-regents-a-crossroad-for-school/>.

36. Defendant Moore, while attending at a least one KSU Faculty Senate meeting, expressly and falsely stated that Plaintiff “had an affair” with a former KSU president and shared the same false information at one or more KSU Frankfort Alumni meetings and among other KSU alumni.
37. Defendants continued spreading false information resulting in a significant economic and financial loss for Plaintiff and ultimately, her positions on other professional associations governing institutions were terminated as a result of her removal as chairperson of the KSU Board of Regents.
38. Defendants, particularly Defendant Farris, were aware of Plaintiff’s consulting business which primarily consults universities and colleges. Defendants knew or should know the impact of spreading the false statements would diminish Plaintiff’s professional credibility and interfere with Plaintiffs business and professional contracts.
39. Plaintiff filed a complaint with the KSU administration regarding the malicious distribution of false information by Defendant members of the Faculty Senate and expressly made KSU aware of the harassment and intimidation by Defendant Sipes. KSU did not respond to Plaintiff’s complaints or express concerns of harassment and intimidation.

COUNT I – DEFAMATION

(All Defendants)

40. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-39 as if fully set forth herein.
41. Defendants, acting in concert, misrepresented to the public and the media false accusations that Plaintiff had an “inappropriate relationship” and “had an affair” with a former KSU president.

42. Defendant KSU failed to investigate Plaintiff's formal complaint filed with the KSU administration alleging the conspiracy to publish false statements Defendant faculty members, Defendant Farris, Defendant Hampton, other members of the administrative staff and faculty. The Defendants acted in their individual capacities and outside the scope of their discretionary functions by spreading false information regarding the Plaintiff and a former president. These actions were outside the scope of the faculty and administrative duties and responsibilities as outline in applicable KSU policies and procedures. *See* KSU Faculty Handbook and KSU Board of Regents Gold Book.
43. The aforementioned activity by all individual Defendants in this case are verbal and written statements that libeled and slandered the Plaintiff.
44. Plaintiff's reputation was damaged as a direct and proximate result of individual Defendants' defamation: Plaintiff was exposed to and experienced disgrace, ridicule, and contempt in the estimation of her friends, acquaintances, colleagues and the public.
45. As a direct result of the defamation,

COUNT II – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(All Defendants)

46. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-45 as if fully set forth herein.
47. Defendants recklessly or intentionally inflicted emotional distress on Plaintiff through their actions beginning February 28, 2016 and thereafter.
48. Defendants conduct was reckless and intentional.
49. Defendants conduct was outrageous and intolerable in that it offends against socially accepted standards of decency and morality in society.

50. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT III- TORTIOUS INTERFERENCE WITH BUSINESS

(All Defendants)

51. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-50 as if fully set forth herein.
52. Plaintiff is a management consultant who is widely known for her specialized work consulting and advising institutions of higher learning.
53. Plaintiff had valid business relationships with and/or expecting business relationships with several institutions of high learning.
54. Defendants were aware of Plaintiff's business and/or expectant business relationships with other institutions of higher learning and specifically knew Plaintiff served on the Association of Governing Boards of Universities and Colleges and could potentially lose her position are a result of the damage to her reputation as a result of the false statements made by the Defendants.
55. Defendants intentionally interfered with Plaintiff's business and/or expectant business relationships.
56. Defendants conduct caused Plaintiff special damages in the form of loss of position, reputation, existing and future business, and other loss of economic and financial advantages to the Plaintiff.

COUNT IV- HOSTILE ENVIRONMENT

(Defendant KSU)

57. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-56 as if fully set forth herein.

- 58. Defendant KSU conduct, and in action regarding the formal complaint filed by Plaintiff, was so severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive.
- 59. Plaintiff subjectively regarded the environment created by Defendant KSU as abusive.
- 60. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT V- HARASSMENT AND INTIMIDATION

(All Defendants)

- 61. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-60 as if fully set forth herein.
- 62. Defendants intentionally engaged in a course of conduct and/or repeatedly committed acts which alarmed or seriously annoyed the Plaintiff and which serve no legitimate purpose.
- 63. Plaintiff was subjectively regarded the Defendants behavior as abusive.
- 64. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT VI - PUNITIVE DAMAGES

(All Defendants)

- 65. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-64 as if fully set forth herein.
- 66. Defendants actions were intentional undertaken taken with oppression and malice.
- 67. Plaintiff is entitled to punitive damages pursuant to KRS 411.184 in as amount sufficient to punish Defendants for their conduct and to discourage similar conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Karen W. Bearden, Ph.D. prays for a judgment in her favor as follows:

- A. Compensatory damages in an amount determined by the trier of fact;
- B. Punitive Damages in the amount to be determined by the trier of fact;
- C. Liquidated damages pursuant to KRS 337.385;
- D. A reasonable award of Plaintiff's costs, and attorney's fees
- E. Trial by jury on all counts so triable;
- F. Pre-and post-judgment interest at the legal rate; and
- G. All other relief to which Plaintiff may be entitled.

Respectfully Submitted,

/s/ Kimberly L. Bunton

KIMBERLY L. BUNTON
 1238 EAST BROADWAY, 2ND FLOOR
 LOUISVILLE, KENTUCKY 40204
 502.208.1037
kimberly@kimberlybuntonlaw.com

ATTORNEY FOR PLAINTIFF

1070BD18-53B6-4CDF-B42B-B1EF3C68388D : 000011 of 000019

AMC : 000011 of 000012

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2018 the foregoing has been filed via AOC electronic filing system, and Parties may access the document through the electronic filing system.

Stephen L. Baker
Joshua M Salsburey
Jamie W.Dittert
Megan K. George
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
Counsel for Defendants

/s/ Kimberly L. Bunton

ATTORNEY FOR PLAINTIFF

1070BD18-53B6-4CDF-B42B-B1EF3C68388D : 000012 of 000019

AMC : 000012 of 000012

EXHIBIT 4

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 18-CI-03



KAREN W. BEARDEN, Ph.D.

PLAINTIFF

vs.

KENTUCKY STATE UNIVERSITY, et al.

DEFENDANTS

ORDER

This matter is before the Court upon Defendants' *Motion to Dismiss* and Defendants' *Response to Plaintiff's Motion for Leave to File an Amended Complaint*. Defendants incorporated by reference the arguments in their initial *Motion to Dismiss*, in their response to Plaintiff's subsequent *Motion for Leave to File an Amended Complaint*. Defendants' arguments are duly incorporated, and effectively serve as a *Motion to Dismiss* Plaintiff's Amended Complaint. The case was called before the Court during a motion hour on Wednesday, May 16, 2018. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **GRANTS** Defendants' *Motion*.

STATEMENT OF FACTS

Plaintiff serves as a board member of the Kentucky State University (KSU) Board of Regents (Board), as an appointee by Governor Ernie Fletcher. Her service on the Board began on October 4, 2004; and Governor Steve Beshear reappointed her on July 10, 2013, a term that extends until June 30, 2019. Plaintiff served as the Chairperson for the Board for six years. In early 2017, information surfaced among members of the Board, other KSU faculty, and related individuals that Plaintiff had an extracurricular

relationship with the former KSU President. This information was shared via email and at Board meetings. On February 27, 2017, the other Board members instituted a vote of “no confidence” against Plaintiff based on allegations that Plaintiff improperly influenced the presidential search. On March 25, 2017, Board members initiated a vote of “no confidence” against Plaintiff as chairperson for the Board and as a board member.

STANDARD OF REVIEW

Under Kentucky law, when a court considers a motion to dismiss under Civil Rule 12.02, “the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true.” Gall v. Scroggy, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) citing Ewell v. Central City, 340 S.W.2d 479 (Ky. 1960). “The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” Mims v. W.-S. Agency, Inc., 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) quoting James v. Wilson, 95 S.W.3d 875, 883-84 (Ky. Ct. App. 2002). In D.F.Bailey, Inc. v. GRW Engineers Inc., 350 S.W.3d 818 (Ky. Ct. App. 2011), the Kentucky Court of Appeals discussed a trial court’s standard of review when ruling on a motion to dismiss. “[T]he question is purely a matter of law. [...] Further, it is true that in reviewing a motion to dismiss, the trial court is not required to make any factual findings, and it may properly consider matters outside of the pleadings in making its decision. Id. at 820 (internal citations omitted).

ANALYSIS

I. Sovereign immunity bars Plaintiff's suit against KSU.

KSU is an agency of the Commonwealth that is entitled to the benefits of sovereign immunity. KSU is a state agency that serves as a central arm of the state by providing the “essential function of educating state citizens at the college level” and it receives state funding from the treasury to carry out this task. *Autry v. Western Kentucky University*, 219 S.W.3d 713, 717 (Ky. 2007). A “sovereign state cannot be held liable in a court of law for either intentional or unintentional torts committed by its agents.” *Calvert Investments v. Louisville & Jefferson County Metropolitan Sewer District*, 810 S.W.2d 133, 139 (Ky. 1991). Thus, the immunity that KSU inherently receives due to its status as a state university applies to claims of negligence as well as intentional torts. *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2011). Only the General Assembly can legislatively waive university immunity, and no such waiver has occurred in this case. *Commonwealth v. Whitworth*, 74 S.W.3d 695, 699 (Ky. 2002). KSU’s actions, specifically those relating to the commission of the alleged torts in the complaint do not constitute a waiver of sovereign immunity. *Id.*

The Court holds that KSU is sovereignly immune from the entirety of this suit, not just any judgment, final verdict, or damages that may be assessed, because it is an arm of the state government performing an essential state function. Plaintiff is barred from bringing tort claims, for which KSU has not waived its immunity, against the institution. The Court dismisses all claims against Defendant KSU.

II. Qualified official immunity bars Plaintiff's claims against individual defendants employed by KSU.

Public officials or employees enjoy qualified official immunity when they are sued for negligent acts in their individual capacities.” *Autry*, 219 S.W.3d at 717. The doctrine of sovereign immunity extends to officials who engage in discretionary functions that constitute the exercise of personal deliberation and judgment, in good faith, regarding actions within the scope of their employment. *Yanero*, 65 S.W.3d at 522; *Autry*, 219 S.W.3d at 717. Officials, to be in good faith, must not violate a statutory or other defined right or duty that would serve as evidence of willful or malicious intent to harm another individual. *Yanero*, 65 S.W.3d at 523.

In this case, Plaintiff claims that the individually named, KSU employed, defendants engaged in the distribution of false information about her relationship with former KSU President, and that Defendants who were members of the Faculty Senate instituted a vote of “no confidence” against her. During this time, the Board, of which Plaintiff was chairperson, was tasked with searching for a new president of KSU. The Court agrees with Defendants’ arguments that the relationship between the current Board chairperson and the former KSU president would be relevant to the Board regarding their search for a replacement. If the chairperson of the Board had an illicit relationship with the university president, it would undoubtedly impact her perceived bias, decision-making capacity, and professional credibility. Defendants engaged in a discretionary activity because it involved the Defendant employees’ ability to make a personal judgment about a work-related matter. Thus, the KSU employed Defendants’ discussion of her fitness as board chairperson and a subsequent vote of “no confidence” initiated by the members of the Faculty Senate, as it relates to her personal relationships with key KSU employees, directly relate to the employee Defendants’ scope of employment.

Qualified official immunity attaches to the Defendant employees' actions. Plaintiff failed to allege any bad faith by implicating that Defendants violated her protected rights or held a malicious intent during their discussion of her behavior. Given the nature of Defendants' work, evaluating potential presidential candidates, the Court declines, on the face of the complaint to infer malice or any other bad faith in these deliberations. Plaintiff, in both her Complaint and Amended Complaint, failed to notice any conduct on behalf of the KSU employee Defendants that would suffice to bad faith. Therefore, Defendants who served as faculty at KSU: Farris, Sipes-Matthews, Reilly, Kumar, Glass, Merlino, Moffett, Andries, Hampton, Rye, and Smith, are immune from suit due to qualified official immunity's protection of officials engaging in discretionary activities in good faith in the scope of their employment. The Court dismisses all claims against KSU employee Defendants.

