

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION NO. III
ACTION NO. 15-CI-551

PAUL KEARNEY, M.D.) DEPOSITION TAKEN ON
) BEHALF OF PLAINTIFF
 PLAINTIFF) BY: NOTICE
)
VS.)
)
UNIVERSITY OF KENTUCKY) Witness:
)
 DEFENDANT) WILLIAM E. THRO

* * * * *

The deposition of WILLIAM E. THRO was taken before Lisa Grant Crump, Court Reporter and Notary Public in and for the State of Kentucky at Large, and by videotape recording, at the law offices of Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Suite 1500, Lexington, Kentucky, on Tuesday, December 19, 2017, commencing at the approximate hour of 9:00 a.m. Said deposition was taken pursuant to Notice, heretofore filed, to be read and used as evidence on behalf of the Plaintiff at the trial in the above-captioned action and all other purposes as permitted by the Kentucky Rules of Civil Procedure.

* * * * *

APPEARANCES:

Hon. Bernard Pafunda
PAFUNDA LAW OFFICES
900 Beasley Street, Suite 150
Lexington, Kentucky 40509

COUNSEL FOR THE PLAINTIFF,
PAUL KEARNEY, M.D.

Hon. Bryan Beauman
STURGILL, TURNER, BARKER & MOLONEY, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507

COUNSEL FOR THE DEFENDANT,
UNIVERSITY OF KENTUCKY

ALSO PRESENT:

Angela Edwards
Video Technician

I N D E X

<u>WITNESS: WILLIAM E. THRO</u>	<u>PAGES</u>
COLLOQUY	4-5
EXAMINATION By Mr. Pafunda	5-25
REPORTER'S CERTIFICATE	26

* * * * *

E X H I B I T I N D E X

<u>Number</u>	<u>Description</u>	<u>Page</u>
No. 1	Curriculum Vitae	5
No. 2	Minutes dated 4-15-15	6
No. 3	E-mail dated 2-17-14	19
No. 4	E-mail dated 3-18-14	19

1 VIDEOGRAPHER: We're on the video
2 record; I'm Angela Edwards, the video
3 technician; the court reporter is Lisa Grant
4 Crump. We're here today to take the
5 deposition of Mr. William E. Thro at 333 West
6 Vine Street in Lexington, Kentucky. This
7 deposition is being taken pursuant to Notice
8 in the Fayette Circuit Court, styled Paul
9 Kearney, et al, M.D. versus University of
10 Kentucky. The date is December 19th, 2017;
11 the time is 9:06 a.m. Counsel will now
12 introduce themselves and state who they
13 represent, please.

14 MR. PAFUNDA: I'm Bernard Pafunda,
15 representing Dr. Paul Kearney.

16 MR. BEAUMAN: Bryan Beaman,
17 representing the University.

18 COURT REPORTER: Would you raise your
19 right hand, please? Do you solemnly swear or
20 affirm that the testimony you're about to give
21 will be the truth, the whole truth, and
22 nothing but the truth?

23 THE WITNESS: I do.

24 COURT REPORTER: Thank you.

25 The witness, WILLIAM E. THRO, after

1 first being duly sworn, was examined and
2 testified as follows:

3 EXAMINATION

4 By Mr. Pafunda:

5 Q. And would you introduce yourself for
6 the record, please?

7 A. My name is William E. Thro; I'm the
8 general counsel at the University of Kentucky.

9 Q. And Mr. Thro, I asked you to bring a
10 copy of your CV, your resume, and you did so today;
11 is that correct?

12 A. I sent it to Mr. Beauman, who printed
13 it for you, yes.

14 Q. And you've had an opportunity to
15 review it independently of Mr. Beauman?

16 A. Yes.

17 Q. And it's true and accurate and up to
18 date; is that correct?

19 A. It is up to date as of the time that I
20 sent it to Mr. Beauman.

21 Q. Which was when?

22 MR. BEAUMAN: Last week.

23 MR. PAFUNDA: Thank you, Mr. Beauman.

24 Mark this as Plaintiffs Exhibit Number 1.

25 (CURRICULUM VITAE IS MARKED AS

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PLAINTIFF'S EXHIBIT 1 FOR THE PURPOSES OF IDENTIFICATION.)

Q. And you are aware that the circuit court has limited the questions I may ask you today?

A. Yes, I am.

Q. If I go out of bounds, scream.

MR. BEAUMAN: Oh, I won't scream, I will politely --

MR. PAFUNDA: No, I meant Mr. Thro.

