



OHIO ETHICS COMMISSION
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2014 DEC 18 P 1:29

SETTLEMENT AGREEMENT

In the Matter of OSU Trustee the Hon. Algenon L. Marbley
Inquiry No. 14-Q-0206-014
December 17, 2014

This agreement is entered into between the Ohio Ethics Commission ("Commission") and The Ohio State University Trustee the Honorable Algenon L. Marbley ("The Trustee"), pursuant to the Commission's authority under Ohio Revised Code Section 102.06(G).

SUMMARY: On November 13, 2013, the Commission received a request dated November 8, 2013, from The Ohio State University ("University") concerning a member of the University Board of Trustees serving as an adjunct faculty member at the University's Moritz College of Law. The request stated that the University was seeking "confirmation" that the Ohio Ethics laws, and in particular, R.C.2921.42(A)(4), do not prohibit The Trustee from serving as a compensated adjunct faculty member while also serving as a University Trustee, because the requirements to meet the affirmative defense under R.C. 2941.42(C) "have been and continue to be met."

The College of Law first appointed The Trustee as an adjunct professor for trial advocacy in 2000 and he has served continuously in that role. The Trustee subsequently was appointed to The Ohio State University Board of Trustees in May 2007, and has served continuously in that role. Since that appointment in May 2007, The Trustee has continued to receive compensation from the University as an adjunct faculty member of the University's College of Law.

Because the question raised by the University concerned transactions that had already occurred, the Commission's Executive Director contacted University counsel and advised that

the Commission could only resolve this question under its investigative authority. The Commission reviewed this request at its regular meeting on December 5, 2013, in Executive Session. Applying its statutory authority granted by the General Assembly in 1978 to review Ethics Law matters involving University Trustees, the Commission reviewed whether The Trustee violated the Ethics Laws by receiving payments from the University as an adjunct faculty member at the College of Law.

As a result of this discussion, the Commission directed that staff request further information from the University and from the Trustees, which is summarized in the "Facts" section of this Agreement.

FACTS: Since 2000, The Trustee has served as an adjunct professor teaching Trial Practice at the University's Moritz College of Law. His gross and net compensation for each year (since May 2007) has been as follows:

<u>Gross</u>	<u>Net (of taxes)</u>
2007: \$18,000 (6 mos.)	\$12,737
2008: \$36,000	\$23,381
2009: \$36,000	\$25,993
2010: \$26,550	\$19,415
2011: \$26,955	\$19,422
2012: \$22,432	\$16,239
2013: \$26,955	\$19,319
2014: \$6,739 (2 mos.)	\$4,813

Beginning in 2006, the College of Law increased its compensation rates for adjunct faculty who are federal judges from \$4,500 per 4 hour course to up to \$18,000 per four hour

course. When annualized, this increase amounts to about 15% of the base salary earned by federal judges. This coincides with the maximum compensation that federal judges may receive for teaching under standards set by the federal Judicial Conference.

In 2007, The Trustee was appointed to a nine-year term as a University Trustee at The Ohio State University, commencing on May 31, 2007.

On December 20, 2012, as a result of an internal audit, the University identified that The Trustee's receipt of compensation as an adjunct faculty for the University's College of Law appeared to have violated R.C. 3335.09, which states, in pertinent part" "[N]o [Ohio State University] Trustee...shall be eligible to a professorship or position in the university, the compensation for which is payable out of the state treasury or a university fund." At the time of this audit, The Trustee served as the Chair of the Board of Trustee's Audit and Compliance Committee. The Trustee was notified of the finding during his regularly scheduled meeting with the University Internal Auditor. The Trustee immediately contacted the University General Counsel to report said finding. The General Counsel then contacted the Commission on November 8, 2013, seeking its confirmation that the Trustee was in compliance with 2941.42(C). The audit report was prepared on July 2, 2013, the closing meeting occurred on August 15, 2013, and the draft report was circulated on August 20, 2013. The final report was issued on October 30, 2013. This finding in the internal audit report resulted in the University contacting the Commission on November 8, 2013. The Trustee continued to be paid by the University through February 28, 2014.

