

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

JAMES TRACY, )  
 )  
 Plaintiff, ) Case No. 9:16-cv-80655-RLR  
 )  
 v. )  
 )  
 FLORIDA ATLANTIC UNIVERSITY )  
 BOARD OF TRUSTEES, a/k/a FLORIDA )  
 ATLANTIC UNIVERSITY, et al. )  
 )  
 )  
 Defendants. )

**PLAINTIFF'S FIRST SET OF  
INTERROGATORIES DIRECTED TO  
DEFENDANT FLORIDA ATLANTIC  
UNIVERSITY BOARD OF TRUSTEES**

Plaintiff JAMES TRACY, by and through his attorneys, and pursuant to Federal Rule of Civil Procedure 33, requests that Defendant Florida Atlantic University Board of Trustees a/k/a “Florida Atlantic University” fully answer the following interrogatories, under oath and in writing, within thirty (30) days.

**DEFINITIONS**

1. **Action**. The term “this action” is defined as the fact or process of doing something, typically to achieve an aim.
2. **All/Each**. The terms “all” and “each” shall be construed as all and each.
3. **And/Or**. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary, in order to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
4. **Any**. The term “any” shall be construed to include the word “all,” and the word “all” shall be construed to include the word “any.”
5. **Blog/Blogging**. “Blogging” is defined as writing on a blog; “blog” is defined as a website or webpage containing a writer’s experiences, observations and opinions.

6. Communication. The term “communication,” means the transmittal of information (in the form of facts, ideas, inquires, or otherwise).
7. Complaint. The term “Complaint” means the Plaintiffs’ Complaint and any future amendments thereof. The term “complaint” means protestation, objection or expression of dissatisfaction.
8. Defendants. The term “Defendants” means any and all Defendants named in the Complaint.
9. Document. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term. Included in this definition are: e-mail, communications, contracts, correspondence, books, records, reports, memoranda or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, calendars, schedules, graphs, charts, releases, studies, blueprints, questionnaires, financial statements, tapes, discs, tape recordings, microfilm, microfiche, videotapes, photographs, phonograph records, motion pictures, and data cards, as well as any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, on which information is recorded in writing or in sound or in any other manner.
10. Electronically stored information. The terms “Electronically stored information” and “ESI” mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including but not limited to electronic mail (sent, received, or draft), instant messaging, videoconferencing, and direct connections or other electronic correspondence (whether opened or unopened, active or deleted), word processing

files, spreadsheets, databases, and sound recordings such as voicemail or recorded telephone calls, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, cell phones, Blackberry, PDA, iPhone, smartphone, or other storage media, and such technical assistance or instructions as will transform such ESI into reasonably usable form.

11. FEA. The term “FEA” means the Defendant Florida Education Association.
12. Identify (with respect to persons). When referring to a person, “to identify,” means to give, to the extent known, the person’s full name, present or last known address and when referring to a natural person, additionally, the present or last known place of employment.
13. Identify (with respect to documents). When referring to documents, “to identify,” means to give, to the extent known: (1) the type of document; (2) general subject matter; (3) date of the document; (4) author(s), addressee(s), and recipient(s); and (5) how (specifically, from whom and where) the Defendant received such document.
14. Identify (with respect to communications). When referring to communications, “to identify” means to give, to the extent known (1) the date of the communication; (2) the person(s) who initiated the communication; (3) the person(s) who received the communication; (4) the name and title of the person(s) involved in the communication; (5) the means through which the communication was made; (6) the topic(s) discussed during the communication; and (7) how (specifically, from whom and where) the Defendant received such communication.
15. Number. The use of the singular form of any word includes the plural and vice versa.
16. Person. The term “Person,” means as any natural person or any business, legal entity, or association.
17. Policy. The term “Policy” refers to Florida Atlantic University’s “Outside Activities/Conflict of Interest” Policy.

18. Relating to. The term “relating to” means concerning, evidencing, constituting, pertaining to, or in relation to.
19. Third-party. The term “third-party” means any natural person or any business, legal or governmental entity, or association that is not a named party in the Complaint.
20. UFF. The term “UFF” means the Defendant United Faculty of Florida.
21. UFF-FAU. The term “UFF-FAU” means the Florida Atlantic University Chapter of United Faculty of Florida.
22. University/FAU. The term “University”, “Defendant University” and “FAU” means Florida Atlantic University.
23. You/Your. The terms “You,” “your” refer to the Defendant Florida Atlantic University Board of Trustees.