Q. With the court's limitation in mind, we'll try to proceed as rapidly as possible, Mr. Thro. And I'll show you what I've marked as Plaintiff's Exhibit No. 2, which is the minutes of the April 15, 2014, College of Medicine Faculty Council meeting. Have you had an opportunity to review those prior to today?

A. I have reviewed the minutes of that meeting.

(MINUTES DATED 4-15-14 ARE MARKED AS PLAINTIFF'S EXHIBIT 2 FOR THE PURPOSES OF IDENTIFICATION.)

Q. And that's prior to today, correct?

A. Prior to today, yes.

Q. Recently?

A. I looked at them last week.

1 Q. All right. And here you will, and if
2 you would just take a moment and review those.

3 A. Okay.

4 Q. Have you had an opportunity to review
5 them?

6 A. I reread them, yes.

7 Q. All right. If you would, this meeting
8 was called to discuss a legal issue?

9 A. The -- my understanding was that the
10 meeting was to discuss issues pertaining to the
11 Practice Plan. I'm not sure that I would
12 characterize that as a legal issue.

13 Q. And the reason that you placed that
14 caveat, you wouldn't characterize it as a legal
15 issue; what is -- what is your reasoning?

16 (TELEPHONE INTERRUPTION)

17 MR. BEAUMAN: Pardon me.

18 A. I said I wasn't sure that I would
19 characterize it as a legal -- legal issue. We -- the
20 purpose of the meeting was to discuss issues
21 pertaining to the Practice Plan. Some of those
22 issues might be legal in nature, some of them were
23 not or might not be.

24 Q. Prior to the meeting, did you have an
25 impression as to what issues concerning the Practice

1 Plan would be -- would fall within under the umbrella
2 of legal issues?

3 MR. BEAUMAN: I'm going to object
4 because I think that does go beyond what the
5 court -- his mental impressions would clearly
6 be attorney-client privilege and work product;
7 that goes beyond what Judge Ishmael said is
8 appropriate.

9 MR. PAFUNDA: I'm not going to argue
10 with you today because you've got a mediation
11 and I'm really in a hurry.

12 Q. So I take it from your read of these
13 minutes, the Practice Plan under AR 3.14 was, in
14 fact, discussed; is that correct?

15 A. I was present at the meeting and the
16 Practice Plan under AR 3.14 was discussed.

17 Q. And do you recall what discussion was
18 conducted with respect to the Practice Plan
19 Committee?

20 A. The meeting in question took place
21 three and a half years ago. To the best of my
22 recollection, several members of the College of
23 Medicine Faculty Council were concerned that the
24 Practice Plan Committee had not met; they were not
25 really sure who was on the committee. There had been

1 some open records requests for information related to
2 that. The University's Custodian of Records had
3 responded with available information. And the
4 information that was provided seemed to be
5 unsatisfactory to certain -- to some members of the
6 Council.

7 Q. And during that meeting, did any of
8 the council members express their dissatisfaction
9 with the information they had received prior to the
10 meeting?

11 A. Information received from whom prior
12 to the meeting?

13 Q. From the University.

14 A. Yes.

15 Q. All right. And recall -- and recount,
16 if you would, what their -- their specific
17 dissatisfaction.

18 A. To the best that I can recall, they
19 were dissatisfied that the Practice Plan Committee
20 had not met, that there were no minutes of Practice
21 Plan Committee meetings. And that it appeared that
22 the Practice Plan Committee had not met for some
23 time.

24 Q. And did they also express that they
25 weren't -- they were unaware of who the members of

1 the Practice Plan Committee were at that time?

2 A. Some members of the Council did see --
3 did note that they were unaware of who the members
4 were, yes.

5 Q. And at the conclusion of that meeting,
6 did Dr. Karpf direct that the identity of the
7 members, the faculty members of the Practice Plan
8 Committee be revealed to those on the Faculty
9 Council?

10 A. I don't recall that. However, the
11 minutes say that Dr. Karpf agreed to send information
12 regarding the identity of the faculty members of the
13 Practice Plan. And I'm assuming that these minutes
14 are an accurate reflection of the meeting. But I
15 don't recall Dr. Karpf specifically saying that.

16 Q. The question then becomes, why would
17 Dr. -- why would Dr. Karpf be the one to take the
18 lead to direct the administration to identify the
19 members of the Practice Plan Committee?

20 A. I think you'll have to ask Dr. Karpf
21 that.

22 Q. All right. And if you would, under
23 the -- under the list of guests you have and it
24 begins with Dean Fred de Beer?