III. Plaintiff failed to meet the pleading standard in CR 8.01 regarding Defendants Thompson and Taylor.

As the Court previously addressed, the claims against Defendant KSU and Defendants Farris, Sipes-Matthews, Reilly, Kumar, Glass, Merlino, Moffett, Andries, Hampton, Rye, and Smith are dismissed on the grounds that sovereign immunity and qualified sovereign immunity bar suits against these Defendants. The remaining Defendants: Moore, Thompson, and Taylor, contend that Plaintiff failed to comply with Kentucky's pleading standard, which includes "(a) a short and plain statement of the claim showing that the pleader is entitled to relief and (b) a demand for judgment for the relief to which he deems himself entitled." Ky. Civ. R. Proc. 8.01. The purpose of the pleading standard is to notify the opposing party of the essence of the claim against him with facts sufficient to support an implication of potential relief beyond mere speculation.

Johnson v. Thoni Oil Magic Benzol Gas Stations, Inc., 467 S.W.2d 772, 772 (Ky. 1971);
Espinosa v. Louisville/Jefferson County Metro Government, 2008-CA-944, 2009 WL
277488 at *1 (Ky. App. 2009).

First, in the enumeration of factual allegations in Plaintiff's Complaint, Plaintiff outlined general actions conducted exclusively by four named Defendants: Sipes-Matthews, Rye, Merlino, Farris, and Moore. Plaintiff failed to detail a single factual allegation against Defendants Taylor and Thompson. Defendant Thompson's name is listed in the introductory paragraphs of both Plaintiff's Complaint and Amended Complaint; and Plaintiff never returns to address any specific instance of Defendant Thompson's conduct that allegedly harmed her during her tenure and exit from the KSU Board. Without pleading any facts that remotely relate to Defendant Thompson directly, Plaintiff's Complaint fails to meet Kentucky's notice pleading requirement relating to Defendant Thompson. Therefore, Plaintiff has no grounds on which to sue Defendant Thompson, and all claims against him are dismissed.

Even more extremely, Plaintiff never mentioned Defendant Taylor in the Amended Complaint. Defendant Taylor's name appears in the caption of Plaintiff's original Complaint, but her name never resurfaces in any part of the Amended Complaint. Without even mentioning Taylor in the introductory paragraphs, let alone without any factual allegations surrounding her alleged misconduct, Plaintiff obviously failed to meet the notice pleading standards regarding Defendant Taylor. The Court dismisses all claims against Defendant Taylor.

IV. Plaintiff failed to state a claim for defamation for which relief may be granted.

A claim for defamation of a public figure requires a showing that a defendant making a facially defamatory statement, that was in fact false, and that the defendant knew to be false and or acted with reckless disregard about its falsity. *Doe v. Coleman*, 436 S.W.3d 207, 211 (Ky. App. 2014). Plaintiff is a public figure. In *Warford v. Lexington Herald-Leader Company*, 789 S.W.2d 758, 766 (Ky. 1990), the Kentucky Supreme Court defined a test to determine if an individual is a public figure. First, a Court must assess “(1) in what particular and identifiable public controversy (2) did appellant by some voluntary act involve himself to the extent that he either assumed a role of public prominence, or was in a position to influence others or the outcome of the controversy, and (3) did appellant enjoy regular and continuing access to the media?” *Id.* Plaintiff was appointed to the KSU Board by Governors Fletcher and Beshear, and she served as chairperson of the Board. During her time as chairperson, particularly at the time of the events in question, Plaintiff was facilitating the Board’s search for a new KSU president when the allegations of Plaintiff’s inappropriate relationship with the former KSU president arose. Plaintiff was in a position of public prominence, she had the ability to influence others during the search process due to her gubernatorial appointment to her post, and she enjoyed ease of access to the media. Therefore, Plaintiff is a public person.

In claiming defamation, Plaintiff must prove malice on the part of her accuser. The only Defendant against whom she could bring this claim is Defendant Moore. In her pleadings, Plaintiff states that “Defendant Moore, while attending at least one KSU Faculty Senate meeting, expressly and falsely stated that Plaintiff ‘had an affair’ with a former KSU president and sheared the same false information at one or more KSU Frankfort Alumni meetings and among other KSU alumni.” In her specific defamation

pleadings, Plaintiff never mentions Defendant Moore's name specifically, despite naming Defendants KSU, Farris, and Hampton in that claim. Further, Plaintiff did not allege any malicious intent behind any Defendant's conduct. Without pleading any facts against Defendant Moore, or pleading the elements required of a defamation of a public figure claim, the Court hereby dismisses Plaintiff's claim of defamation against Defendant Moore.

V. Plaintiff failed to state a claim for intentional infliction of emotional distress for which relief may be granted.

In her Amended Complaint, Plaintiff claims that Defendants acted in a reckless and intentional manner with conduct that was so outrageous that it offended socially accepted standards of decency and morality, causing her to suffer severe emotional distress. To succeed with an action of intentional infliction of emotional distress, the claimant must prove that conduct that was "truly outrageous, intolerable and which results in bringing one to his knees" occurred. *Kroger Company v. Willgruber*, 920 S.W.2d 61 (Ky. 1996). "The tort is not available for 'petty insults, unkind words and minor indignities.' Nor is it to compensate for behavior that is 'cold, callous and lacking sensitivity.'" *Osborne v. Payne*, 31 S.W.3d 911, 913-14 (Ky. 2000); citing *Kroger v. Willgruber*, 920 S.W.2d 61 (Ky. 1996); citing *Humana of Kentucky, Inc. v. Seitz*, 796 S.W.2d 1 (1990). In *Osborne*, the Court held that a combination of a special counselor relationship between a priest and a married couple and a resulting sexual relationship with the wife of the couple, exploiting that vulnerable relationship, created outrage significant enough to suffice as a requisite element for a claim of intentional infliction of emotional distress. *Osborne v. Payne*, 31 S.W.3d at 916. In *Kroger v. Willgruber*, the Court found that a repeated series of false job performance reviews and the promise of

another position at a bakery ultimately resulted in causing a mental breakdown, and qualified as outrageous conduct for a claim of intentional infliction of emotional distress. *Kroger v. Willgruber*, 920 S.W.2d at 68.

In this case, all Plaintiff alleges that Defendants, collectively, without express mention of Defendant Moore, “recklessly or intentionally inflicted emotional distress” on her through actions “beginning February 28, 2016 and thereafter.” Essentially, Plaintiff’s allegations amount merely to a recitation of the elements of the tort of intentional infliction of emotional distress. The spread of true information that did not cause her any physical repercussive harm fails to meet the Kentucky standard for the tort. Plaintiff failed to enumerate factual allegations regarding any Defendant, and specifically Plaintiff never linked Defendant Moore to any of her allegations. Therefore, Plaintiff’s claim for intentional infliction of emotional distress against Defendant Moore fails, and the Court dismisses it.

VI. Plaintiff failed to state a claim for tortious interference with business for which relief may be granted.

Plaintiff’s claim of tortious interference with business simply alleges that Plaintiff, as a “management consultant ... is widely known for her specialized work consulting and advising institutions of higher learning.” She claimed that she had valid business relationships with “several institutions of high learning” and was expecting more relationships to develop. She charged Defendants, writ large, with awareness of her connections with other educational institutes and that she “could potentially lose her position as a result of the damage to her reputation as a result of the false statements made by the Defendants.” Plaintiff never addressed any specific conduct on the part of Defendant Moore that could possibly be categorized as tortious interference with

business. She never, in the claim or in her factual pleadings, alleged any improper motive on the part of Defendants regarding the dissemination of information about her relationship with extracurricular a former KSU president. Therefore, Plaintiff's clam for tortious interference with business against Defendant Moore is dismissed because she failed to plead a cause of action that even addressed all the elements the tort requires.

VII. Plaintiff failed to state claims for harassment and intimidation and hostile environment for which relief may be granted.

Plaintiff claims hostile environment exclusively against Defendant KSU. As the Court previously stated, Defendant KSU is immune from suit in this matter. Therefore, the Court dismisses that claim. Plaintiff's claim of harassment and intimidation against all Defendants allegedly "alarmed or seriously annoyed her." Plaintiff has not pled elements of harassment or intimidation claims that would remotely suffice as a legally recognized cause of action against Defendant Moore. Therefore, the Court dismisses her claim.

VIII. Plaintiff has failed to plead any cognizable legal claim; therefore, she may not recover punitive damages.

The Court may not award Plaintiff the right to recover punitive damages when she has not sufficiently pled any claim against any Defendant, those who are protected by sovereign immunity and those who are not. Therefore, the Court cannot allow her to proceed with a suit to collect punitive damages.

CONCLUSION

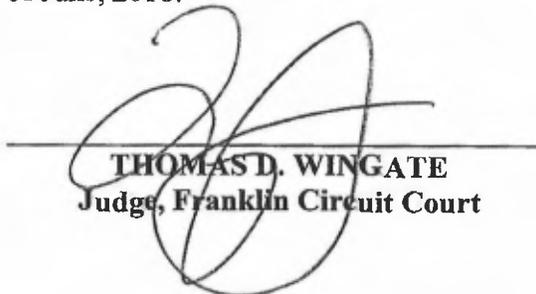
The Court **GRANTS** Defendants' *Motion to Dismiss*. Plaintiff has failed to allege any claims for which relief may be granted against any of the fourteen co-Defendants.

Sovereign immunity bars Defendants KSU and employee-Defendants from suit, and her pleadings fall short of seeking redress against non-protected Defendants.

Wherefore, the Court hereby **DISMISSES** this action.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 6th day of June, 2018.



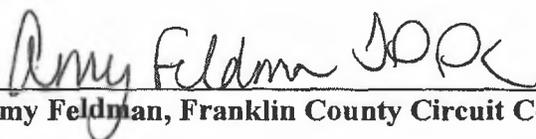
THOMAS D. WINGATE
Judge, Franklin Circuit Court

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this 7 day of June, 2018, to the following:

Hon. Kimberly L. Bunton
1238 East Broadway, 2nd Floor
Louisville, Kentucky 40204

Hon. Jamie W. Dittert
Hon. Stephen L. Barker
Hon. Joshua M. Salsburey
Hon. Megan K. George
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507



Amy Feldman, Franklin County Circuit Court Clerk

EXHIBIT 5



English Lucas Priest & Owsley, LLP | Strength. Knowledge. Experience.

Writer's E-mail Address mowsley@elpolaw.com

May 15, 2018

Kimberly L. Bunton
1238 East Broadway, 2nd Floor
Louisville, KY 40204

Re: Dr. Karen Bearden

Dear Ms. Bunton,

Our law firm has been retained by Kentucky State University (“KSU”) to write to you on behalf of the Board of Regents requesting that Dr. Karen Bearden voluntarily resign her position on the Board. While the Board of Regents recognizes and appreciates Dr. Bearden’s past service, the Board believes it is duty bound to request that Dr. Bearden voluntarily resign her position in light of the lawsuit she filed against KSU (*Karen W. Bearden, Ph.D. v. Kentucky State University, et. al.*, Franklin Circuit Court, 18-CI-0003).

When Dr. Bearden filed her lawsuit, she unquestionably juxtaposed her own self-interests against that of the KSU’s interests, thereby, creating a clear, impermissible, and irreparable conflict of interest. Said action is in direct conflict with the KSU’s interests and impedes Dr. Bearden’s abilities to carry out her ultimate duty to ensure the well-being of KSU. Pursuant to Kentucky law and KSU’s bylaws, Dr. Bearden’s continued service on the Board of Regents is impermissible.

The Board of Regents understand that Dr. Bearden will need time to consider this request, but would request that Dr. Bearden provide a response by no later than May 31, 2018. Please understand that if the Board of Regents does not receive her signed resignation by this date, the Board of Regents will have no choice, but to take the steps by law to initiate board removal proceedings.

Very truly yours,

ENGLISH, LUCAS, PRIEST & OWSLEY, LLP

Michael A. Owsley

MAO/tlw

EXHIBIT 6

RESOLUTION

AT A MEETING OF THE KENTUCKY STATE UNIVERSITY BOARD OF REGENTS,
HELD AT KENTUCKY STATE UNIVERSITY, ON JUNE 7, 2018

RESOLUTION – KENTUCKY STATE UNIVERSITY BOARD OF REGENTS PURSUANT to KRS 63.080(2)(c)(1) hereby formally provides written notice to the Council for Post-Secondary Education that board member Dr. Karen Bearden has created an impermissible conflict of interest by filing a lawsuit against Kentucky State University and that said conduct may warrant removal from the Kentucky State University Board of Regents.

