

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT – DIVISION II
CIVIL ACTION No. 13-CI-1413

LESLIE THOMAS

PLAINTIFF

vs.

PLAINTIFF’S PROPOSED JURY INSTRUCTIONS

BOARD OF REGENTS OF KENTUCKY STATE
UNIVERSITY, LORENZO ESTERS, MARY SIAS,
JACQUELINE GIBSON

DEFENDANTS

Plaintiff Leslie Thomas submits the proposed jury instructions as set forth in the following. Plaintiff respectfully requests leave to reserve the right to tender further and/or additional instructions as shown appropriate.

Plaintiff has included a proposed missing evidence instruction based on defendants’ failure to produce in discovery various documents.

Respectfully submitted,

By: /s/ Robert L. Abell
Robert L. Abell
ROBERT ABELL LAW
120 N. Upper Street
Lexington, KY 40507
859.254.7076
859.281.6541 fax
Robert@RobertAbellLaw.com
COUNSEL FOR PLAINTIFF

D63B6CF3-766C-42CE-9AE9-E67979FB787B : 000001 of 000024

J1 : 000001 of 000024

Certificate of Service

I hereby certify that on the 27th day of February 2017, the foregoing document was electronically filed with the Clerk of this Court using the KY eCourts eFiling system.

I further certify that a true copy of the foregoing was mailed, postage prepaid, this 27th day of February 2017 to the following:

William E. Johnson
Johnson Bearse LLP
326 West Main St.
Frankfort, KY 40601

/s/ Robert L. Abell
Counsel for Plaintiff

THE JURY IS INSTRUCTED AS FOLLOWS:**GENERAL INSTRUCTION**

- A. Immediately upon retiring to the jury room, you should elect one of your number as foreperson.
- B. Nine (9) or more of your number must agree in order to answer any of the questions or make any of the determinations required by these instructions. The nine or more who agree upon one, however, need not be the same jurors who agree upon another.
- C. If all twelve (12) of you agree on the answers to all of the questions and determinations to which you are required to respond, the foreperson can sign for you.
- D. Each answer or response on which the verdict is not unanimous must be signed by the nine or more of you who agree.

Instruction No. 1**Missing Evidence**

If you find from the evidence that certain documents including payroll records for plaintiff Leslie Thomas during her employment at Kentucky State University, budget documents for Student Life and/or a video recording of the Board of Regents meeting in July 2013 was intentionally and in bad faith concealed or destroyed, you may, but are not required to, infer that the information contained in these records, documents and/or recording would be, if available, adverse to defendants and favorable to the plaintiff.

Authority: *Univ. Med. Ctr., Inc. v. Beglin*, 375 S.W.3d 783 (Ky. 2011); *Palmore & Cetrulo, Kentucky Instructions to Juries, Civil § 52.01*.

Instruction No. 2

You will find for the Plaintiff Leslie Thomas and mark “YES” to Interrogatory No. 1 below if you are satisfied from the evidence that her race was a factor but for which she would not have been fired as Director of Student Life at Kentucky State University. Her race does not need to be the only factor or the primary factor for her firing.

Authority: KRS 344.040; *Powell v. Asbury Univ.*, 486 S.W.3d 246, 259-60 (Ky. 2016)

Interrogatory No. 1

Do you believe from the evidence that Leslie Thomas's race was a factor but for which she would not have been fired as Director of Student Life at Kentucky State University?

_____ YES

_____ NO

FOREPERSON

JURORS (if not unanimous)

If you answered "Yes" as to Interrogatory No. 1, go to Instruction No. 3 and answer Interrogatory Nos. 2(a), 2(b) and 2(c). If you answered "No" to Interrogatory No. 1, proceed to Instruction No. 4.

Instruction No. 3

You will find to the plaintiff Leslie Thomas and mark “Yes” to Interrogatory No. 2(a), 2(b) and/or 2(c) if you are satisfied from the evidence that defendants Mary Sias, Lorenzo Esters and/or Jacqueline Gibson aided or abetted Leslie Thomas’s firing as Director of Student Life because of her race.

Authority: KRS 344.280(2).

Interrogatory 2(a)

Do you believe from the evidence defendant Mary Sias aided or abetted Leslie Thomas's firing as Director of Student Life because of her race?

_____ YES

_____ NO

FOREPERSON

JURORS (if not unanimous)

D63B6CF3-766C-42CE-9AE9-E67979FB787B : 000008 of 000024

J1 : 000008 of 000024

Interrogatory 2(b)

Do you believe from the evidence defendant Lorenzo Esters aided or abetted Leslie Thomas's firing as Director of Student Life because of her race?