25 A. Uh-huh (AFFIRMATIVE).

1 Q. And I apologize; you see where I'm
2 reading from?

3 A. Yeah. This is at the top, right after
4 the attendance table that has the list of people from
5 Basic Sciences and Clinical.

6 Q. All right. And when it says Dr. Dean
7 Fred de Beer, for the record, that's Dean Fred de
8 Beer of the College of Medicine; is that correct?

9 A. At the time, Dr. de Beer was the Dean
10 of the College of Medicine, yes.

11 Q. And then we skip over yourself, which
12 you've explained already, general counsel for the
13 University, and then we come to the Executive Vice
14 President for Health Affairs and that's Dr. Michael
15 Karpf, correct; he's present?

16 A. At the time, Dr. Karpf was the
17 Executive Vice President for Health Affairs, and yes,
18 he was present.

19 Q. All right. And at the time, we also
20 have Faculty Trustee, John Wilson, correct?

21 A. At the time, Dr. Wilson was a member
22 of the Board of Trustees, elected by the faculty. I
23 am not sure that -- if he was a guest or an actual
24 member of the College of Medicine Faculty Council.

25 Q. But if we take the minutes as it's

1 reflected, it appears that he's a guest, correct?

2 A. The minutes reflect him as a guest.

3 Q. And did the members of the Faculty
4 Council, when I say members, the members of Basic --
5 from Basic Sciences and Clinical Practice, did they
6 express that it was their opinion that AR 3.14
7 University Regulation had been breached?

8 A. Certainly Dr. Jones of the Basic
9 Science Department, the Basic Science area, said
10 something to that effect.

11 Q. All right. And did you express an
12 opinion to Dr. Jones in regard to that or a response
13 in regard to that?

14 A. I don't recall specifically saying --
15 saying something to the effect of no, it was not.
16 Certainly, the -- I don't think I agreed with him
17 that it had been.

18 Q. And since at the time you were general
19 counsel, did you express to the Faculty Council that
20 it -- that this matter was none of their business?

21 A. No, I did not.

22 Q. So when Hollie Swanson says that you
23 said that and it's not reflected in the minutes which
24 she drafted, she's mistaken; is that correct?

25 A. I do not recall using the words, it

1 was none of your business. And I would not use those
2 words in this context. None of your business implies
3 that this is a matter that can be kept secretive from
4 the people of the Commonwealth. Obviously, any
5 decision that the University makes is subject to open
6 records and a certain degree of transparency. Thus,
7 all of the University's business is open to public
8 inspection.

9 Q. Including executive sessions and
10 deliberations with respect to personnel matters?

11 MR. BEAUMAN: I think you know that.

12 MR. PAFUNDA: Well, I didn't know how
13 far Mr. Thro was going to go.

14 MR. BEAUMAN: So the decision would be
15 not to deliberate --

16 A. The decision would certainly be
17 subject, obviously, to the various exceptions to both
18 the Open Meetings Act and the Open Records Act.

19 MR. BEAUMAN: Or other privilege that
20 makes it --

21 A. Or -- right.

22 MR. PAFUNDA: You think there is a
23 privilege? We're going to find out.

24 MR. BEAUMAN: I think there is.

25 MR. PAFUNDA: I know you do. I

1 thought it was very --

2 MR. BEAUMAN: So did Circuit Court.

3 MR. PAFUNDA: Yeah, okay, I always stop
4 there.

5 Q. So Mr. Thro, if you didn't use the
6 precise words none of your business, did you use
7 words to that effect or to that tenor?

8 A. Certainly, I didn't use words --
9 certainly, I did not intend to convey the message
10 that this was none of the faculty's business.
11 Rather, what I was -- the point that I was attempting
12 to make to the Faculty Council was that there are
13 areas which are clearly within the faculty's -- what
14 I would call the faculty sphere, such as academic
15 decisions. And then there are other decisions that
16 are within the administrative sphere. The Practice
17 Plan would, for the most part, be within the admini
18 -- the Practice Plan as it relates to physician
19 compensation, would in effect, be within the
20 physicians' sphere. Although, obviously, individual
21 faculty members who may serve on the Practice Plan
22 would have -- would have an opportunity to provide
23 input, and presumably could provide -- could set
24 forth the views of the faculty, of other faculty
25 members.

1 Q. And likewise, along that same line,
2 the members of the Practice Plan Committee, which is
3 referenced under AR 3.14, would also serve in a
4 watchdog role with respect to the flow of funds from
5 the Kentucky Medical Services back to UK Healthcare,
6 correct?