WHEREAS, Kentucky State University Board of Regents (the Board), does hereby states as follows:

WHEREAS, Dr. Karen Bearden, hereinafter referred to as “Dr. Bearden,” is a Board of Regents member of Kentucky State University (KSU).

WHEREAS, Dr. Bearden has created a conflict of interest by filing a lawsuit against KSU. (Attached: Civil Complaint)

WHEREAS, Dr. Bearden is pursuing the aforementioned lawsuit while maintaining her position on the Board of Regents and continues to insist, through Counsel, that KSU should not be dismissed as a party from the KSU lawsuit. (Attached: Video – Defendant’s Motion to Dismiss)

WHEREAS, the Board acknowledges that Dr. Bearden’s lawsuit presents a significant conflict of interest which negatively affects KSU and the Commonwealth of Kentucky,

WHEREAS, KRS 63.080(2)(a) provides the Governor with the authority to remove Board of Regent members through an executive order so long as cause is met.

WHEREAS, KRS 63.080(2)(c) provides the procedures for which a member of a board of regents may be removed.

WHEREAS, pursuant to KRS 63.080(2)(c)(1), to initiate the removal process, “[t]he Governor...or the Board of Regents, as applicable, shall notify, in writing”, to the conflicted “board member and the Council on Postsecondary Education, that the member should be removed for cause and shall specify the conduct warranting removal.”

WHEREAS, the board member then has “seven (7) days to voluntarily resign or provide evidence to the Council on Postsecondary Education that the member’s conduct does not warrant removal.” KRS 63.080(2)(c)(2)

WHEREAS, “[w]ithin thirty (30) days of receipt of the Board’s written notice, the Council on Postsecondary Education shall review the written notice, investigate the

member and the alleged conduct, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed. A copy of the recommendation shall be provided to the Legislative Research Commission” (LRC). KRS 63.080(2)(c)(3)

WHEREAS, pursuant to KRS 63.080(2)(c)(4), “[t]he Governor shall make the determination, in writing, whether the member should be removed and shall notify the member, the board, the Council on Postsecondary Education, and the LRC of the determination.

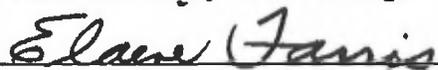
WHEREAS, “[i]f the Governor’s determination is to remove the member, the Governor shall remove the member by executive order...” KRS 63.080(2)(c)(5)

WHEREAS, through the statutory removal process, Dr. Bearden will have an opportunity to rebut any action taken against her.

WHEREAS, the Board asserts that the aforementioned conflict of interest fulfills the requirement of proper cause for removal, pursuant to KRS 63.080(2)(d).

WHEREAS, the Board, believing removal to be in the best interest of KSU, requests that the Council for Post-Secondary Education investigate Dr. Bearden and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor concerning removal of Dr. Bearden from the Kentucky State University Board of Regents.

NOW, THEREFORE, BE IT HEREBY RESOLVED KENTUCKY STATE UNIVERSITY BOARD OF REGENTS hereby formally provides written notice pursuant to KRS 63.080(2)(c)(1) to the Council for Post-Secondary Education that board member Dr. Karen Bearden has created an impermissible conflict of interest by filing a lawsuit against Kentucky State University and that said conduct may warrant removal from the Kentucky State University Board of Regents.



Chair, Kentucky State University Board of Regents

Dated: 6/7/18

EXHIBIT 7



Former Kentucky State University Board of Regents Chair Karen Bearden listened during a board meeting. Courtesy Frankfort State Journal

EDUCATION

She led a Kentucky university's Board of Regents. Now she's suing it for defamation.

BY LINDA BLACKFORD
lblackford@herald-leader.com

January 03, 2018 03:35 PM
Updated January 04, 2018 08:53 AM

The former chairwoman of the Kentucky State University Board of Regents is suing the school, its current board chair and faculty members for defamation, according to a lawsuit filed in Franklin Circuit Court.

Karen Bearden, who was appointed to the board in 2004, alleges that the KSU Faculty Senate began a campaign to have her removed as chair last spring by spreading the "malicious" and "false" information that she was engaged in an "inappropriate relationship" with a former Kentucky State president. The suit does not identify which president.

Then, faculty senate members and current board chairwoman Elaine Farris "publicly and falsely accused" Bearden of improperly influencing the search for a new president to replace Raymond Burse, who resigned in 2016.

The lawsuit alleges that Bearden suffered reputational harm, "disgrace, ridicule and contempt" as a result. The suit asks for punitive and compensatory damages and lawyers' fees. Neither Kentucky State University officials nor Farris would comment on the matter. Bearden still serves on the board, which hired current President Christopher Brown last March in a highly controversial search. Faculty were angry about the quality of the candidates and that the search committee did not consider interim President Aaron Thompson, who has since returned to his job at the Council on Postsecondary Education.

A week later, the Faculty Senate voted 50-30 in a vote of no confidence in Bearden because of concerns about leadership, finances and the presidential search. A separate vote of no confidence in the entire Board of Regents also passed 39-36.

Linda Blackford: 859-231-1359, @lblackford



Former Kentucky State University Board of Regents Chair Karen Bearden listens during a board meeting. (Rosalind Essig/rosalind.essig@state-journal.com)

KSU's Bearden sues school, Faculty Senate for defamation



(<https://www.state-journal.com/author/State-Journal-Staff-Report/>)

By **State Journal Staff Report** (<https://www.state-journal.com/author/State-Journal-Staff-Report/>)

Email the author (<mailto:news@state-journal.com>)

Published 12:43 pm Wednesday, January 3, 2018

The battle between Kentucky State University's Board of Regents and faculty isn't over yet.

Former Chairwoman Karen Bearden, a current member of the Board of Regents, is suing the school and members of its Faculty Senate less than a year after the school's faculty voted "no confidence" in her and the board. Bearden also names former interim President Aaron Thompson, current Chairwoman Elaine Farris and KSU Frankfort Alumni Chapter President Ron Moore in the suit.

Bearden was first appointed to the Board of Regents in 2004 by former Gov. Ernie Fletcher. She was reappointed in 2013 by former Gov. Steve Beshear. She served as chair from 2012 to 2017, and her term ends in 2019.

In March, KSU's faculty voted no confidence in Bearden and in the board as a whole amid a presidential search that was criticized by faculty for not including Thompson among its finalists.

Filed in Franklin Circuit Court on Tuesday, the suit alleges that members of the KSU Faculty Senate started a campaign to have Bearden removed as chairwoman by accusing her in electronic communications of being "engaged in an 'inappropriate' relationship with a former Kentucky State University President."

The suit also alleges Chairwoman Farris and former KSU Faculty Senate President Kim Sipes publicly and falsely accused her of "improperly influencing" the presidential search.

Citing defamation, intentional infliction of emotional distress, tortious interference with business, the creation of a hostile environment, harassment and intimidation, Bearden is seeking damages "sufficient to punish Defendants for their conduct and to discourage similar conduct in the future."

In the suit, Bearden asks for a trial by jury on all applicable counts.

KSU President Christopher Brown and the law firm representing Bearden could not be reached Wednesday to comment about the lawsuit.

Farris, the current chair of the KSU Board of Regents, said she had not seen the lawsuit and could not comment.

Reporters Alfred Miller, Sara Giza and Chanda Vena contributed to this story.

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EXHIBIT 8

William E. Johnson

From: Karen Bearden [karnbeardengrp@aol.com]
Sent: Saturday, March 11, 2017 8:17 AM
To: E Lysonge
Cc: William E. Johnson
Subject: Regent Paul Harnice

Dear Regent Lysonge,

I write this letter to you with a heavy heart. The past few weeks have been difficult for my family as I have been subjected to a campaign of lies, defamation and cruelty by members of the Kentucky State University faculty.

In addition to the hurt and harm inflicted by those individuals, I am now being threatened by one of my own colleagues, Regent Paul Harnice. While Regent Harnice has not contacted me directly, I have learned through conversations with you and Attorney Rowe, that Regent Harnice wants me to resign from the board or face being removed.

First, I find that to be an audacious demand in that I barely know Regent Harnice and to my knowledge, he has no previous experience in academic governance and can hardly make an effective and objective assessment of my years of service at Kentucky State University. He has made reference to "people in Frankfort" saying things about me and gossip and personal perspectives hardly warrant a threat for my resignation and removal.

Secondly, Regent Harnice appeared to threaten the board, if Aaron Thompson was not added to the slate of finalists. Clearly, the Search Committee, based on their criteria, determined that Aaron Thompson should not be a finalist. Regent Harnice sought to coerce the board to add him to appease "Frankfort people."

I viewed his comments as a threat if Aaron Thompson was not added we would suffer the consequences. The subsequent attacks on me seem to emanate from that threat.

Finally, Regent Harnice received second hand information about a conversation which I thought was privileged, and without appropriate context, he has determined I have done something wrong. It is interesting that the conversation was repeated to Regent Harnice and not to other board members. That is probably not a coincidence and I

believe is part of a plan to harass and threaten me. I want his accusations against me to stop and more importantly, I want his threats to stop immediately.

Please accept this as a formal grievance against Regent Harnice. The board, through its governance committee has draft individual board assessments and an assessment for the entire board. Rather than pursue personal vendettas, I would suggest that the board review these assessment tools at the April meeting, determine which will be used and then move forward with a data driven method for assessing performance.

I would also request that an external consultant on academic governance be brought in to work with the board at the earliest possible date.

Please contact me should you have questions or require additional information. Thank you.

Karen W. Bearden

Sent from my iPhone

COMMONWEALTH OF KENTUCKY
KENTUCKY COUNCIL ON POSTSECONDARY EDUCATION

KENTUCKY STATE UNIVERSITY
BOARD OF REGENTS

PETITIONER

v.

RESPONSE TO PETITIONER'S SUBMISSION
Electronically Submitted

KAREN W. BEARDEN, PH.D.

RESPONDENT

Respondent, Karen W. Bearden, Ph.D. ("Dr. Bearden"), by and through counsel, hereby submits her Response to Petitioner's Submission in Support of Removal and incorporates by reference her Request for Attorney General's opinion and Request for Stay pending the Attorney General's opinion and alternatively, request for hearing and states as follows:

A. KRS 63.080(2)(c)(3) Does Not Expressly Provide for Removal of a Board Member for Filing a Lawsuit Against a University.

Pursuant to KRS 63.080(2)(c)(3), a board member may be removed for cause for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty. Here, the Kentucky State University Board of Regents ("Board of Regents") issued a Resolution seeking the removal of Dr. Bearden for filing a lawsuit against Kentucky State University ("KSU") after KSU administrators ignored her formal grievance and other written communications expressing outlining her complaints regarding the malicious treatment she experienced from KSU administrators, faculty and Board of Regent members. There was no process in place to receive, investigate or hear Dr. Bearden's grievance. Moreover, she suffered a professional reputation as result of the false allegations by KSU administrators and others named in her lawsuit that cause

her to loss business and clients as a consultant for other institutions for higher learner. Accordingly, having no other recourse, Dr. Bearden was forced to defend herself and seek damages for her loss reputation and business.

KRS 63.080(2)(c)(3) does not expressly provide for removal of a board member for filing a lawsuit against a university. Nor is there any case law supporting such a notion. Indeed, KSU admits to a “dearth of case law addressing the issue when a lawsuit is filed by a sitting board member...” (*See* Petitioner’s Submission in Support of Removal, pg. 6.) Moreover, KSU concedes merely filing a lawsuit against a university by a board member does not institute *per se* breach of a fiduciary duty or present a conflict of interest warranting removal. *Id.* at pg. 2. Yet, KSU makes the circular argument that merely filing a lawsuit does not constitute a breach of fiduciary duty and then claims that Dr. Bearden’s lawsuit is distinguishable by making over reaching statements suggesting that the lawsuit filed by Dr. Bearden is distinguishable without providing any evidence.

For example, KSU claims that the lawsuit adversely impacted KSU’s “shares, governances, finances, constituents support and potential accreditation.” Dr. Bearden argues reciprocally that KSU’s actions against her would have the same impact. Ultimately, KSU does not provide any tangible evidence to support this broad claim.

