

ELECTRONICALLY FILED

NO. _____

JEFFERSON CIRCUIT COURT
DIVISION _____

AMY SHOEMAKER

PLAINTIFF

v.

COMPLAINT

UNIVERSITY OF LOUISVILLE
University of Louisville
Office of University Counsel
Louisville, KY 40292

Serve: Angela Curry
University of Louisville
2301 S. Third Street
Louisville, KY 40292

DEFENDANTS

* * * * *

Comes the Plaintiff, Amy Shoemaker, by and through undersigned counsel, and for her cause of action against the Defendant, states and alleges as follows:

JURISDICTION AND PARTIES

1. This is an action for damages which exceeds the minimum jurisdictional limits of this Court.
2. This action is brought pursuant to KRS 61.102 and KRS 61.103(2) (the Kentucky Whistleblower Act) for employment retaliation and pursuant to KRS 524.055 and KRS 446.070 for retaliation against a participant in the legal process.
3. At all times material hereto, Plaintiff, Amy Shoemaker, was a resident of Louisville, Jefferson County, Kentucky and is presently a resident of the State of Ohio.
4. At all times material hereto, Defendant, University of Louisville (“UofL”), was and is a duly licensed corporation based in Louisville, Jefferson County, Kentucky.

FACTS¹

Plaintiff's Employment with Defendant

5. Plaintiff Amy Shoemaker is a licensed attorney in Kentucky and began working in the general counsel's office for Defendant UofL in December 2006 as an assistant general counsel.

6. In July 2012, Plaintiff was promoted to Associate General Counsel for UofL.

7. In May 2018, Plaintiff was again promoted to Deputy General Counsel and Associate Athletic Director, employed by UofL.

8. In her role as Deputy General Counsel and Associate Athletic Director, Plaintiff reported directly to Athletic Director and ULAA President Vince Tyra and to the General Counsel for UofL. Tyra and the General Counsel, in turn, reported directly to UofL president Neeli Bendapudi.

a. From approximately May 2018 through April 2021, Tom Hoy served as General Counsel for UofL and was one of Plaintiff's immediate supervisors, in addition to Vince Tyra. Plaintiff received positive performance reviews from both Hoy and Tyra throughout this time.

b. From April 2021 through present, Angela Curry served as General Counsel for UofL and, at the time of Plaintiff's employment by Defendants, was one of Plaintiff's immediate supervisors, in addition to Vince Tyra.

9. In her role as Deputy General Counsel and Associate Athletic Director, Plaintiff was employed by UofL; however, 25% of her compensation was provided by UofL's General

¹ **PLEASE NOTE** The facts set forth in this Complaint, in paragraphs 5 through 41, do not disclose any statements made or information provided to Plaintiff which is subject to the attorney-client privilege. To the extent a determination is made that any fact set forth in this Complaint does contain a privileged communication or information, Kentucky Supreme Court Rule 3.130 (1.6)(b)(3) permits disclosure "to the extent the lawyer reasonably believes necessary" to "establish a **claim** or defense on behalf of the lawyer in a controversy between the lawyer and the client" (emphasis added).

Counsel office and 75% of her compensation was provided by ULAA.

10. In her role as Deputy General Counsel and Associate Athletic Director, Plaintiff spent approximately half her time working on matters pertaining to ULAA in a posting which also oversaw and supervised ULAA human resources functions, and spent half her time on general legal matters pertaining to UofL.

11. Defendant UofL was Plaintiff's "employer" and was and is acting on behalf of the Commonwealth of Kentucky, as set forth in KRS 61.101 and KRS 61.102. *See Harper v. Univ. of Louisville*, 559 S.W.3d 796, 802 (Ky. 2018).

12. Plaintiff was an "employee" of UofL as set forth in KRS 61.101 and KRS 61.102. *See Harper v. Univ. of Louisville*, 559 S.W.3d 796, 802 (Ky. 2018).

Plaintiff's Reporting of Criminal Activity and Extortion Attempt

13. On the morning of March 17, 2021, then-Deputy Athletic Director Josh Heird came to Plaintiff and requested her assistance with non-renewal and termination of employment of two assistant coaches, including UofL men's basketball assistant coach Dino Gaudio. Plaintiff requested another person, preferably then ULAA HR-Director, be in the room with Coach Chris Mack for conversations with assistant coaches concerning their non-renewal.