7 A. I -- I'm not --

8 MR. BEAUMAN: We're getting way
9 beyond --

10 MR. PAFUNDA: Well, we're not way
11 beyond it. This one question might be.

12 MR. BEAUMAN: Well, okay. I think
13 it's beyond the scope --

14 MR. PAFUNDA: That's fine.

15 Q. If you look under the columns where we
16 have Basic Science -- Sciences, you are familiar with
17 those -- you, in fact, know those individuals, do you
18 not?

19 A. I -- if Dr. Mendenhall or Dr. Wilson
20 were to walk in, I am not sure that I would recognize
21 them. Dr. Blonder is on the Board of Trustees, and
22 prior to that served as Chair of Senate Council. Dr.
23 Jones I have encountered from time to time. Dr.
24 Swanson was Chair of the Senate Council prior to me
25 coming, and I have encountered her from time to time.

1 Q. And when you say doctor, you're
2 actually referring to the fact that they hold PhDs,
3 correct, rather than MDs?

4 A. I'm not -- I am not certain on the --
5 I know that all of the folks on the Basic Sciences
6 page have a doctoral degree. I don't know if those
7 may be MD degrees or if they are both a PhD and an MD
8 degree.

9 Q. Well, let's take Davy Jones; you're
10 very familiar with Mr. Jones, aren't you? Or Dr.
11 Jones, excuse me.

12 A. I'm not sure that I am very familiar
13 with Dr. Jones, but I do know that Dr. Jones holds a
14 PhD.

15 Q. And, but my question is, he doesn't
16 hold an MD degree, correct?

17 A. To the best of my knowledge, Dr. Jones
18 does not hold an MD degree. But I am not familiar
19 with Dr. Jones' CV.

20 Q. And likewise, with respect to Dr.
21 Hollie Swanson, she holds a PhD degree and not an MD
22 degree, correct?

23 A. I know that Dr. Swanson holds a PhD
24 degree. To the best of my knowledge, she does not
25 have an MD degree. However, my conversations with

1 Dr. Swanson about her academic credentials are
2 limited to one conversation when I first met her,
3 approximately five years ago. I don't recall her
4 mentioning an MD there, but again, I'm not familiar
5 with her CV.

6 Q. The point being that you have
7 individuals in the Basic Science field who teach at
8 the College of Medicine who do not have MD degrees,
9 correct?

10 A. There are many people who hold faculty
11 appointments within the College of Medicine who do
12 not have MD degrees. There are many who do; there
13 are a few who have both an MD and a PhD.

14 Q. And of the many that don't have an MD
15 degree, they teach in the College of Medicine,
16 correct?

17 A. Many teach. Some do nothing but
18 research.

19 Q. But the answer to my -- the answer to
20 my question is in the affirmative, is it not?

21 A. If you mean do they exclusively teach,
22 then the answer is in the negative. But there are --
23 I think there are faculty members within the College
24 of Medicine who do not hold MD degrees.

25 Q. And who do teach, correct, in the

1 College of Medicine?

2 A. Many of the faculty members who teach
3 in the College of Medicine in the Basic Science
4 Department do not have MD degrees.

5 Q. And likewise, would a breach of AR
6 3.14, if a breach, in fact, occurred, would that
7 place the accreditation of the University in any
8 jeopardy, and, if so, how? And I'll preface that
9 with was that aspect discussed at the meeting?

10 MR. BEAUMAN: Thank you.

11 MR. PAFUNDA: You're welcome, Mr.
12 Beauman.

13 A. The first half of your question is a
14 -- something of a legal conclusion, and that is
15 whether or not failure to follow an internal
16 regulation might be upsetting to the accrediting
17 board, either SACS or the accrediting board for the
18 College of Medicine. And with respect to that
19 question, I don't know.

20 Q. We'll wrap this up pretty soon. I'll
21 show you what I've marked as Plaintiff's Exhibit 3
22 and ask you if you're familiar with this e-mail. I'm
23 showing Mr. Beauman. Before you answer, see if Mr.
24 Beauman has an objection. Have you had an
25 opportunity to review it, Mr. Thro?

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A. I have.
(E-MAIL DATED 2-17-14 WAS MARKED AS
PLAINTIFF'S EXHIBIT 3 FOR THE PURPOSES OF
IDENTIFICATION.)