Moreover, KSU claims that the allegations of the lawsuit and Dr. Bearden attempt to recover damages is malfeasance and gross neglect of duty. This argument is misplaced. Though not formally defined by Kentucky law, malfeasance has traditionally been defined as “[t]he wrongful or unjust doing of some act which the doer has no right to perform, or which he has stipulated by contract not to do. It differs from “mis- feasance” and “non-feasance,” Black’s Law Dictionary Free Online Dictionary, 2nd Ed. *Quoting See* 1 Chit. Pr. 9; 1 Chit. Pl. 134; *Dudley v.*

Flemingsburg, 115 Ky. 5, 72 S. W. 327, 00 L. R. A. 575, 103 Am. St. Rep. 253; *Coite v. Lynes*, 33 Conn. 115; *Bell v. Josse-lyn*, 3 Gray (Mass.) 311, 63 Am. Dec. 741.

In application to this case, it is agreed that a board member has a right to sue, KSU argument is not Dr. Bearden because it believes her lawsuit to be personal. Indeed, the facts to the case are sensitive in nature and contain personal information regarding Dr. Bearden. However, the lawsuit was a direct result of KSU ignoring her formal grievance and requests for assistance. Her actions were not “wrongful” and she had a right to sue. Additionally, there was no “stipulated contract” preventing her action. Accordingly, the lawsuit filed by Dr. Bearden does not meet the standard of malfeasance.

B. Dr. Bearden’s Lawsuit is not Irreparable

Despite of KSU’s claims, Dr. Bearden did not file the lawsuit out of spite. Indeed, the purpose of the lawsuit was to address the issues KSU refused to review in her formal grievance and to seek damages for her loss reputation and business as a result. KSU claims they were “blindsided” by the lawsuit and that Dr. Bearden used her “access to the press” when filing the lawsuit.

First, Dr. Bearden gave KSU the opportunity to address the issues when she filed the grievance and in her many follow-up requests. (*See* emails attached hereto). Second, the filing of the lawsuit is public record and accessible to the public, especially the media who reviews lawsuit filings daily. Third, KSU and the other named defendants used the local media to spread false information about Dr. Bearden to suggest that she would turn to the entity that she deems adversarial to her to leak the lawsuit is absurd and supported by any factual or tangible evidence.

Moreover, KSU claims that by naming the individual defendants in their individual capacities and sought damages from each was to punish them. Indeed, these individuals are distinguishable from KSU which is why they were named in their *individual* capacities and not their official capacity. KSU's reference to *Phelps v. Louisville Water Co.* 103 S.W. 3d 46, 55 (Ky. 2003) is misplaced. Dr. Bearden's primary motive was not to punish, but to address the wrong initiated by the individuals and ignored by KSU.

CONCLUSION

Dr. Bearden agrees with KSU that "not every suit by a board member against its own entity may require removal." (Petitioner's Submission in Support of Removal, pg. 15) Her case is no different. KSU has failed to produce any tangible evidence to support why Dr. Bearden's lawsuit is warrants removal under KRS 63.080(2)(c)(3). There is no evidence of malfeasance, misfeasance, incompetence, or gross neglect of duty. Accordingly, KSU's request for removal fails and should be dismissed.

Respectfully Submitted,

/s/ Kimberly L. Bunton

KIMBERLY L. BUNTON
1238 EAST BROADWAY, 2ND FLOOR
LOUISVILLE, KENTUCKY 40204
502.208.1037
kimberly@kimberlybuntonlaw.com

ATTORNEY FOR RESPONDENT

Certificate of Service

I hereby certify that on this 10th day of July, 2018 the foregoing has been submitted via electronic mail.

Stephen L. Baker
Joshua M Salsburey
Jamie W.Dittert
Megan K. George
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
jdittert@sturgilturner.com

Counsel for Petitioner

/s/ Kimberly L. Bunton

ATTORNEY FOR RESPONDENT

gordon rowe

Gmail

Move to Inbox

COMPOSE

Inbox (26,667)

Starred

Important

Sent Mail

Drafts (351)

Categories

Social (16,493)

Promotions (87,4...

Updates (20,090)

Forums (12)

Notes

Personal

Travel

Unwanted

More

Begin forwarded message:

From: Karen Bearden

Date: May 2, 2017, 9:50:42 AM EDT

To: Gordon Rowe <gordon.rowe@kysu.edu>, "William E. Johnsc

Subject: Grievances

Gentlemen,

I have previously filed grievances against the executive committee and by laws and for publicly defaming me by stating I had an inaj taken on me during Raymond's tenure.

All lies and I swear to that.

They invited Ron Moore to attend a meeting to lie and publicly de emergency meeting to take a vote, without ever explaining the er and chaos prevailed. Speakers who may have defended me wer

I must reiterate that neither the president nor the provost ever co because all the issues are under the control of the president, yet This was a witch hunt encouraged by Aaron Thompson because they too wanted him to be president as evidenced by Kim Sipes

Regent Elaine Farris also played a role in this witch hunt, but I wi

I am hurt that the board and the university remained silent during attacks. Nor should university resources, such as Rick Smith's of of the FCC which voted confidence in me and the board and no c me reported. Also, Aaron had the authority to stop the slander ar

I want to formally request that Kim Sipes, Mara Merlino, Peter Sr will

show that their behavior was egregious and fraudulent. Although faced with the facts in the report written by Dr. Mary Pat Wohlfor

My family and I have received hateful communications and threa

The activities of these people have brought shame and negativity apology from the institution and these individuals.

gordon rowe

Gmail

Move to Inbox

COMPOSE

Inbox (26,666)

Starred

Important

Sent Mail

Drafts (351)

Categories

Social (16,493)

Promotions (87,4...

Updates (20,091)

Forums (12)

Notes

Personal

Travel

Unwanted

More

Begin forwarded message:

From: Karen Bearden [redacted]
Date: May 2, 2017 at 16:53:01 EDT
To: "Rowe, Gordon" <Gordon.Rowe@kysu.edu>, "William E. Johnson" <bill@j...>
Cc: E Lysonge [redacted]
Subject: Re: Confidential and Privileged

Gordon,

I am writing to ask if you have the ability to take affidavits in your office, or if en

Aaron Thompson lied to members of the faculty senate by telling them I ordere fact that I only became aware that there was some perceived issue regarding p faculty senate.

You personally have said that I did in fact call you and ask you to return to KSU discussions with anyone, including lying Aaron Thompson.

If Aaron Thompson somehow imagined that I pressured him, (which would be took place. What I do know is that Kim Sipes is recorded saying Aaron Thomps people to try and destroy me and my reputation in order to be named president

I am writing to request that an affidavit be taken on each employee named by tl discussions with these people about their pay. I am requesting that this be don

As part of my formal grievance, I want copies of the personnel action forms rel

Finally, I want a calendar of all meetings between Aaron Thompson and Kimbe part of my formal grievance.

Sent from my iPhone

On Apr 18, 2017, at 8:52 PM, "Rowe, Gordon" <Gordon.Rowe@kysu.edu> wr

[redacted signature]



[Redacted]

Fwd: Grievance

Karen Bearden [Redacted]

Thu, May 31, 2018 at 4:23 PM

[Redacted]

[Redacted]

Sent from my iPhone

Begin forwarded message:

From: Karen Bearden [Redacted]
Date: April 25, 2017 at 1:57:14 PM EDT
To: Gordon Rowe <gordon.rowe@kysu.edu>
Subject: Grievance

Attorney Rowe,
Please accept this email as official grievance against Mr. Ken Andries. While I do not think I have ever personally met Mr. Andries, he stated in either a Faculty Senate meeting and or in Faculty Senate Committee meeting that I wanted to be president of Kentucky State University and that was a reason that I did not support Aaron Thompson.
It has come to my attention that this lie was widely repeated at KSU and may have fueled the fraudulent vote of no confidence taken by the Senate.

Moreover, former KSU faculty member, Dan Green published a slanderous hateful Opinion article state that I wanted to be KSU president and that I lacked the qualifications and credentials to do so. While, I am unable to draw a direct line between Andries and Green, it is clear that Andries stated this lie.

I wish for this grievance to be investigated and completed within the timelines stated for these matters. Ken Andries lies have damaged me and my reputation. I am requesting all his email that may be related to this matter, meeting minutes and interviews with possible witnesses including Kim Sipes, Peter Smith, Reba Rye, Tierra Freeman, Dr. Raj and and Mara Merlino be included in this investigation.

Thank you.
Karen W. Bearden

Sent from my iPhone

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY
COMMONWEALTH OF KENTUCKY
CIVIL ACTION NO. _____

KAREN W. BEARDEN, Ph.D.

PLAINTIFF

v.

VERIFIED COMPLAINT

KENTUCKY STATE UNIVERSITY

**SERVE: M. Christopher Brown, II, Ph.D.
Kentucky State University
400 East Main Street
Frankfort, Kentucky 40601**

**SERVE: Attorney General Andy Beshear
Office of The Attorney General
710 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449**

and

ELAINE FARRIS
In Her Individual Capacity
1006 Windsor Court
Shelbyville, Kentucky 40065

and

KIMBERY A. SIPES-MATTHEWS
In Her Individual Capacity
509 Oaklawn Drive
Mount Sterling, Kentucky 40353

and

ASHOK KUMAR
In His Individual Capacity
400 East Main Street
Frankfort, Kentucky 40601

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and

CYNTHIA S. GLASS,
In Her Individual Capacity
400 East Main Street
Frankfort, Kentucky 40601

and

MARA LEE MERLINO
In her Individual Capacity
1096 Twelve Oaks Drive
Lawrenceburg, Kentucky 40342

and

TIERRA FREEMAN TAYLOR
In Her Individual Capacity
326 Cane Run Camp Road
Harrodsburg, Kentucky 40330

and

JOSEPH W MOFFET
In His Individual Capacity
8000 John Davis Drive, Apt 2901
Frankfort, Kentucky 40601

and

KENNETH ANDRIES
In His Individual Capacity
1440 Pigeon Fork Road
Lawrenceburg, Kentucky 40342

and

DANTREA HAMPTON
In her Individual Capacity
109 Schenkelwood Drive
Frankfort, Kentucky 40601

and

REBA RYE
In Her Individual Capacity
220 East Campbell Street
Frankfort, Kentucky 40601

and

PETER SMITH
In His Individual Capacity
400 East Main Street
Frankfort, Kentucky 40601

and

AARON THOMPSON
In His Individual Capacity
175 Wildcat Drive
Richmond, Kentucky 40475

and

RONALD MOORE, SR.
In His Individual Capacity
312 East Third Street
Frankfort, Kentucky 40601

DEFENDANTS

* * * * *

Plaintiff, Karen W. Bearden, Ph.D. ("Plaintiff"), hereby brings her Verified Complaint against Defendants, Kentucky State University ("KSU"), Elaine Farris, in her individual capacity, Kimberly Sipes-Matthews, in her individual capacity, Wilfred Reilly, in his individual capacity, Ashok Kumar, in his individual capacity, Cynthia S. Glass, in her individual capacity, Mara Lee Merlino, in her individual capacity, Joseph Moffet, in his individual capacity, Kenneth Andries, in his individual capacity, Dantrea Hampton, in her individual capacity, Reba Rye, in her individual capacity, Peter Smith, in his individual capacity, Aaron Thompson, in his individual

capacity, and Ronald Moore, Sr., in his individual capacity (Collectively “Defendants”) and states as follows:

PARTIES

1. Plaintiff, Karen W. Bearden, Ph.D. (“Plaintiff”) is an individual who resides in the Commonwealth of Kentucky.
2. Defendant Kentucky State University (“KSU”) is a Kentucky public university located in Frankfort, Franklin County, Kentucky. It may be served through its President and the Attorney General.
3. Defendant Elaine Farris, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
4. Defendant Kimberly Sipes-Matthews, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
5. Defendant Wilfred Reilly, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
6. Defendant Ashok Kumar, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
7. Defendant Cynthia S. Glass, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

8. Defendant Mara Lee Merlino, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
9. Defendant Joseph Moffett, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
10. Defendant Kenneth Andries, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
11. Defendant Dantrea Hampton, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
12. Defendant Reba Rye, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
13. Defendant Peter Smith, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
14. Defendant Aaron Thompson, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

15. Defendant Ronald Moore, Sr., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

JURISDICTION AND VENUE

16. An actual and justiciable controversy exists and this Court has jurisdiction of the Defendants because Defendants work and do business in Franklin County, Kentucky and because the subject matter of this action is located in Franklin County, Kentucky.
17. The Franklin Circuit Court is the appropriate venue for this action because the Defendants may be summoned to Franklin Circuit Court and actions against a state agency is proper in Franklin Circuit Court.