#### **INSTRUCTIONS**

1. These interrogatories are continuing in nature, thus, you must file supplemental responses when you acquire further information or documents, including ESI, within the scope of Rule 33 of the Federal Rules of Civil Procedure.
2. Answer each interrogatory separately; do not join together and give a common answer to two or more interrogatories or their separate parts. Each response should repeat the text of the interrogatory in full and be followed by your response or objection thereto.
3. Each individual interrogatory should be construed independently, without reference to any other interrogatory.
4. Answer each interrogatory fully based on all information in your possession, custody or control, including that of any of your agents, accountants, attorneys, consultants, employees, or

other representatives, or any person from whom you can obtain information by request or from whom you have a legal right to bring information within your possession by demand.

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

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

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

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

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

i. For documents, including ESI: (1) the type of document, *e.g.*, letter or memorandum; (2) the general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate: the author of the document; the addresses of the document, and any other recipients shown in the

document, and where not apparent, the relationship of the author, addressees, and recipients to each other.

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

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

- a. The specifications of documents to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought.
- b. The producing party shall also make available any computerized information or summaries thereof that it either has, or can adduce by a relatively simple procedure, unless those material are privileged or otherwise immune from discovery.
- c. The producing party shall also provide any relevant compilations, abstracts or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise immune from discovery.
- d. Unless otherwise ordered by the Court, the documents shall be made available for inspection and copying within fourteen (14) days after service of the answer to interrogatories or at a date agreed upon by the parties.

9. The responses to these interrogatories are to be signed and certified by an officer or agent of the Defendant University, and any objections signed and certified by the attorney making them. *See Fed. R. Civ. P. 26(g) and 33(b)(1)(B).*

10. The time period covered by these interrogatories is January 2011 through the date of full and complete response.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES  
DIRECTED TO DEFENDANT FLORIDA ATLANTIC UNIVERSITY**

**Interrogatory No. 1**

Describe when and how you first discovered Plaintiff's blogging, identifying the date you first became aware of the activity, and any and all actions undertaken by the University upon discovery, including but not limited to any investigation or monitoring of the activity. If any reports or documents were created in connection with any of the above-referenced actions, identify them and identify any and all FAU officers, representatives, agents and employees involved in the above-referenced actions.

**Interrogatory No. 2**

Explain why FAU initiated disciplinary action against Plaintiff in 2013.

**Interrogatory No. 3**

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

**Interrogatory No. 4**

Explain why, in 2013, FAU did not request "Outside Activities/Conflict of Interest" forms for Plaintiff's blogging for the 2013-2014 school year. If the University did request the forms, identify who requested the forms, and identify all documents or communications relating to the request(s), if any.

**Interrogatory No. 5**

Explain why, in 2014, FAU did not request "Outside Activities/Conflict of Interest" forms for Plaintiff's personal blogging. If the University did request the forms, identify who requested the forms, and identify all documents or communications relating to the request(s), if any.

**Interrogatory No. 6**

Set forth any and all conduct of Plaintiff which you believe violated your policies, at any time, describing for each alleged action or omission which policy was violated by Plaintiff, when each policy was violated and how. Policy is defined as an action, procedure or rule adopted by Florida Atlantic University.

**Interrogatory No. 7**

Describe any and all potential, actual or perceived conflicts of commitment or interest which existed, or otherwise resulted from Plaintiff's personal blogging and online speech.

**Interrogatory No. 8**

Set forth any and all blogs, websites and/or social media of University personnel, including but not limited to officers, employees, agents and faculty members, which have been disclosed, monitored or subjected to the University's "Outside Activities/Conflict of Interest" Policy since the inception of the Policy. "Subjected to" is defined as being under dominion, rule or authority, as of a sovereign, state or governing power.

**Interrogatory No. 9**

Describe the University's "progressive" disciplinary process, and set forth how, if at all, progressive discipline was applied to Plaintiff.