14. On March 17, 2021, without Plaintiff or any other counsel present, UofL men's basketball head coach Chris Mack met with assistant coach Dino Gaudio concerning the non-renewal of his coaching contract in Mack's office on UofL's campus. Mack records his conversation with Gaudio, which is laden with multiple profanities and during which Gaudio threatens to expose alleged recruiting violations to the media unless he receives a lump sum of 1-½ years' salary, through September 2022. Gaudio demands an in-person meeting with Mack at noon the next day to go over a written contract paying Gaudio or he will disclose alleged recruiting violations.

15. Following his meeting with Gaudio, Mack reports the conversation to Heird and Plaintiff, who then schedule a meeting that evening with Tyra, Plaintiff, Heird, Mack, and John Carns, ULAA's Director for Compliance, all in attendance.

16. During this meeting, Plaintiff expresses security concerns with Gaudio's emotional state and his stated intent to return to campus the next day for a meeting with Mack with the expectation that he would be paid. Additionally, Plaintiff believes Gaudio's actions were an attempt at criminal extortion.

17. At the time, Plaintiff is a mandatory reporter ("Campus Security Authority") for criminal acts under the Clery Act, 20 USC § 1092, and is required to report information concerning serious criminal activity on campus to law enforcement. Additionally, she had an obligation to report the incident to a compliance officer under UofL Policy ICO-1.01.

18. Given the belief that a crime had occurred on campus and Plaintiff's obligation to report crimes under the Clery Act, as well as the concern that Gaudio may pose a possible threat or danger to Mack or others in the meeting he demanded the following day, Plaintiff reports the incident to University of Louisville Police Department (ULPD) Chief Gary Lewis on the night of March 17, 2021. She also provides Chief Lewis with an audio recording of Mack's meeting with Gaudio provided to Plaintiff by Mack as well as the voicemail Gaudio left for Mack confirming he would be returning to campus the following day at noon to collect his payment.

19. While Plaintiff reports the extortion attempt to ULPD, Tyra reports the extortion attempt the UofL President Neeli Bendapudi in a phone call late on the night of March 17, 2021.

**Retaliation and "Freezing Out" by Defendant
Following Report of Criminal Activity**

20. In a video conference call meeting the next morning, March 18, 2021, with Plaintiff, Bendapudi, and Bendapudi's Chief of Staff Michael Wade Smith participating,

Bendapudi expresses frustration and anger that Tyra contacted Chief Lewis the night before, including concerns about the negative publicity the incident will cause. Plaintiff corrects Bendapudi and informs her that she, not Tyra, had contacted Chief Lewis about the extortion attempt.

21. On the evening of March 18, 2021, ULPD Chief Lewis tells Plaintiff that the FBI is coming to interview Mack at 6:30 pm. Plaintiff alerts Tyra and Bendapudi about the interview and says she will be in attendance.

22. During Mack's interview with the FBI, Plaintiff learns Mack deleted a longer recording of his conversation with Gaudio and only provided a smaller portion of it to Plaintiff and the FBI. Mack expresses concern that the longer recording would reflect poorly on him because he was trying to defuse the tension with Gaudio, which is why he had not provided it earlier and why he deleted it. Mack participates fully with the FBI in recovering the deleted recording.

23. On March 19, 2021, Chief of Staff Michael Wade Smith calls Plaintiff and tells her she should not have reported the Gaudio extortion attempt to ULPD. Smith tells Plaintiff that doing so is not her job and that decisions about what should and would be reported to ULPD are up to the President. Smith tells Plaintiff that President Bendapudi is very upset Plaintiff reported the extortion attempt to ULPD. Smith tells Plaintiff that "Bendapudi is the University" and all decisions on reporting similar incidents belong to her.

24. Plaintiff is intimidated by her conversation with Chief of Staff Smith and apologizes for making President Bendapudi upset, but says she believes her decisions were appropriate under the circumstances.

25. On April 1, 2021, Tom Hoy's tenure as General Counsel ends, and Angela Curry begins her tenure as General Counsel.

26. On April 8, 2021, during a video conference call meeting with Plaintiff, Bendapudi, Tyra, Angela Curry, Communications Consultant Brian Curtis, Director of Compliance John Carns, outside NCAA counsel, and others, Bendapudi berates Plaintiff for reporting the extortion attempt and assisting the FBI in its investigation, telling Plaintiff “Amy! You cannot trust the FBI!” She goes on to say that the FBI is “tricky.”

27. Later on April 8, 2021, Bendapudi sends a text message to Plaintiff stating:

Thu, Apr 8, 11:21 AM

Amy, Two things.
1. In all this busy-ness, don't forget to do your reflected best self exercise! Have you scheduled your next appointment with me?
2. Sorry if I seemed too hard on you. I just am worried.
Appreciate you.