Q. And my question is, is this correct
that Dr. Karpf had asked your Office of Legal Counsel
to set up this meeting?

A. The e-mail states that Dr. Karpf asked
the Office of Legal Counsel to review issues raised
by the Faculty Council related to the College of
Medicine Practice Plan and that is correct.

Q. All right. And did your office do so,
review those legal issues?

A. We did.

MR. BEAUMAN: Let me give him this.

MR. PAFUNDA: Okay, yeah, it's 4.

(E-MAIL DATED 3-18-14 IS MARKED AS
PLAINTIFF'S EXHIBIT 4 FOR THE PURPOSES OF
IDENTIFICATION.)

Q. I'll show you what I've marked as
Plaintiff's Exhibit No. 4. And if you would, read
that into the record, please, the subject matter.

A. The subject is April Faculty Council.

Q. And the text of that e-mail reads as?
And if you would, read it into the record.

1 A. Dr. Swanson, Dr. Karpf and Bill Thro
2 would like to address Faculty Council at their April
3 meeting on Tuesday, April 15th, regarding a legal
4 matter. I have notified Dr. D'Orazio -- I think is
5 how you pronounce it -- and he plans to make an
6 announcement at tonight's meeting. Thank you,
7 Brandy. And it's signed Brandy Lawson, University of
8 Kentucky, College of Medicine Dean's Office, 138
9 Leader Avenue, Room 244, Lexington, 40506-9983, phone
10 number, 859-323-1367, fax number, 859-323-2039,
11 e-mail, brandy.lawson@uky.edu.

12 Q. All right. But now that you've gone
13 on and read underneath Brandy Lawson, those ledger
14 lines, with respect to Brandy Lawson, she was the
15 dean's secretary?

16 A. I have no idea.

17 Q. But you do have an idea that you and
18 Dr. Karpf were there to address the faculty issue --
19 the Faculty Council, excuse me, regarding a legal
20 matter, correct?

21 A. This letter states that Ms. Lawson has
22 conveyed that Dr. Karpf and I would like to address
23 the Faculty Council at their April meeting regarding
24 a legal matter. So in Dr. -- so in Ms. Lawson's
25 view, it's a legal matter.

1 Q. Was it a legal matter as you attended
2 the meeting on April 15th, 2014?

3 A. I think I've already explained that
4 some aspects were a legal matter, some aspects were
5 not a legal matter.

6 Q. But to clarify as we wind up this
7 deposition today, what aspects were of a legal
8 matter?

9 A. I suppose it depends upon how you
10 define a legal matter.

11 Q. Just from your perspective when you
12 were at the meeting, what aspects of that meeting did
13 you take to be a legal matter?

14 A. Discussions of why the -- of the open
15 -- of the University's compliance with the Open
16 Records Act, I think would -- certainly, a legal
17 matter.

18 Q. Now when you say that, there's nothing
19 reflected in these minutes about any open records
20 request; was there discussion about an open records
21 request?

22 A. As you noted in one of your earlier
23 questions, the -- several members of the Faculty
24 Council were dissatisfied with the University's
25 response to an open records request.

1 Q. So we can scratch that off as one of
2 the legal matters that was discussed. Were there
3 others that were discussed in this April 2014
4 meeting?

5 A. Some may regard compliance with
6 Regulation 3.14 as a legal matter. As the
7 University's regulations are not laws or
8 constitutional provisions, perhaps one could construe
9 those as not being a legal matter. But others could
10 obviously construe that as being a legal matter.

11 Q. And when you say that they're not laws
12 or constitutional provisions, to state the obvious,
13 we know that when you say constitutional provision,
14 you're referring to the Kentucky and U.S.
15 Constitution?

16 A. Yes.

17 Q. And when you say that they're not
18 laws, you're referring to statutes or common law,
19 case law?

20 A. I'm referring to federal and state
21 statutes.

22 Q. Thank you. But yet the University
23 Regulation, it is a regulatory scheme, is it not,
24 that should not be violated?

25 A. The University's reg -- the governing

1 regulations and the administrative regulations
2 reflect the policies of the Board of Trustees in the
3 case of governing regulations, and reflect the
4 policies of the president in the case of
5 administrative regulations, at least generally. And
6 the University should try to adhere to its policies.

7 Q. All right. And if -- if there's a
8 breach of AR 3.14, then that certainly raises, does
9 it not, a legal issue?

10 A. You would have a university violating
11 its -- violating its policy. I'm not sure that it
12 would rise to a legal issue. For example, I'm not
13 sure that it would be capable of being enforced in
14 court.