_____ YES

_____ NO

FOREPERSON

JURORS (if not unanimous)

D63B6CF3-766C-42CE-9AE9-E67979FB787B : 000009 of 000024

J1 : 000009 of 000024

Interrogatory 2(c)

Do you believe from the evidence defendant Jacqueline Gibson aided or abetted Leslie Thomas's firing as Director of Student Life because of her race?

_____ YES

_____ NO

FOREPERSON

JURORS (if not unanimous)

D63B6CF3-766C-42CE-9AE9-E67979FB787B : 000010 of 000024

J1 : 000010 of 000024

Instruction No. 4

You will find for plaintiff Leslie Thomas and mark “Yes” to Interrogatory No. 3 below, if you are satisfied from the evidence that a substantial factor but for which she would not have been discharged as Director of Student Life: (a) requesting further information and documentation and raising questions in her capacity as a member of the Kentucky State University Board of Regents regarding the University budget, student enrollment numbers and totals, and/or, (b) fees charged related to services provided by a university-operated childcare center.

Interrogatory No. 3

Do you believe from the evidence that a substantial factor but for which Leslie Thomas would not have been discharged as Director of Student Life was her requesting further information and documentation and raising questions in her capacity as a member of the Kentucky State University Board of Regents regarding the University budget, student enrollment numbers and totals, and/or (b) fees charged related to services provided by a university-operated childcare center?

_____ YES

_____ NO

FOREPERSON

JURORS (if not unanimous)

If you answered "Yes" to Interrogatory No. 3, please go to Interrogatory No. 4 and answer it. If you answered "No" to Interrogatory No. 3, proceed to Instruction No. 5

Interrogatory No. 4

Do you believe from the evidence defendant Mary Sias aided or abetted Leslie Thomas's firing as Director of Student Life because of her requesting further information and documentation and raising questions in her capacity as a member of the Kentucky State University Board of Regents regarding the University budget, student enrollment numbers and totals, and/or fees charged related to services provided by a university-operated childcare center?

_____ YES

_____ NO

FOREPERSON

JURORS (if not unanimous)

Instruction No. 5

You will find for plaintiff Leslie Thomas and answer “Yes” to Interrogatory No. 5 if you are satisfied from the evidence that a contributing factor to plaintiff being fired as Director of Student Life was one or more of the following:

- (1) Her refusal to sign off and acknowledge a non-existent “donation” by Tonea Stewart on or about March 6 and 7, 2013;
- (2) The grievance that Leslie Thomas filed in May 2013;
- (3) The statement Leslie Thomas prepared and tendered in August 2013 in response to her performance evaluation.

As used in this instruction, “contributing factor” means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of a decision.

Interrogatory No. 5

Are you satisfied from the evidence that a contributing factor to plaintiff Leslie Thomas being fired as Director of Student Life was one or more of the factors listed above in subparagraphs (1), (2), or (3) under Instruction No. 5?

_____ YES

_____ NO

FOREPERSON

JURORS (if not unanimous)

If you answered "Yes" to Interrogatory No. 5 above, please proceed to and answer Interrogatory No. 6. If you answered "No" to Interrogatory No. 5, please proceed to Instruction No. 6.

Interrogatory No. 6

State whether you are satisfied by clear and convincing evidence that plaintiff's actions as described in subparagraphs (1), (2), or (3) under Instruction No. 5, were not a material factor in the termination of her employment as Director of Student Life at Kentucky state University:

_____ Yes (not a material factor)

_____ No

FOREPERSON

JURORS (if not unanimous)

D63B6CF3-766C-42CE-9AE9-E67979FB787B : 000016 of 000024

J1 : 000016 of 000024

Instruction No. 6

You will find for plaintiff Leslie Thomas and mark “Yes” to Interrogatory No. 7 below if you are satisfied from the evidence that defendant the Board of Regents of Kentucky State University did not have just cause to terminate her employment as Director of Student Life.

Interrogatory No. 7

Are you satisfied from the evidence that defendant the Board of Regents of Kentucky State University did not have just cause to terminate her employment as Director of Student Life?