28. Plaintiff responds, thanking Bendapudi for the text message and asking that Bendapudi trust Plaintiff in her role as university counsel, reiterating her 14-year commitment to the university, her experience, and her efforts to preserve her integrity and ethics through a myriad of challenges. Bendapudi replies that she has no question about Plaintiff's integrity and ethics.

29. Following this conference call, Plaintiff relays to Curry that Plaintiff feels vulnerable and asks Curry whether Bendapudi has a fundamental distrust for federal law enforcement.

30. After reporting the extortion attempt to ULPD, Plaintiff observes a shift in her role in relation to her involvement with matters she had previously overseen:

- a. Despite having been involved in the NCAA investigation since the initial phone call from the U.S. Attorney's Office for the SDNY in September of 2017, Plaintiff is excluded from phone calls scheduled by Curry with outside NCAA counsel involving the case as the IARP process continues, despite seeing scheduled calls on the General Counsel calendar and reviewing numerous billings concerning such phone calls.
- b. Additionally, despite drafting the revised ULAA Bylaws in 2020, She is no longer included in executive sessions of the ULAA Board meetings to discuss updates on the matters she has been overseeing. Angela Curry takes over responsibilities in ULAA Board meetings previously belonging to Plaintiff.
- c. Plaintiff's access to the General Counsel group calendar is revoked.
- d. Plaintiff and Tyra are excluded from conversations with counsel and UofL Board members regarding the President's decision to discipline Chris Mack as a result of the Gaudio extortion attempt
- e. Chief of Staff Smith, who was previously co-chair with Plaintiff for UofL's accreditation and reaffirmation with the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), stops responding to communications from Plaintiff regarding their charge. Eventually, Smith notifies Plaintiff that he is stepping away from working with her on the reaffirmation process, an important accreditation process with which Plaintiff had significant experience in prior years following the termination of President James Ramsey and the prior UofL Board of Trustees by Governor Matt Bevin in 2016.
- f. Plaintiff is excluded from Microsoft Teams meetings for the UofL Board which are viewable on public calendars, and which she had previously attended.

- g. She no longer has communications with Chief of Staff Smith or President Bendapudi which she had regularly maintained prior to her reporting the extortion attempt to ULPD.
- h. Bendapudi continues to advise Tyra that she is unhappy that the extortion attempt was reported to law enforcement.
- i. Angela Curry fails to respond to emails from Plaintiff regarding ULAA personnel matters.

31. From the date of her reporting the extortion to ULPD through November 2021, Plaintiff is effectively frozen out by the President's office from her job responsibilities as Deputy General Counsel for those legal matters not otherwise directed by Vince Tyra.

32. On November 11, 2021, Plaintiff learns of a conversation between President Bendapudi and Alumni Director Josh Hawkins that took place during the Chick-Fil-A Kickoff Game over Labor Day Weekend. During this conversation, President Bendapudi—six months after the fact—expressed her continuing anger that the Gaudio extortion attempt was referred to law enforcement, indicating she wished it had been dealt with internally.

33. Based on information and belief, President Bendapudi's continued displeasure with Plaintiff is the cause of her being frozen-out from her job responsibilities from March through November 2021, and the contempt Bendapudi and Smith displayed as a result of Plaintiff's actions were reflected by Angela Curry's treatment of her.

**Defendant's Termination of Plaintiff in Retaliation for
Reporting Criminal Activity**

34. On November 28, 2021, upon information and belief, President Bendapudi and General Counsel Angela Curry discuss relieving Plaintiff of her counsel role with UofL.

35. On November 29, 2021, Angela Curry schedules a meeting with Plaintiff in her office to discuss her future with UofL's General Counsel's office, including a reduction in responsibilities and salary paid from counsel's office.

36. Based on information and belief, the demotion Curry communicated to Plaintiff on November 29, 2021, in addition to the previous months' long freezing out described above, confirmed Plaintiff's belief that she was purposefully being diminished in her role as counsel, culminating in her being advised she was being stripped of that role.

37. Based on information and belief, this adverse employment action was not discussed with Tyra, nor were arrangements made to have the Athletics Department cover the 25% portion of Plaintiff's salary currently being paid by UofL. *See paragraph 9.*

38. Based on information and belief, the adverse employment action Curry communicated to Plaintiff on November 29, 2021, in addition to the previous months' long freezing out described above, was orchestrated by agents of Defendant, including President Bendapudi and Chief of Staff Smith, in retaliation for Plaintiff reporting the extortion attempt to ULPD.