15 Q. But that's just a summation on your
16 part in terms of speculation, correct?

17 A. Yes, it would be speculation.

18 Q. And if there were such a breach, you
19 would not want to keep that hidden or secret from the
20 Faculty Council, would you?

21 A. I'm not sure I understand the
22 question.

23 Q. You wouldn't want to cover that up?

24 A. The University is committed to
25 transparency and would not cover up a violation of

1 its policies.

2 Q. Or a violation of its regulatory
3 structure, correct?

4 A. If regulatory structure, as I have
5 stated, are policies.

6 Q. Not to be -- you didn't express to the
7 Faculty Council that these policies could be either
8 followed or not followed arbitrarily, whichever way
9 the administration so decided, did you?

10 A. I don't recall saying anything that
11 would imply that.

12 Q. All right. Because if were you to
13 imply that, that would be an incorrect impression
14 that would be given to the Faculty Council, correct?

15 A. The University aspires to follow all
16 of its policies in all endeavors; as the University
17 is run by human beings, occasionally it falls short
18 of that.

19 Q. But if there is deliberate conduct
20 intended to breach a certain regulation, that's more
21 than just falling short of a policy or a regulation,
22 correct?

23 MR. BEAUMAN: I think you've done a
24 good job of tying questions to what the court
25 allowed you to inquire, but --

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MR. PAFUNDA: You think I'm going too far?

MR. BEAUMAN: I think that one goes too far, yes.

MR. PAFUNDA: You know what? Give me a second to confer with my client and we may be done.

MR. BEAUMAN: Okay, sounds good.

MR. PAFUNDA: Thank you, Mr. Thro, if you'll just give me a minute.

VIDEOGRAPHER: We'll go off the record at 9:30.

* * * * *

THEREUPON, the taking of the deposition of WILLIAM E. THRO was concluded at 9:30 a.m.

* * * * *

STATE OF KENTUCKY)
COUNTY OF FAYETTE)

I, Lisa Grant Crump, the undersigned Notary Public in and for the State of Kentucky at Large, certify that the facts stated in the caption hereto are true; that at the time and place stated in said caption, the witness named in the caption hereto personally appeared before me, and that after being by me duly sworn, was examined by counsel for the parties; that said testimony was taken down in stenotype by me and later reduced to computer transcription by me, and the foregoing is a true and accurate record of the testimony given by said witness.

No party to said action nor counsel for said parties requested in writing that said deposition be signed by the testifying witness.

My commission expires: April 6, 2019.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office on this the 5th day of January, 2018.