**Interrogatory No. 10**

Identify all persons involved in the decision to discipline and/or terminate the Plaintiff, at any time.

**Interrogatory No. 11**

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

**Interrogatory No. 12**

Set forth any and all meetings with UFF, FEA, and/or UFF-FAU officers, agents, representatives and/or employees, telephonic or otherwise, concerning Plaintiff's blogging, or any discipline of Plaintiff, since January of 2012, and identify the subject of each meeting, and all persons who participated in such meetings, and any documents or communications relating to the meetings.

**Interrogatory No. 13**

Identify all donors to the University, including actual and prospective donors, who complained about Plaintiff or Plaintiff's blogging, at any time, and identify all documents and/or communications, correspondence, e-mails, text messages or notes of conversations relating to such complaints.

**Interrogatory No. 14**

Set forth the agenda of the November 30, 2015 Consultation, identifying all persons in attendance at the Consultation, whether physically or electronically (i.e. telephone or internet participation) and identify any and all documents, notes, or memoranda relating to the Consultation. "Consultation" is defined in Article 2 of the 2012-2015 UFF-FAU Collective Bargaining Agreement. "Agenda" is defined as a list items, issues, topics, plans or concerns that were discussed or addressed, i.e. grievances, collective bargaining, FAU's "Outside Activities/Conflict of Interest" Policy, etc.

**Interrogatory No. 15**

Set forth the date(s) and agenda(s) of any and all meetings held at the University between January 1, 2011 to date, relating to Plaintiff's blogging, identifying all persons (including but not limited to FAU officers, employees, agents, and representatives) in attendance at the meetings, whether physically or electronically (i.e. telephone or internet participation) and identify any and all documents, notes, or memoranda relating to the meetings. "Agenda" is defined as a list items, issues, topics, plans or concerns that were discussed or addressed, i.e. Plaintiff's speech, Plaintiff's grievance, FAU's "Outside Activities/Conflict of Interest" Policy, etc.

**Interrogatory No. 16**

Set forth Plaintiff's salary, benefits and any other form of compensation made by FAU to Plaintiff, beginning in 2010 through the date of Plaintiff's termination.

**Interrogatory No. 17**

Set forth the raise(s), if any, received by any and all FAU officers, employees, agents and/or representatives since Plaintiff's termination. "Raise" is defined as an increase in wages, salary, bonuses, or any other form of compensation. This includes but is not limited to any bonus received by any FAU officer, employee, agent, representative, and/or the increase in salary of any FAU employee.

**Interrogatory No. 18**

Set forth all official recognition of Plaintiff by the University, including but not limited to disciplinary action, threats of disciplinary action, admonishment, accolade, award, scholarship, grant, and any other form of recognition. “Recognition” is defined as the formal acknowledgement of something, including achievement, service, merit, appreciation, sanction, punishment, etc.

**Interrogatory No. 19**

Describe how Professor Tracy was “rebellious” or “non-conformist” as described in your Affirmative Defenses.

**Interrogatory No. 20**

Set forth any and all facts or evidence supporting your affirmative defenses.

**Interrogatory No. 21**

Set forth how exactly your “Outside Activities/Conflict of Interest” Policy was applied to each and every FAU employee, identifying each employee that the policy was applied to.

**Interrogatory No. 22**

Describe how you are able to “address and anticipate in a reasonable manner potential conflicting circumstances which include, among other things, business and personal interests outside of the Defendant University that create conflicts of interest or commitment on the part of Defendant University’s personnel”, and identify all documents used in connection with addressing and anticipating any such “potential conflicting circumstances”. If any “potential conflicting circumstances” addressed and anticipated by you involved the Plaintiff, identify those circumstances.

**Interrogatory No. 23**

Set forth the date when the University’s “Outside Activities/Conflict of Interest” Policy first went into effect, identifying the individual(s) who drafted and/or adopted the Policy, and identify any and all documents, including written notes, or memoranda relating to the intent, creation and/or implementation of the Policy.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of April 2017, I electronically served by e-mail Plaintiff's First Set of Interrogatories Directed to Defendant Florida Atlantic University Board of Trustees to all counsel and parties of record per the attached Service List below.

/s/ **Louis Leo IV**  
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