BACKGROUND

18. Plaintiff is currently a member of the Kentucky State University Board of Regents (“Board of Regents”). Plaintiff was originally appointed by Governor Ernie Fletcher on October 4, 2004. Plaintiff was then re-appointed by Governor Steve Beshear on or about July 10, 2013. Her current term runs until June 30, 2019. There are eleven members of the Board of Regents.
19. Plaintiff has served on governing boards for institutions of higher learning for over twenty-five (25) years. In addition, Plaintiff is a management consultant whose clients include public and private colleges and universities.
20. Plaintiff served as Chairperson for the Board of Regents from 2012-2017.
21. The Kentucky State University (“KSU”) is an institution of the Commonwealth of Kentucky. *See e.g.*, KRS 164.810, *et seq.* The University is governed by a Board of Regents

(“Board”), the membership of which is determined by a statute that calls for most of the Board to be appointed by the Governor. KRS 164.821.

- 22. Defendant Farris is the current chairperson for the Board of Regents.
- 23. Defendant Sipes-Matthews, Defendant Reilly, Defendant Kumar, Defendant Glass, Defendant Merlino, Defendant Moffett, Defendant Rye, Defendant Smith and Defendant Andries are all members of the KSU faculty and KSU Faculty Senate.
- 24. Defendant Thompson is an individual and former KSU Interim President.
- 25. Defendant Hampton is the current president of the KSU Faculty Senate.
- 26. Defendant Moore is President of KSU Frankfort Alumni Chapter.

A. Misrepresentation of Plaintiff’s Relationship with Former KSU President

- 27. During the Spring Semester of 2017, members of the KSU Faculty Senate began a campaign to have the Plaintiff removed as chairperson of the Board of Regents (“Removal Campaign”).
- 28. Part of the Removal Campaign included the malicious distribution, dissemination, and circulation of false information alleging that Plaintiff was engaged in an “inappropriate” relationship with a former Kentucky State University President
- 29. This false information was distributed, disseminated and published via a thread of electronic communications shared by Defendant Sipes, Defendant Rye and Defendant Merlino.
- 30. This false information was also distributed, disseminated and published during Faculty Senate meetings and to the local media.

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B. Misrepresentation of Plaintiff’s Role in the Presidential Search Process

- 31. On or about February 27, 2017, Defendants continued their Removal Campaign by instituting a vote of “no confidence” against Plaintiff. Defendants fostered and created a hostile atmosphere and environment based on false accusations and allegations against the Plaintiff.
- 32. Defendants, specifically Defendant Farris and Defendant Sipes, publicly and falsely accused Plaintiff of improperly influencing the presidential search which was facilitated by a committee comprised of KSU Regents, members of the Frankfort community and other KSU stakeholders. Defendants statements against the Plaintiff were false and unsubstantiated.
- 33. Moreover, Defendants Farris and Sipes harassed and intimidated Plaintiff in an attempt to induce Plaintiff to influence the outcome of the presidential search.
- 34. On or about March 25, 2017, members of the Faculty Senate maliciously initiated a vote of “no confidence” against the Plaintiff as chairperson for the Board of Regents and the overall Board of Regents. Defendant members of the Faculty Senate told the local paper that the “presidential search was a tipping point.” <http://www.state-journal.com/2017/03/25/facultys-vote-of-no-confidence-in-kentucky-state-university-board-of-regents-a-crossroad-for-school/>.
- 35. Defendants continued spreading false information regarding Plaintiff resulting in a significant economic and financial loss for Plaintiff.
- 36. Plaintiff filed a complaint with the KSU administration regarding the malicious distribution of false information by Defendant members of the Faculty Senate and expressly made KSU

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aware of the harassment and intimidation. KSU did not respond to Plaintiff's complaints or express concerns of harassment and intimidation.

COUNT I – DEFAMATION

(All Defendants)

37. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-36 as if fully set forth herein.
38. Defendants, acting in concert, misrepresented to the public and the media false accusations that Plaintiff had an “inappropriate” relationship with a former KSU president.
39. Defendant KSU failed to investigate Plaintiff's formal complaint filed with the KSU administration alleging the conspiracy to publish false statements Defendant members of the Faculty Senate, Defendant Farris, Defendant Hampton, other members of the administrative staff and faculty. The Defendants acted in their individual capacities in doing so much as action and publications were not within their authority.
40. The aforementioned activity by all individual Defendants in this case are oral and written statements that libeled and slandered the Plaintiff.
41. Plaintiff's reputation was damaged as a direct and proximate result of individual Defendants' defamation: Plaintiff was exposed to and experienced disgrace, ridicule, and contempt in the estimation of her friends, acquaintances, colleagues and the public.

COUNT II – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(All Defendants)

42. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-41 as if fully set forth herein.
43. Defendants recklessly or intentionally inflicted emotional distress on Plaintiff through their actions beginning February 28, 2017 and thereafter.

44. Defendants conduct was reckless and intentional.
45. Defendants conduct was outrageous and intolerable in that it offends against socially accepted standards of decency and morality in society.
46. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT III- TORTIOUS INTERFERENCE WITH BUSINESS

(All Defendants)

47. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-46 as if fully set forth herein.
48. Plaintiff is a management consultant who is widely known for her specialized work consulting and advising institutions of higher learning.
49. Plaintiff had valid business relationships with and/or expecting business relationships with several institutions of high learning.
50. Defendants were aware of Plaintiff's business and/or expectant business relationships.
51. Defendants intentionally interfered with Plaintiff's business and/or expectant business relationships.
52. Defendants conduct caused Plaintiff special damages in the form of loss of position, reputation, existing and future business, and other loss of economic and financial advantages to the Plaintiff.

COUNT IV- HOSTILE ENVIRONMENT

(Defendant KSU)

53. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-52 as if fully set forth herein.

- 54. Defendant KSU conduct, and in action regarding the formal complaint filed by Plaintiff, was so severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive.
- 55. Plaintiff subjectively regarded the environment created by Defendant KSU as abusive.
- 56. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT IV- HARASSMENT AND INTIMIDATION

(All Defendants)

- 57. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-56 as if fully set forth herein.
- 58. Defendants intentionally engaged in hostile behavior to intimidate Plaintiff.
- 59. Plaintiff was subjectively regarded the Defendants behavior as abusive.
- 60. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT V- PUNITIVE DAMAGES

(All Defendants)

- 61. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-60 as if fully set forth herein.
- 62. Defendants actions vis-à-vis Plaintiff were taken with oppression and malice.
- 63. Plaintiff is entitled to punitive damages pursuant to KRS 411.184 in as amount sufficient to punish Defendants for their conduct and to discourage similar conduct in the future.

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COUNT VI- ATTORNEYS FEES

(All Defendants)

- 64. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-62 as if fully set forth herein.
- 65. Plaintiff is entitled to attorney's fees, pursuant to KRS 337.385, common law and equity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Karen W. Bearden, Ph.D. prays for a judgment in her favor as follows:

- A. Compensatory damages in an amount determined by the trier of fact;
- B. Punitive Damages in the amount to be determined by the trier of fact;
- C. Liquidated damages pursuant to KRS 337.385;
- D. A reasonable award of Plaintiff's costs, and attorney's fees herein expended under KRS 337.385.
- E. Trial by jury on all counts so triable;
- F. Pre-and post-judgment interest at the legal rate; and
- G. All other relief to which Plaintiff may be entitled.

Respectfully Submitted,



 KIMBERLY L. BUNTON
 1238 EAST BROADWAY, 2ND FLOOR
 LOUISVILLE, KENTUCKY 40204
 502.554.9954
 KIMBERLY@TALBOTTBUNTON.COM

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- 2. Defendant Kentucky State University (“KSU”) is a Kentucky public university located in Frankfort, Franklin County, Kentucky. It may be served through its President and the Attorney General.
- 3. Defendant Elaine Farris, Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
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- 7. Defendant Cynthia S. Glass, Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
- 8. Defendant Mara Lee Merlino, upon information and belief, is an individual that resides in the Commonwealth of Kentucky. She is being sued in her individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

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9. Defendant Joseph Moffett, Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
10. Defendant Kenneth Andries Ph.D., upon information and belief, is an individual that resides in the Commonwealth of Kentucky. He is being sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.
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JURISDICTION AND VENUE

15. An actual and justiciable controversy exists and this Court has jurisdiction of the Defendants because Defendants work and do business in Franklin County, Kentucky and because the subject matter of this action is located in Franklin County, Kentucky.

16. The Franklin Circuit Court is the appropriate venue for this action because the Defendants may be summoned to Franklin Circuit Court and actions against a state agency is proper in Franklin Circuit Court.

BACKGROUND

17. Plaintiff is currently a member of the Kentucky State University Board of Regents (“Board of Regents”). Plaintiff was originally appointed by Governor Ernie Fletcher on October 4, 2004. Plaintiff was then re-appointed by Governor Steve Beshear on or about July 10, 2013. Her current term runs until June 30, 2019. There are eleven (11) members of the Board of Regents.
18. Plaintiff has served on governing boards for institutions of higher learning for over twenty-five (25) years. In addition, Plaintiff is a management consultant whose clients include public and private colleges and universities.
19. Plaintiff served as Chairperson for the Board of Regents for approximately six years.
20. The Kentucky State University (“KSU”) is an institution of the Commonwealth of Kentucky. *See e.g.*, KRS 164.810, *et seq.* The University is governed by a Board of Regents (“Board”), the membership of which is determined by a statute that calls for most of the Board to be appointed by the Governor. KRS 164.821.
21. Defendant Farris is the current chairperson for the Board of Regents.
22. Defendant Sipes-Matthews, Defendant Reilly, Defendant Kumar, Defendant Glass, Defendant Merlino, Defendant Moffett, Defendant Rye and Defendant Andries are all members of the KSU faculty and KSU Faculty Senate.
23. Defendant Thompson is an individual and former KSU Interim President.

24. Defendant Hampton is a current president of the KSU Faculty Senate on the Board of Regents.
25. Defendant Moore is a member of the Executive KSU Frankfort Alumni Chapter.
 - A. **Misrepresentation of Plaintiff's Relationship with Former KSU President**
26. During the Spring Semester of 2017, Defendants intentionally started a public campaign to discredit and malign Plaintiff's personal and professional reputation for the purpose of provide a basis to remove Plaintiff as chairperson of the Board of Regents ("Removal Campaign").
27. Part of the Removal Campaign included the malicious distribution, dissemination, and circulation of false information alleging that Plaintiff engaged in an "inappropriate" relationship with a former Kentucky State University President. Each Defendant falsely asserted, confirmed and/or shared allegations that Plaintiff engaged in a sexual relationship with a former Kentucky State University president.
28. The Defendant Sipes-Matthews, Defendant Reilly, Defendant Kumar, Defendant Glass, Defendant Merlino, Defendant Moffett, Defendant Rye and Defendant Andries verbally spread false information regarding Plaintiff during one or more KSU Faculty meetings and through casual conversations with other University employees by expressly stating Plaintiff had an "inappropriate relationship" with a former KSU president.
29. Defendant Sipes-Matthews, Defendant Farris, Defendant Hampton falsely and maliciously, stated to other employees and board members, that Plaintiff "had an affair" with a former Kentucky State University president.
30. Defendant Sipes-Matthews, Defendant Rye and Defendant Merlino distributed, disseminated and published intentionally and maliciously shared the false information

accusing Plaintiff of having an “inappropriate relationship” and “affair” with a former KSU president, via a thread of electronic communications.

31. Defendant Sipes-Matthews also distributed, disseminated and published false statements alleging Plaintiff had an “inappropriate relationship” with a former KSU president to the local media.