Commission staff reviewed the results of this inquiry with the Commission at its regularly scheduled meeting, in Executive Session, on July 17, 2014. While the Commission found that the facts supported violations of Ohio's Ethics Laws, as well as R.C. 3335.09, the

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Commission has directed that first these violations should be addressed through its settlement authority under R.C. 102.06(G), based upon the following factors in mitigation.

MITIGATION: For mitigation, the Commission has not received any evidence that The Trustee misused his position (or knew of the violation) as a Trustee to obtain disproportionate compensation as an adjunct faculty member at the College of Law beyond what the University paid other federal judges.

Further, the Commission has not received any evidence that the Trustee did not fully perform his duties as an adjunct professor. Several former students have provided letters that described The Trustee as having “a unique and irreplaceable identity as an Adjunct Professor,” being “one of the best professors I have ever had” and that his course was such an “outstanding experience” that it “should be a required course” at the Moritz College of Law.

Beginning on March 1, 2014 and ending on April 29, 2014, it has been reported that The Trustee elected to teach Trial Practice at the College of Law without compensation.

The Trustee has fully cooperated with the Commission’s review and investigation of this matter. Further, both Franklin County Prosecutor Ron O’Brien and Ohio Auditor of State David Yost have agreed to the following resolution.

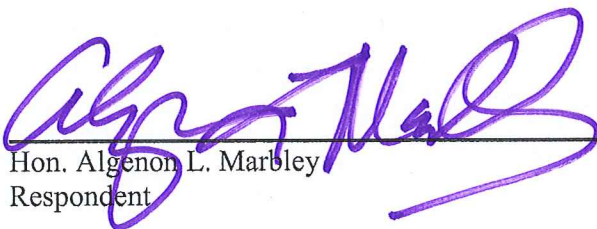
RESOLUTION: Per the terms of this Settlement Agreement:

- 1) The Trustee acknowledges and is now aware that his receipt of compensation as an adjunct faculty member of the University’s College of Law from May 2007 through February 28, 2014 was contrary to the advisory opinions of the Ethics Commission that have interpreted R.C. 2921.42(A)(4) and also violated R.C. 3335.09.
- 2) The Trustee agrees to resign as a Trustee of The Ohio State University, effective on Friday, January 30, 2015.

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- 3) In addition to the time he already has worked without pay, The Trustee will work as an adjunct faculty member of the University's College of Law, without compensation, for both the Spring 2015 and Autumn 2015 academic semesters.
- 4) This Settlement Agreement will be shared with the appropriate University management, the Franklin County Prosecutor and the Ohio Auditor of State. It will be public record, maintained in the Commission's files.
- 5) With this Agreement, the Commission will end any further investigative activity concerning the University's payments to The Trustee as an adjunct faculty member.
- 6) As provided for in R.C. 102.06(G)(3), if The Trustee breaches this Settlement Agreement, the Commission, in its discretion, may rescind this Agreement and may undertake any investigation, hearing, or refer the matter for prosecution and The Trustee hereby voluntarily waives the statute of limitations related to those potential charges.
- 7) The Trustee acknowledges that any future alleged violations brought to the Commission would be fully investigated and, if warranted by the facts, referred to the appropriate prosecuting authorities.

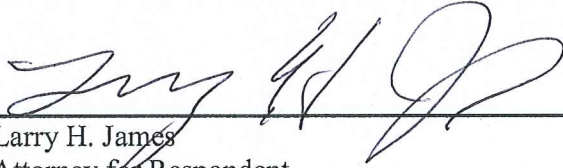
Per the terms of the Settlement Agreement, the Commission will hereby close its review of this matter in lieu of any referral for prosecution.


Hon. Algenon L. Marbley
Respondent

16 Dec. 2014
Date

In the Matter of OSU Trustee the Hon. Algenon L. Marbley
Settlement Proposal
December 17, 2014

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12/17/2014

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12/18/2014

Date