/s/ Lisa Grant Crump
LISA GRANT CRUMP
NOTARY PUBLIC, STATE-AT-LARGE
NOTARY ID: 530912

I	6	17:22, 18:23 apologize [1] - 11:1 APPEARANCES [1] - 2:1 appeared [2] - 9:21, 26:9 appointments [1] - 17:11 appropriate [1] - 8:8 approximate [1] - 1:18 april [1] - 26:19 April [7] - 6:14, 19:23, 20:2, 20:3, 20:23, 21:2, 22:3 AR [6] - 8:13, 8:16, 12:6, 15:3, 18:5, 23:8 arbitrarily [1] - 24:8 ARE [1] - 6:19 area [1] - 12:9 areas [1] - 14:13 argue [1] - 8:9 AS [4] - 5:25, 6:19, 19:2, 19:17 aspect [1] - 18:9 aspects [4] - 21:4, 21:7, 21:12 aspires [1] - 24:15 assuming [1] - 10:13 AT [1] - 26:24 attempting [1] - 14:11 attendance [1] - 11:4 attended [1] - 21:1 attorney [1] - 8:6 attorney-client [1] - 8:6 available [1] - 9:3 Avenue [1] - 20:9 aware [1] - 6:3	client [2] - 8:6, 25:6 Clinical [2] - 11:5, 12:5 College [14] - 6:14, 8:22, 11:8, 11:10, 11:24, 17:8, 17:11, 17:15, 17:23, 18:1, 18:3, 18:18, 19:10, 20:8 COLLOQUY [1] - 3:4 columns [1] - 15:15 coming [1] - 15:25 commencing [1] - 1:17 commission [1] - 26:19 committed [1] - 23:24 Committee [9] - 8:19, 8:24, 9:19, 9:21, 9:22, 10:1, 10:8, 10:19, 15:2 committee [1] - 8:25 common [1] - 22:18 Commonwealth [1] - 13:4 COMMONWEALTH [1] - 1:1 compensation [1] - 14:19 compliance [2] - 21:15, 22:5 computer [1] - 26:12 concerned [1] - 8:23 concerning [1] - 7:25 concluded [1] - 25:15 conclusion [2] - 10:5, 18:14 conduct [1] - 24:19 conducted [1] - 8:18 confer [1] - 25:6 Constitution [1] - 22:15 constitutional [3] - 22:8, 22:12, 22:13 construe [2] - 22:8, 22:10 context [1] - 13:2 conversation [1] - 17:2 conversations [1] - 16:25 convey [1] - 14:9 conveyed [1] - 20:22 copy [1] - 5:10 correct [23] - 5:11, 5:18, 6:22, 8:14, 11:8, 11:15, 11:20, 12:1, 12:24, 15:6, 16:3, 16:16, 16:22, 17:9, 17:16, 17:25,
/s [1] - 26:23	6 [2] - 3:16, 26:19		
1	8		
1 [3] - 3:15, 5:24, 6:1 138 [1] - 20:8 15 [1] - 6:14 15-CI-551 [1] - 1:2 150 [1] - 2:4 1500 [2] - 1:16, 2:9 15th [2] - 20:3, 21:2 19 [3] - 1:17, 3:17, 3:18 19th [1] - 4:10	859-323-1367 [1] - 20:10 859-323-2039 [1] - 20:10		
2	9		
2 [3] - 3:16, 6:13, 6:20 2-17-14 [2] - 3:17, 19:2 2014 [3] - 6:14, 21:2, 22:3 2017 [2] - 1:17, 4:10 2018 [1] - 26:22 2019 [1] - 26:19 244 [1] - 20:9 26 [1] - 3:8	900 [1] - 2:4 9:00 [1] - 1:18 9:06 [1] - 4:11 9:30 [2] - 25:12, 25:15		
3	A		
2 [3] - 3:16, 6:13, 6:20 2-17-14 [2] - 3:17, 19:2 2014 [3] - 6:14, 21:2, 22:3 2017 [2] - 1:17, 4:10 2018 [1] - 26:22 2019 [1] - 26:19 244 [1] - 20:9 26 [1] - 3:8	a.m. [3] - 1:18, 4:11, 25:15 above-captioned [1] - 1:21 academic [2] - 14:14, 17:1 accreditation [1] - 18:7 accrediting [2] - 18:16, 18:17 accurate [3] - 5:17, 10:14, 26:14 Act [3] - 13:18, 21:16 ACTION [1] - 1:2 action [2] - 1:21, 26:16 actual [1] - 11:23 address [3] - 20:2, 20:18, 20:22 adhere [1] - 23:6 admini [1] - 14:17 administration [2] - 10:18, 24:9 administrative [3] - 14:16, 23:1, 23:5 Affairs [2] - 11:14, 11:17 affirm [1] - 4:20 AFFIRMATIVE) [1] - 10:25 ago [2] - 8:21, 17:3 agreed [2] - 10:11, 12:16 al [1] - 4:9 allowed [1] - 24:25 ALSO [1] - 2:14 Angela [2] - 2:15, 4:2 announcement [1] - 20:6 answer [4] - 17:19,	B Barker [1] - 1:15 BARKER [1] - 2:8 Basic [9] - 11:5, 12:4, 12:5, 12:8, 12:9, 15:16, 16:5, 17:7, 18:3 Beasley [1] - 2:4 beauman [5] - 5:12, 5:15, 5:23, 18:12, 18:23 BEAUMAN [17] - 4:16, 5:22, 6:7, 7:17, 8:3, 13:11, 13:14, 13:19, 13:24, 14:2, 15:8, 15:12, 18:10, 19:15, 24:23, 25:3, 25:8 Beauman [4] - 2:8, 4:16, 5:20, 18:24	
4	B		
3 [3] - 3:17, 18:21, 19:3 3-18-14 [2] - 3:18, 19:17 3.14 [7] - 8:13, 8:16, 12:6, 15:3, 18:6, 22:6, 23:8 333 [3] - 1:15, 2:9, 4:5	B		
5	C		
5 [1] - 3:15 5-25 [1] - 3:6 530912 [1] - 26:24 5th [1] - 26:21	becomes [1] - 10:16 Beer [4] - 10:24, 11:7, 11:8, 11:9 begins [1] - 10:24 BEHALF [1] - 1:4 behalf [1] - 1:20 beings [1] - 24:17 Bernard [2] - 2:3, 4:14 best [4] - 8:21, 9:18, 16:17, 16:24 beyond [5] - 8:4, 8:7, 15:9, 15:11, 15:13 Bill [1] - 20:1 blonder [1] - 15:21 Board [3] - 11:22, 15:21, 23:2 board [2] - 18:17 bounds [1] - 6:6 Brandy [4] - 20:7, 20:13, 20:14 brandy.lawson@uky.edu [1] - 20:11 breach [5] - 18:5, 18:6, 23:8, 23:18, 24:20 breached [1] - 12:7 bring [1] - 5:9 Bryan [2] - 2:8, 4:16 business [6] - 12:20, 13:1, 13:2, 13:7, 14:6, 14:10 BY [1] - 1:5	capable [1] - 23:13 caption [3] - 26:6, 26:8 captioned [1] - 1:21 case [3] - 22:19, 23:3, 23:4 caveat [1] - 7:14 certain [4] - 9:5, 13:6, 16:4, 24:20 certainly [7] - 12:8, 12:16, 13:16, 14:8, 14:9, 21:16, 23:8 CERTIFICATE [1] - 3:8 certify [1] - 26:6 Chair [2] - 15:22, 15:24 characterize [3] - 7:12, 7:14, 7:19 circuit [1] - 6:3 Circuit [2] - 4:8, 14:2 CIRCUIT [1] - 1:1 Civil [1] - 1:23 clarify [1] - 21:6 clearly [2] - 8:5, 14:13	