B. Misrepresentation of Plaintiff’s Role in the Presidential Search Process

32. On or about February 27, 2017, Defendants continued their Removal Campaign by instituting a vote of “no confidence” against Plaintiff. Defendants, in bad faith, fostered and created a hostile atmosphere and environment based on false accusations and allegations about the Plaintiff.
33. Defendants, specifically Defendant Farris and Defendant Sipes-Matthews, publicly and falsely accused Plaintiff of improperly influencing the presidential search which was facilitated by a committee comprised of KSU Regents, members of the Frankfort community and other KSU stakeholders. Defendants’ statements against the Plaintiff were false and unsubstantiated.
34. Moreover, Defendants Farris and Sipes verbally harassed and intimidated Plaintiff in an attempt to induce Plaintiff to influence the outcome of the presidential search.
35. On or about March 25, 2017, maliciously initiated a vote of “no confidence” against the Plaintiff as chairperson for the Board of Regents and the overall Board of Regents. Defendant members of the Faculty Senate told the local paper that the “presidential search was a tipping point.” <http://www.state-journal.com/2017/03/25/facultys-vote-of-no-confidence-in-kentucky-state-university-board-of-regents-a-crossroad-for-school/>.

36. Defendant Moore, while attending at a least one KSU Faculty Senate meeting, expressly and falsely stated that Plaintiff “had an affair” with a former KSU president and shared the same false information at one or more KSU Frankfort Alumni meetings and among other KSU alumni.
37. Defendants continued spreading false information resulting in a significant economic and financial loss for Plaintiff and ultimately, her positions on other professional associations governing institutions were terminated as a result of her removal as chairperson of the KSU Board of Regents.
38. Defendants, particularly Defendant Farris, were aware of Plaintiff’s consulting business which primarily consults universities and colleges. Defendants knew or should know the impact of spreading the false statements would diminish Plaintiff’s professional credibility and interfere with Plaintiff’s business and professional contracts.
39. Plaintiff filed a complaint with the KSU administration regarding the malicious distribution of false information by Defendant members of the Faculty Senate and expressly made KSU aware of the harassment and intimidation by Defendant Sipes. KSU did not respond to Plaintiff’s complaints or express concerns of harassment and intimidation.

COUNT I – DEFAMATION

(All Defendants)

40. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-39 as if fully set forth herein.
41. Defendants, acting in concert, misrepresented to the public and the media false accusations that Plaintiff had an “inappropriate relationship” and “had an affair” with a former KSU president.

42. Defendant KSU failed to investigate Plaintiff's formal complaint filed with the KSU administration alleging the conspiracy to publish false statements Defendant faculty members, Defendant Farris, Defendant Hampton, other members of the administrative staff and faculty. The Defendants acted in their individual capacities and outside the scope of their discretionary functions by spreading false information regarding the Plaintiff and a former president. These actions were outside the scope of the faculty and administrative duties and responsibilities as outline in applicable KSU policies and procedures. *See* KSU Faculty Handbook and KSU Board of Regents Gold Book.
43. The aforementioned activity by all individual Defendants in this case are verbal and written statements that libeled and slandered the Plaintiff.
44. Plaintiff's reputation was damaged as a direct and proximate result of individual Defendants' defamation: Plaintiff was exposed to and experienced disgrace, ridicule, and contempt in the estimation of her friends, acquaintances, colleagues and the public.
45. As a direct result of the defamation,

COUNT II – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(All Defendants)

46. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-45 as if fully set forth herein.
47. Defendants recklessly or intentionally inflicted emotional distress on Plaintiff through their actions beginning February 28, 2016 and thereafter.
48. Defendants conduct was reckless and intentional.
49. Defendants conduct was outrageous and intolerable in that it offends against socially accepted standards of decency and morality in society.

50. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT III- TORTIOUS INTERFERENCE WITH BUSINESS

(All Defendants)

51. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-50 as if fully set forth herein.
52. Plaintiff is a management consultant who is widely known for her specialized work consulting and advising institutions of higher learning.
53. Plaintiff had valid business relationships with and/or expecting business relationships with several institutions of high learning.
54. Defendants were aware of Plaintiff's business and/or expectant business relationships with other institutions of higher learning and specifically knew Plaintiff served on the Association of Governing Boards of Universities and Colleges and could potentially lose her position are a result of the damage to her reputation as a result of the false statements made by the Defendants.
55. Defendants intentionally interfered with Plaintiff's business and/or expectant business relationships.
56. Defendants conduct caused Plaintiff special damages in the form of loss of position, reputation, existing and future business, and other loss of economic and financial advantages to the Plaintiff.

COUNT IV- HOSTILE ENVIRONMENT

(Defendant KSU)

57. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-56 as if fully set forth herein.

- 58. Defendant KSU conduct, and in action regarding the formal complaint filed by Plaintiff, was so severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive.
- 59. Plaintiff subjectively regarded the environment created by Defendant KSU as abusive.
- 60. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT V- HARASSMENT AND INTIMIDATION

(All Defendants)

- 61. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-60 as if fully set forth herein.
- 62. Defendants intentionally engaged in a course of conduct and/or repeatedly committed acts which alarmed or seriously annoyed the Plaintiff and which serve no legitimate purpose.
- 63. Plaintiff was subjectively regarded the Defendants behavior as abusive.
- 64. Defendants actions caused Plaintiff and continues to cause Plaintiff severe emotional distress.

COUNT VI – PUNITIVE DAMAGES

(All Defendants)

- 65. Plaintiff repeats and realleges each of the allegations in Paragraphs 1-64 as if fully set forth herein.
- 66. Defendants actions were intentional undertaken taken with oppression and malice.
- 67. Plaintiff is entitled to punitive damages pursuant to KRS 411.184 in as amount sufficient to punish Defendants for their conduct and to discourage similar conduct in the future.

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AMC : 000010 of 000012

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Karen W. Bearden, Ph.D. prays for a judgment in her favor as follows:

- A. Compensatory damages in an amount determined by the trier of fact;
- B. Punitive Damages in the amount to be determined by the trier of fact;
- C. Liquidated damages pursuant to KRS 337.385;
- D. A reasonable award of Plaintiff's costs, and attorney's fees
- E. Trial by jury on all counts so triable;
- F. Pre-and post-judgment interest at the legal rate; and
- G. All other relief to which Plaintiff may be entitled.

Respectfully Submitted,

/s/ Kimberly L. Bunton

KIMBERLY L. BUNTON
 1238 EAST BROADWAY, 2ND FLOOR
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 502.208.1037
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ATTORNEY FOR PLAINTIFF

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AMC : 000011 of 000012

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2018 the foregoing has been filed via AOC electronic filing system, and Parties may access the document through the electronic filing system.

Stephen L. Baker
Joshua M Salsburey
Jamie W.Dittert
Megan K. George
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
Counsel for Defendants

/s/ Kimberly L. Bunton

ATTORNEY FOR PLAINTIFF

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AMC : 000012 of 000012

KETUCKY STATE UNIVERSITY
Regular Meeting of the Board of Regents
1:00 p.m., March 1, 2018
Carl M. Hill Student Center Ballroom
Kentucky State University
Frankfort, Kentucky 40601
Regent Elaine Farris, Presiding

MINUTES

I. Call to Order

Chairperson Elaine Farris, Ed.D. called the meeting to order at 1:01 p.m. and welcomed everyone.

II. Roll Call

President M. Christopher Brown II, Ph.D. conducted roll call:

Regent Ron Banks	Present
Regent Mindy Barfield, Esq.	Present
Regent Karen Bearden, Ph.D.	Present
Regent Onaje Cunningham	Present
Regent Elaine Farris, Ed.D.	Present
Regent Derrick Gilmore	Present
Regent Paul Harnice, Esq.	Present
Regent Dalton Jantzen	Present
Regent Elgie McFayden, Ph.D.	Present
Regent Syamala H. K. Reddy, M.D.	Absent
Regent Roger Reynolds	Present

Ten Regents were in attendance; a quorum was established.

III. Adoption of the Agenda

MOTION by Regent McFayden:

Move the Board to approve the March 1, 2018, Board of Regents Agenda with the addition of the Executive Committee Report.

Seconded by Regent Reynolds and passed without dissent.

IV. Opening Remarks

Chairperson Farris gave her opening remarks.

V. Approval of Minutes

MOTION by Regent McFayden:

Move to approve the minutes of the December 7, 2017, Board of Regents meeting.

Seconded by Regent Jantzen and passed without dissent.

VI. President's Quarterly Report

President Brown updated the Board of Regents with his quarterly report.

VII. Presentations

Belle S. Wheelan, Ph.D., President, Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) gave an overview of the SACSCOC process.

Patricia A. Higgins, Ed.D., Chair, Green Ribbon Commission on Academic Prioritization and Budget Alignment provided an update on the Commission's work since December of 2017.

VIII. Committee Areas

A. Executive Committee

Chairperson Farris updated the Board on the Executive Committee Meeting that was held on March 1, 2018 at 12:00 p.m. There were no action items at this meeting.

B. Academic Affairs

1. Action Items

- a. Dr. Debbie Thomas, Provost and Vice President for Academic Affairs, presented a Resolution for the conferral of the Spring 2018 Degrees.

MOTION by Regent McFayden:

Move the Board to confer the Spring 2018 Degrees.

Seconded by Regent Barfield and passed without dissent.

- b. Dr. Thomas requested approval to award a Posthumous Degree to Julian Bond.

MOTION by Regent Banks:

Move the Board to award a Posthumous Degree to Julian Bond.

Seconded by Regent Reynolds and passed without dissent.

- c. President Brown requested to defer the motion to award an Honorary Degree for Doctor of Humane Letters due to lack of sufficient documentation.
- d. Dr. Thomas requested approval of Dr. Kristen E. Broady as a candidate for Tenure and Promotion.

MOTION by Regent McFayden:

Move the Board to approve Dr. Kristen E. Broady as candidate for Tenure and Promotion.

Seconded by Regent Bearden and passed without dissent.

2. Informational Items

The Southern Association of Colleges and Schools Commission on Colleges update was passed as the information was covered in Dr. Belle Wheelan's presentation.

C. Enrollment Management and Brand Identity

1. Informational Items

Justin Mathis, Assistant Vice President for Enrollment Management and Director of Admissions, presented the Spring 2018 Enrollment Management Update. Clara Ross Stamps, Vice President for Enrollment Management and Brand Identity, presented the Quarterly Media and Brand Identity Report and the University Branding Survey Update.

D. Institutional Advancement and Alumni Relations

1. Informational Item

Sonia Sanders, Assistant Vice President for Public Engagement and Community Outreach, presented the Public Engagement Initiatives Report.

E. Finance and Administration

1. Informational Items

Kevin Appleton, Senior Vice President for Finance and Administration, presented the Quarterly Financial Status Update, 2018-2020 Budget Forecast, Review of Campus Facilities and Priorities, and Audit updates.

F. Student Engagement and Campus Life

1. *Informational Items*

Dr. Thomas Calhoun, Vice President for Student Engagement and Campus Life, gave an update on Residence Life and the Spring 2018 Campus Life Programs.

G. Governance

1. *Informational Item*

President Brown and General Counsel Lisa Lang gave an update of the Gold Book revisions.

H. Legal

1. *Action Items*

Ms. Lang presented contracts for Board approval.

MOTION by Regent Barfield:

Move the Board to approve the Addendum to President Brown's Employment Agreement, the ADT Residential Services Contract, the National IPA Participation Agreement, and the ADP Master Services Agreement.

Seconded by Regent McFayden and passed without dissent.

VIII. Campus Stakeholder Presentations

- A. Dantrea Hampton, President of the Faculty Senate, presented the Faculty Senate updates.
- B. Joseph Goodman, President of the Staff Senate, presented the Staff Senate updates.
- C. Regent Onaje Cunningham, President of the Student Government Association, presented the Student Government updates.

IX. No closed session was held.

X. No closing remarks

XI. Adjournment

MOTION by Regent McFayden:

Moved the Board for adjournment at 4:45 p.m.

Seconded by Regent Reynolds and passed without dissent.