39. Based on information and belief, the retaliation against Plaintiff orchestrated by Defendants' agents Bendapudi and Smith was motivated in part by the President's ongoing effort to negotiate a salary increase with the UofL Board of Trustees in August of 2021 and in furtherance of soliciting employment offers at other universities. As a result, she desired to avoid a "blemish" on her record with a scandal while at UofL. On December 9, 2021, ten days after Plaintiff's employment was constructively terminated, Bendapudi was named President of Pennsylvania State University. Smith was subsequently provided a newly created position of Senior Vice President and Chief of Staff for Pennsylvania State University.

40. On November 30, 2021, Plaintiff is offered a position with Miami University, beginning January 19, 2022, which she ultimately accepts because of her freezing-out, explicit demotion, and constructive termination with Defendant UofL

41. On December 2, 2021, in recognition of her fiduciary duty to UofL, Plaintiff filed an internal whistleblower retaliation complaint with the UofL Vice President for Risk Audit & Compliance Sandy Russell, which complaint was never investigated by UofL, despite multiple attempts by Plaintiff to inquire as to the status of her internal complaint.

42. As a result of Defendants' retaliation against Plaintiff, she was forced out of her employment with UofL on behalf of ULAA, lost two terms of sabbatical pay, incurred relocation costs, and suffered mental and emotional anguish by relocating away from her family and the UofL community where she had spent the better part of her life and career.

CAUSES OF ACTION

Count I: Violation of KRS 61.102 (Kentucky Whistleblower Act) Retaliation Prior to Employment Termination

43. Plaintiff incorporates the averments contained in paragraphs 1 through 42, as delineated and set forth above, and incorporates same as if originally set forth herein.

44. Plaintiff, at all times mentioned herein, was employed by Defendant acting on behalf of the Commonwealth of Kentucky, and as such, was an employee protected under the Kentucky Whistleblower Act (KRS 61.102, et seq.).

45. Plaintiff, in good faith and as required by the Clery Act, reported criminal activity to law enforcement and participated in law enforcement's investigation of criminal activity involving Dino Gaudio.

46. Soon after Plaintiff reported facts and information about suspected criminal activity by Dino Gaudio to law enforcement, President Neeli Bendapudi and Chief of Staff

Michael Wade Smith, among other agents of Defendant, engaged in a pattern of retaliatory actions against Plaintiff to remove her job duties and to freeze her out of her employment.

47. Removal of Plaintiff's job duties in retaliation for reporting criminal activity is prohibited by KRS 61.102.

**Count II: Violation of KRS 61.102 (Kentucky Whistleblower Act)
Retaliatory Employment Demotion and Constructive Termination**

48. Plaintiff incorporates the averments contained in paragraphs 1 through 47, as delineated and set forth above, and incorporates same as if originally set forth herein.

49. Plaintiff was subject to further reprisal in violation of KRS 61.102 as stated in paragraphs 34 through 41, resulting in adverse employment action

50. On November 29, 2021, Plaintiff was demoted and constructively terminated from her employment by UofL.

51. Defendants' demotion and constructive termination of Plaintiff's employment in retaliation for reporting criminal activity is prohibited by KRS 61.102.

**Count III: Violation of KRS 524.555
(Retaliating against a participant in the legal process)**

52. Plaintiff incorporates the averments contained in paragraphs 1 through 51, as delineated and set forth above, and incorporates same as if originally set forth herein.

53. It is a Class D felony under KRS 524.055 to use threat of damage to tangible property to retaliate against a participant in the legal process or against a person one believes may be called as a participant in the legal process, including the giving of information to law enforcement related to the possible commission of an offense.

54. The actions of Defendants and their agents as described herein adversely affected Plaintiff's tangible property, including loss of employment and sabbatical income, and such acts were in retaliation for her participation in the legal process and reporting of a criminal offense to

law enforcement, in violation of KRS 524.055.

55. KRS 446.070 provides for a private right of action by persons injured by an offender's violation of a statute.

56. Plaintiff, a witness reporting a crime, is among the class of persons intended to be protected by KRS 524.055.

57. Plaintiff suffered injury by Defendant's violation of KRS 524.055.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory and punitive damages; interest; trial by jury; for costs herein expended; all damages allowed by KRS 61.103; attorney's fees and other amounts as allowed by KRS 61.990(4); and for any and all further relief to which the Plaintiff may appear entitled.

Respectfully submitted,

/s/ Hans G. Poppe

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