FOREPERSON

JURORS (if not unanimous)

Instruction No. 7

If you found for plaintiff Leslie Thomas and answered any of the preceding Interrogatories as follows: “Yes” to Interrogatory No. 1; Interrogatory Nos. 2(a), 2(b), or 2(c); Interrogatories 3 and 4; Interrogatories No. 5; “No” to Interrogatory No. 6; and/or “Yes” to Interrogatory No. 7, you will determine from the evidence and award her a sum or sums of money that will fairly and reasonably compensate her for such of the following damages as you believe from the evidence she has sustained directly by reason of the termination of her employment:

(a) The gross compensation, including fringe benefits, that Leslie Thomas would have earned from her employment as Director of Student Life at Kentucky State University during a period between the date of termination of her employment in this date, less any compensation, including fringe benefits, during that period of time that she has received from other employment or could have earned to the exercise of reasonable diligence to secure other employment:

\$ _____

(b) the gross compensation, including fringe benefits, that Leslie Thomas would have received from her employment as Director of Student Life at Kentucky State University in the future for such period of time as she is reasonably certain to have continued that employment, less any compensation, including fringe benefits, during that period of time that you believe she will receive from other employment or could earn to the exercise of reasonable diligence to secure other employment:

\$ _____

(c) Embarrassment, humiliation, and mental distress to this day:

\$ _____

(d) Any embarrassment, humiliation, and mental distress she is reasonably certain to endure in the future:

\$ _____

FOREPERSON

JURORS (if not unanimous)

Instruction No. 8

If you find for plaintiff Leslie Thomas and award her a sum or sums of money and damages under Instruction No. 7, and if you are further satisfied by clear and convincing evidence that defendant Mary Sias acted in reckless disregard and/or with gross negligence toward the rights and duties of plaintiff as a member of the Board of Regents of Kentucky State University, you may in your discretion award punitive damages against defendant in addition to the damages awarded under Instruction No. 7.

Whether you make an award of punitive damages, in addition to the damages previously awarded, as a matter exclusively with in your discretion. If, however, you award punitive damages, in determining the amount thereof, you should consider the following factors:

- (a) the likelihood at the time of such misconduct by defendant that serious harm would arise from it;
- (b) the degree of defendant's awareness of that likelihood;
- (c) the profitability of the misconduct to defendant;
- (d) the duration of the misconduct in any concealment of it by defendant; and,
- (e) any actions by defendant to remedy the misconduct once it became known to defendant.

“Punitive damages” are damages awarded against defendant for the purpose of punishing defendant for her misconduct in this case and deterring her and others from engaging in similar conduct in the future.

If you award punitive damages, they must be fixed with calm discretion and sound reason, and must never be either awarded, or fixed in amount, because of any sympathy, or bias, or prejudice with respect to any party to the case.

If you award punitive damages, you will state the amount separately from the sum or sums awarded under Interrogatory No. _____.

_____ We award punitive damages against defendant to plaintiff in the sum of \$_____.

_____ We do not award punitive damages against defendant to the plaintiff.

FOREPERSON

JURORS (if not unanimous)

Instruction No. 9

If you find for plaintiff Leslie Thomas and award her a sum or sums of money and damages under Instruction No. 7, and if you are further satisfied by clear and convincing evidence that defendant the Board of Regents of Kentucky State University acted in reckless disregard and/or with gross negligence toward the rights and duties of plaintiff, you may in your discretion award punitive damages against defendant in addition to the damages awarded under Instruction No. 7.

Whether you make an award of punitive damages, in addition to the damages previously awarded, as a matter exclusively with in your discretion. If, however, you award punitive damages, in determining the amount thereof, you should consider the following factors:

- (a) the likelihood at the time of such misconduct by defendant that serious harm would arise from it;
- (b) the degree of defendant's awareness of that likelihood;
- (c) the profitability of the misconduct to defendant;
- (d) the duration of the misconduct in any concealment of it by defendant; and,
- (e) any actions by defendant to remedy the misconduct once it became known to defendant.

“Punitive damages” are damages awarded against defendant for the purpose of punishing defendant for her misconduct in this case and deterring her and others from engaging in similar conduct in the future.

If you award punitive damages, they must be fixed with calm discretion and sound reason, and must never be either awarded, or fixed in amount, because of any sympathy, or bias, or prejudice with respect to any party to the case.

If you award punitive damages, you will state the amount separately from the sum or sums awarded under Instruction No. 7.

_____ We award punitive damages against defendant to plaintiff in the sum of \$_____.

_____ We do not award punitive damages against defendant to the plaintiff.

FOREPERSON

JURORS (if not unanimous)

Interrogatory No. 8

Do you believe from the evidence that reinstatement of Leslie Thomas to her position of Director of Student Life at Kentucky State University would be impractical?

_____ Yes

_____ No

FOREPERSON

JURORS (if not unanimous)

D63B6CF3-766C-42CE-9AE9-E67979FB787B : 000024 of 000024

J1 : 000024 of 000024