**SPECIAL MEETING
KENTUCKY STATE UNIVERSITY
BOARD OF REGENTS**

**Monday, April 16, 2018
1:00 p.m.**

Board of Regents Room
2nd Floor Julian M. Carroll Academic Services Building
Kentucky State University
Frankfort, Kentucky 40601

MINUTES

I. Call to Order

Chairperson Elaine Farris, Ed.D. called the meeting to order at 1:00 p.m.

II. Roll Call

President M. Christopher Brown II, Ph.D. conducted roll call:

Regent Ron Banks	Present
Regent Mindy Barfield, Esq.	Present
Regent Karen Bearden, Ph.D.	Present
Regent Onaje Cunningham	Present
Regent Elaine Farris, Ed.D.	Present
Regent Derrick Gilmore	Present
Regent Paul Harnice, Esq.	Present
Regent Dalton Jantzen	Present
Regent Elgie McFayden, Ph.D.	Present
Regent Syamala H. K. Reddy, M.D.	Absent
Regent Roger Reynolds	Present

Ten Regents were in attendance; a quorum was established.

III. Adoption of the Agenda

MOTION by Regent Harnice:

Move the Board to approve the April 16, 2018, Board of Regents Agenda.

Seconded by Regent Reynolds and passed without dissent.

Regent Cunningham was not present for this vote.

IV. Opening Remarks

President Brown gave his opening remarks.

V. Approval of Minutes

MOTION by Regent Jantzen:

Move to approve the minutes of the March 1, 2018, Executive Committee Meeting.

Seconded by Regent Barfield and passed without dissent.

MOTION by Regent McFayden:

Move to approve the minutes of the March 1, 2018, Board of Regents Meeting.

Seconded by Regent Barfield and passed without dissent.

VI. Committee Areas

A. Academic Affairs

1. Action Items

- a. President Brown requested approval of the Clarified Mission Statement.

MOTION by Regent Gilmore:

Move the Board to approve the Mission Statement as stated.

Seconded by Regent McFayden and passed without dissent.

- b. President Brown requested approval to continue the Associate Degree in Nursing Program.

MOTION by Regent Reynolds:

Move the Board to continue the Associate Degree in Nursing Program.

Seconded by Regent McFayden and passed without dissent.

- c. President Brown requested approval to award an Honorary Degree to Dr. Randal Pinkett.

MOTION by Regent McFayden:

Move the Board to award an Honorary Degree to Dr. Randal Pinkett.

Seconded by Regent Reynolds and passed without dissent.

B. Finance and Administration

1. Informational Items

President Brown gave an update on dining and catering services.

2. Action Items

- a. President Brown requested approval of the tuition rates for the Summer 2018 Semester.

MOTION by Regent McFayden:

Move the Board to approve the tuition rates for the Summer 2018 Semester.

Seconded by Regent Farris and passed without dissent.

- b. President Brown requested approval of the capital construction projects to renovate Hunter Hall and The Halls.

MOTION by Regent Harnice:

Move the Board to approve the Hunter Hall renovation project with a budget of \$1.9 million in federal funds.

Seconded by Regent McFayden and passed without dissent.

MOTION by Regent Harnice:

Move the Board to approve The Halls renovation project which has a \$900,000.00 budget from the University's fund balance to be repaid from auxiliary revenues.

Seconded by Regent McFayden and passed without dissent.

- c. President Brown requested approval of the tuition rates for Montgomery GI Bill Federal Tuition Assistance.

MOTION by Regent Harnice:

Move the Board to approve the adjusted tuition rates for the Montgomery GI Bill Federal Tuition Assistance.

Seconded by Regent McFayden and passed without dissent.

C. Governance

1. *Action Items*

- a. President Brown requested approval of Board having a Self-Evaluation Process.

MOTION by Regent Reynolds:

Move the Board to approve the Board's Self-Evaluation Process.

Seconded by Regent Jantzen and passed without dissent.

- b. Regent Harnice requested approval of the Presidential Evaluation Process Procedures.

MOTION by Regent Barfield:

Move the Board to approve the Presidential Evaluation Process Procedures.

Seconded by Regent McFayden and passed without dissent.

- c. Regent Harnice requested approval of the Board of Regents' questionnaire for the Presidential Evaluation Process.

MOTION by Regent McFayden:

Move the Board to approve the Board of Regents' questionnaire for the Presidential Evaluation Process.

Seconded by Regent Jantzen and passed without dissent.

- d. Regent Harnice requested approval of the timeline for the Presidential Evaluation Process.

MOTION by Regent Barfield:

Move the Board to approve the timeline of the Presidential Evaluation Process.

Seconded by Regent McFayden and passed without dissent.

D. Legal

1. *Action Items*

- a. Ms. Lang presented the Crowe Horwath, FY 2018 Auditor, contract; the CampusLabs contract; and the contracts related to Ellucian/Banner for Board approval.

MOTION by Regent Gilmore:

Move the Board to approve the FY 2018 Auditor contract.

Seconded by Regent Jantzen and passed without dissent.

MOTION by Regent Barfield:

Move the Board to approve the Campus Labs contract.

Seconded by Regent McFayden and passed without dissent.

MOTION by Regent McFayden:

Move the Board to approve the Ellucian/Banner contracts.

Seconded by Regent Gilmore and passed without dissent.

VII. Closed Session

MOTION by Regent Barfield:

Move to go into Closed Session to discuss personnel matters, pending litigation, and property acquisition pursuant to KRS 61.810 (Kentucky Open Meetings Act).

Seconded by Regent McFayden and passed without dissent.

VIII. Open Session

MOTION by Regent McFayden:

Move to enter into open session.

Seconded by Regent Jantzen and passed without dissent.

IX. Personnel Actions

- A. President Brown announced the retirement of Athletic Director William Graham to occur on June 1, 2018. Regent McFayden requested approval to draft a resolution to honor William Graham for his year of service.

MOTION by Regent Barfield:

Move to draft a resolution to honor William Graham.

Seconded by Regent Harnice and passed without dissent.

- B. President Brown advanced the name of Douglas R. Allen, II to serve as Vice President for Finance and Administration and Chief Financial Officer. Regent McFayden requested approval for Douglas R. Allen, II to be hired by Kentucky State University.

MOTION by Regent Harnice:

Move to approve that Kentucky State University hire Douglas R. Allen, II as the new CFO.

Seconded by Regent Reynolds and passed without dissent.

X. No closing remarks

XI. Adjournment

MOTION by Regent McFayden:

Moved the Board for adjournment at 3:41 p.m.

Seconded by Regent Reynolds and passed without dissent.

Submitted by:



Dr. M. Christopher Brown II, Board Secretary
Kentucky State University
Board of Regents



Dr. Elaine Farris, Chair
Kentucky State University
Board of Regents

Approved with no corrections

Approved with corrections

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 18-CI-03



KAREN W. BEARDEN, Ph.D.

PLAINTIFF

vs.

KENTUCKY STATE UNIVERSITY, et al.

DEFENDANTS

ORDER

This matter is before the Court upon Defendants' *Motion to Dismiss* and Defendants' *Response to Plaintiff's Motion for Leave to File an Amended Complaint*. Defendants incorporated by reference the arguments in their initial *Motion to Dismiss*, in their response to Plaintiff's subsequent *Motion for Leave to File an Amended Complaint*. Defendants' arguments are duly incorporated, and effectively serve as a *Motion to Dismiss* Plaintiff's Amended Complaint. The case was called before the Court during a motion hour on Wednesday, May 16, 2018. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **GRANTS** Defendants' *Motion*.

STATEMENT OF FACTS

Plaintiff serves as a board member of the Kentucky State University (KSU) Board of Regents (Board), as an appointee by Governor Ernie Fletcher. Her service on the Board began on October 4, 2004; and Governor Steve Beshear reappointed her on July 10, 2013, a term that extends until June 30, 2019. Plaintiff served as the Chairperson for the Board for six years. In early 2017, information surfaced among members of the Board, other KSU faculty, and related individuals that Plaintiff had an extracurricular

relationship with the former KSU President. This information was shared via email and at Board meetings. On February 27, 2017, the other Board members instituted a vote of “no confidence” against Plaintiff based on allegations that Plaintiff improperly influenced the presidential search. On March 25, 2017, Board members initiated a vote of “no confidence” against Plaintiff as chairperson for the Board and as a board member.

STANDARD OF REVIEW

Under Kentucky law, when a court considers a motion to dismiss under Civil Rule 12.02, “the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true.” Gall v. Scroggy, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) citing Ewell v. Central City, 340 S.W.2d 479 (Ky. 1960). “The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” Mims v. W.-S. Agency, Inc., 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) quoting James v. Wilson, 95 S.W.3d 875, 883-84 (Ky. Ct. App. 2002). In D.F.Bailey, Inc. v. GRW Engineers Inc., 350 S.W.3d 818 (Ky. Ct. App. 2011), the Kentucky Court of Appeals discussed a trial court’s standard of review when ruling on a motion to dismiss. “[T]he question is purely a matter of law. [...] Further, it is true that in reviewing a motion to dismiss, the trial court is not required to make any factual findings, and it may properly consider matters outside of the pleadings in making its decision. Id. at 820 (internal citations omitted).

ANALYSIS

I. Sovereign immunity bars Plaintiff's suit against KSU.

KSU is an agency of the Commonwealth that is entitled to the benefits of sovereign immunity. KSU is a state agency that serves as a central arm of the state by providing the “essential function of educating state citizens at the college level” and it receives state funding from the treasury to carry out this task. *Autry v. Western Kentucky University*, 219 S.W.3d 713, 717 (Ky. 2007). A “sovereign state cannot be held liable in a court of law for either intentional or unintentional torts committed by its agents.” *Calvert Investments v. Louisville & Jefferson County Metropolitan Sewer District*, 810 S.W.2d 133, 139 (Ky. 1991). Thus, the immunity that KSU inherently receives due to its status as a state university applies to claims of negligence as well as intentional torts. *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2011). Only the General Assembly can legislatively waive university immunity, and no such waiver has occurred in this case. *Commonwealth v. Whitworth*, 74 S.W.3d 695, 699 (Ky. 2002). KSU’s actions, specifically those relating to the commission of the alleged torts in the complaint do not constitute a waiver of sovereign immunity. *Id.*

The Court holds that KSU is sovereignly immune from the entirety of this suit, not just any judgment, final verdict, or damages that may be assessed, because it is an arm of the state government performing an essential state function. Plaintiff is barred from bringing tort claims, for which KSU has not waived its immunity, against the institution. The Court dismisses all claims against Defendant KSU.

II. Qualified official immunity bars Plaintiff's claims against individual defendants employed by KSU.

Public officials or employees enjoy qualified official immunity when they are sued for negligent acts in their individual capacities.” *Autry*, 219 S.W.3d at 717. The doctrine of sovereign immunity extends to officials who engage in discretionary functions that constitute the exercise of personal deliberation and judgment, in good faith, regarding actions within the scope of their employment. *Yanero*, 65 S.W.3d at 522; *Autry*, 219 S.W.3d at 717. Officials, to be in good faith, must not violate a statutory or other defined right or duty that would serve as evidence of willful or malicious intent to harm another individual. *Yanero*, 65 S.W.3d at 523.

In this case, Plaintiff claims that the individually named, KSU employed, defendants engaged in the distribution of false information about her relationship with former KSU President, and that Defendants who were members of the Faculty Senate instituted a vote of “no confidence” against her. During this time, the Board, of which Plaintiff was chairperson, was tasked with searching for a new president of KSU. The Court agrees with Defendants’ arguments that the relationship between the current Board chairperson and the former KSU president would be relevant to the Board regarding their search for a replacement. If the chairperson of the Board had an illicit relationship with the university president, it would undoubtedly impact her perceived bias, decision-making capacity, and professional credibility. Defendants engaged in a discretionary activity because it involved the Defendant employees’ ability to make a personal judgment about a work-related matter. Thus, the KSU employed Defendants’ discussion of her fitness as board chairperson and a subsequent vote of “no confidence” initiated by the members of the Faculty Senate, as it relates to her personal relationships with key KSU employees, directly relate to the employee Defendants’ scope of employment.

Qualified official immunity attaches to the Defendant employees' actions. Plaintiff failed to allege any bad faith by implicating that Defendants violated her protected rights or held a malicious intent during their discussion of her behavior. Given the nature of Defendants' work, evaluating potential presidential candidates, the Court declines, on the face of the complaint to infer malice or any other bad faith in these deliberations. Plaintiff, in both her Complaint and Amended Complaint, failed to notice any conduct on behalf of the KSU employee Defendants that would suffice to bad faith. Therefore, Defendants who served as faculty at KSU: Farris, Sipes-Matthews, Reilly, Kumar, Glass, Merlino, Moffett, Andries, Hampton, Rye, and Smith, are immune from suit due to qualified official immunity's protection of officials engaging in discretionary activities in good faith in the scope of their employment. The Court dismisses all claims against KSU employee Defendants.

III. Plaintiff failed to meet the pleading standard in CR 8.01 regarding Defendants Thompson and Taylor.

As the Court previously addressed, the claims against Defendant KSU and Defendants Farris, Sipes-Matthews, Reilly, Kumar, Glass, Merlino, Moffett, Andries, Hampton, Rye, and Smith are dismissed on the grounds that sovereign immunity and qualified sovereign immunity bar suits against these Defendants. The remaining Defendants: Moore, Thompson, and Taylor, contend that Plaintiff failed to comply with Kentucky's pleading standard, which includes "(a) a short and plain statement of the claim showing that the pleader is entitled to relief and (b) a demand for judgment for the relief to which he deems himself entitled." Ky. Civ. R. Proc. 8.01. The purpose of the pleading standard is to notify the opposing party of the essence of the claim against him with facts sufficient to support an implication of potential relief beyond mere speculation.

Johnson v. Thoni Oil Magic Benzol Gas Stations, Inc., 467 S.W.2d 772, 772 (Ky. 1971);
Espinosa v. Louisville/Jefferson County Metro Government, 2008-CA-944, 2009 WL
277488 at *1 (Ky. App. 2009).

First, in the enumeration of factual allegations in Plaintiff's Complaint, Plaintiff outlined general actions conducted exclusively by four named Defendants: Sipes-Matthews, Rye, Merlino, Farris, and Moore. Plaintiff failed to detail a single factual allegation against Defendants Taylor and Thompson. Defendant Thompson's name is listed in the introductory paragraphs of both Plaintiff's Complaint and Amended Complaint; and Plaintiff never returns to address any specific instance of Defendant Thompson's conduct that allegedly harmed her during her tenure and exit from the KSU Board. Without pleading any facts that remotely relate to Defendant Thompson directly, Plaintiff's Complaint fails to meet Kentucky's notice pleading requirement relating to Defendant Thompson. Therefore, Plaintiff has no grounds on which to sue Defendant Thompson, and all claims against him are dismissed.

Even more extremely, Plaintiff never mentioned Defendant Taylor in the Amended Complaint. Defendant Taylor's name appears in the caption of Plaintiff's original Complaint, but her name never resurfaces in any part of the Amended Complaint. Without even mentioning Taylor in the introductory paragraphs, let alone without any factual allegations surrounding her alleged misconduct, Plaintiff obviously failed to meet the notice pleading standards regarding Defendant Taylor. The Court dismisses all claims against Defendant Taylor.

IV. Plaintiff failed to state a claim for defamation for which relief may be granted.

A claim for defamation of a public figure requires a showing that a defendant making a facially defamatory statement, that was in fact false, and that the defendant knew to be false and or acted with reckless disregard about its falsity. *Doe v. Coleman*, 436 S.W.3d 207, 211 (Ky. App. 2014). Plaintiff is a public figure. In *Warford v. Lexington Herald-Leader Company*, 789 S.W.2d 758, 766 (Ky. 1990), the Kentucky Supreme Court defined a test to determine if an individual is a public figure. First, a Court must assess “(1) in what particular and identifiable public controversy (2) did appellant by some voluntary act involve himself to the extent that he either assumed a role of public prominence, or was in a position to influence others or the outcome of the controversy, and (3) did appellant enjoy regular and continuing access to the media?” *Id.* Plaintiff was appointed to the KSU Board by Governors Fletcher and Beshear, and she served as chairperson of the Board. During her time as chairperson, particularly at the time of the events in question, Plaintiff was facilitating the Board’s search for a new KSU president when the allegations of Plaintiff’s inappropriate relationship with the former KSU president arose. Plaintiff was in a position of public prominence, she had the ability to influence others during the search process due to her gubernatorial appointment to her post, and she enjoyed ease of access to the media. Therefore, Plaintiff is a public person.

In claiming defamation, Plaintiff must prove malice on the part of her accuser. The only Defendant against whom she could bring this claim is Defendant Moore. In her pleadings, Plaintiff states that “Defendant Moore, while attending at least one KSU Faculty Senate meeting, expressly and falsely stated that Plaintiff ‘had an affair’ with a former KSU president and sheared the same false information at one or more KSU Frankfort Alumni meetings and among other KSU alumni.” In her specific defamation

pleadings, Plaintiff never mentions Defendant Moore's name specifically, despite naming Defendants KSU, Farris, and Hampton in that claim. Further, Plaintiff did not allege any malicious intent behind any Defendant's conduct. Without pleading any facts against Defendant Moore, or pleading the elements required of a defamation of a public figure claim, the Court hereby dismisses Plaintiff's claim of defamation against Defendant Moore.

V. Plaintiff failed to state a claim for intentional infliction of emotional distress for which relief may be granted.

In her Amended Complaint, Plaintiff claims that Defendants acted in a reckless and intentional manner with conduct that was so outrageous that it offended socially accepted standards of decency and morality, causing her to suffer severe emotional distress. To succeed with an action of intentional infliction of emotional distress, the claimant must prove that conduct that was "truly outrageous, intolerable and which results in bringing one to his knees" occurred. *Kroger Company v. Willgruber*, 920 S.W.2d 61 (Ky. 1996). "The tort is not available for 'petty insults, unkind words and minor indignities.' Nor is it to compensate for behavior that is 'cold, callous and lacking sensitivity.'" *Osborne v. Payne*, 31 S.W.3d 911, 913-14 (Ky. 2000); citing *Kroger v. Willgruber*, 920 S.W.2d 61 (Ky. 1996); citing *Humana of Kentucky, Inc. v. Seitz*, 796 S.W.2d 1 (1990). In *Osborne*, the Court held that a combination of a special counselor relationship between a priest and a married couple and a resulting sexual relationship with the wife of the couple, exploiting that vulnerable relationship, created outrage significant enough to suffice as a requisite element for a claim of intentional infliction of emotional distress. *Osborne v. Payne*, 31 S.W.3d at 916. In *Kroger v. Willgruber*, the Court found that a repeated series of false job performance reviews and the promise of

another position at a bakery ultimately resulted in causing a mental breakdown, and qualified as outrageous conduct for a claim of intentional infliction of emotional distress. *Kroger v. Willgruber*, 920 S.W.2d at 68.

In this case, all Plaintiff alleges that Defendants, collectively, without express mention of Defendant Moore, “recklessly or intentionally inflicted emotional distress” on her through actions “beginning February 28, 2016 and thereafter.” Essentially, Plaintiff’s allegations amount merely to a recitation of the elements of the tort of intentional infliction of emotional distress. The spread of true information that did not cause her any physical repercussive harm fails to meet the Kentucky standard for the tort. Plaintiff failed to enumerate factual allegations regarding any Defendant, and specifically Plaintiff never linked Defendant Moore to any of her allegations. Therefore, Plaintiff’s claim for intentional infliction of emotional distress against Defendant Moore fails, and the Court dismisses it.

VI. Plaintiff failed to state a claim for tortious interference with business for which relief may be granted.

Plaintiff’s claim of tortious interference with business simply alleges that Plaintiff, as a “management consultant ... is widely known for her specialized work consulting and advising institutions of higher learning.” She claimed that she had valid business relationships with “several institutions of high learning” and was expecting more relationships to develop. She charged Defendants, writ large, with awareness of her connections with other educational institutes and that she “could potentially lose her position as a result of the damage to her reputation as a result of the false statements made by the Defendants.” Plaintiff never addressed any specific conduct on the part of Defendant Moore that could possibly be categorized as tortious interference with

business. She never, in the claim or in her factual pleadings, alleged any improper motive on the part of Defendants regarding the dissemination of information about her relationship with extracurricular a former KSU president. Therefore, Plaintiff's clam for tortious interference with business against Defendant Moore is dismissed because she failed to plead a cause of action that even addressed all the elements the tort requires.

VII. Plaintiff failed to state claims for harassment and intimidation and hostile environment for which relief may be granted.

Plaintiff claims hostile environment exclusively against Defendant KSU. As the Court previously stated, Defendant KSU is immune from suit in this matter. Therefore, the Court dismisses that claim. Plaintiff's claim of harassment and intimidation against all Defendants allegedly "alarmed or seriously annoyed her." Plaintiff has not pled elements of harassment or intimidation claims that would remotely suffice as a legally recognized cause of action against Defendant Moore. Therefore, the Court dismisses her claim.

VIII. Plaintiff has failed to plead any cognizable legal claim; therefore, she may not recover punitive damages.

The Court may not award Plaintiff the right to recover punitive damages when she has not sufficiently pled any claim against any Defendant, those who are protected by sovereign immunity and those who are not. Therefore, the Court cannot allow her to proceed with a suit to collect punitive damages.

CONCLUSION

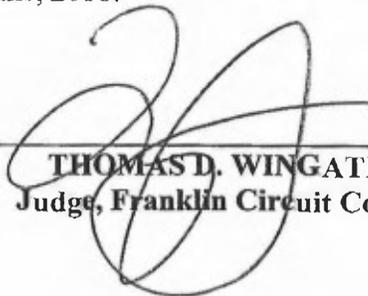
The Court **GRANTS** Defendants' *Motion to Dismiss*. Plaintiff has failed to allege any claims for which relief may be granted against any of the fourteen co-Defendants.

Sovereign immunity bars Defendants KSU and employee-Defendants from suit, and her pleadings fall short of seeking redress against non-protected Defendants.

Wherefore, the Court hereby **DISMISSES** this action.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 6th day of June, 2018.



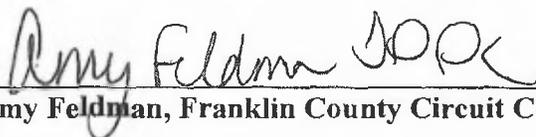
THOMAS D. WINGATE
Judge, Franklin Circuit Court

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this 7 day of June, 2018, to the following:

Hon. Kimberly L. Bunton
1238 East Broadway, 2nd Floor
Louisville, Kentucky 40204

Hon. Jamie W. Dittert
Hon. Stephen L. Barker
Hon. Joshua M. Salsburey
Hon. Megan K. George
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507



Amy Feldman, Franklin County Circuit Court Clerk



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Writer's E-mail Address mowsley@elpolaw.com

May 15, 2018

Kimberly L. Bunton
1238 East Broadway, 2nd Floor
Louisville, KY 40204

Re: Dr. Karen Bearden

Dear Ms. Bunton,

Our law firm has been retained by Kentucky State University (“KSU”) to write to you on behalf of the Board of Regents requesting that Dr. Karen Bearden voluntarily resign her position on the Board. While the Board of Regents recognizes and appreciates Dr. Bearden’s past service, the Board believes it is duty bound to request that Dr. Bearden voluntarily resign her position in light of the lawsuit she filed against KSU (*Karen W. Bearden, Ph.D. v. Kentucky State University, et. al.*, Franklin Circuit Court, 18-CI-0003).

When Dr. Bearden filed her lawsuit, she unquestionably juxtaposed her own self-interests against that of the KSU’s interests, thereby, creating a clear, impermissible, and irreparable conflict of interest. Said action is in direct conflict with the KSU’s interests and impedes Dr. Bearden’s abilities to carry out her ultimate duty to ensure the well-being of KSU. Pursuant to Kentucky law and KSU’s bylaws, Dr. Bearden’s continued service on the Board of Regents is impermissible.

The Board of Regents understand that Dr. Bearden will need time to consider this request, but would request that Dr. Bearden provide a response by no later than May 31, 2018. Please understand that if the Board of Regents does not receive her signed resignation by this date, the Board of Regents will have no choice, but to take the steps by law to initiate board removal proceedings.

Very truly yours,

ENGLISH, LUCAS, PRIEST & OWSLEY, LLP

Michael A. Owsley

MAO/tlw