<p>19:5, 19:11, 20:20, 23:16, 24:3, 24:14, 24:22</p> <p>Council [20] - 6:15, 8:23, 9:6, 10:2, 10:9, 11:24, 12:4, 12:19, 14:12, 15:22, 15:24, 19:10, 19:23, 20:2, 20:19, 20:23, 21:24, 23:20, 24:7, 24:14</p> <p>council [1] - 9:8</p> <p>COUNSEL [2] - 2:5, 2:10</p> <p>Counsel [3] - 4:11, 19:6, 19:9</p> <p>counsel [5] - 5:8, 11:12, 12:19, 26:10, 26:16</p> <p>COUNTY [1] - 26:2</p> <p>COURT [3] - 1:1, 4:18, 4:24</p> <p>court [5] - 4:3, 6:4, 8:5, 23:14, 24:24</p> <p>Court [3] - 1:12, 4:8, 14:2</p> <p>court's [1] - 6:10</p> <p>cover [2] - 23:23, 23:25</p> <p>credentials [1] - 17:1</p> <p>Crump [4] - 1:12, 4:4, 26:4, 26:23</p> <p>CRUMP [1] - 26:23</p> <p>CURRICULUM [1] - 5:25</p> <p>Custodian [1] - 9:2</p> <p>CV [3] - 5:10, 16:19, 17:5</p>	<p>13:14, 13:16</p> <p>decisions [2] - 14:15</p> <p>DEFENDANT [2] - 1:8, 2:10</p> <p>define [1] - 21:10</p> <p>degree [10] - 13:6, 16:6, 16:8, 16:16, 16:18, 16:21, 16:22, 16:24, 16:25, 17:15</p> <p>degrees [5] - 16:7, 17:8, 17:12, 17:24, 18:4</p> <p>deliberate [2] - 13:15, 24:19</p> <p>deliberations [1] - 13:10</p> <p>Department [2] - 12:9, 18:4</p> <p>DEPOSITION [1] - 1:4</p> <p>deposition [7] - 1:11, 1:18, 4:5, 4:7, 21:7, 25:14, 26:17</p> <p>Description [1] - 3:13</p> <p>direct [2] - 10:6, 10:18</p> <p>discuss [3] - 7:8, 7:10, 7:20</p> <p>discussed [5] - 8:14, 8:16, 18:9, 22:2, 22:3</p> <p>discussion [2] - 8:17, 21:20</p> <p>discussions [1] - 21:14</p> <p>dissatisfaction [2] - 9:8, 9:17</p> <p>dissatisfied [2] - 9:19, 21:24</p> <p>DIVISION [1] - 1:2</p> <p>doctor [1] - 16:1</p> <p>doctoral [1] - 16:6</p> <p>done [2] - 24:23, 25:7</p> <p>down [1] - 26:11</p> <p>Dr [34] - 4:15, 10:6, 10:11, 10:15, 10:17, 10:20, 11:6, 11:9, 11:14, 11:16, 11:21, 12:8, 12:12, 15:19, 15:21, 15:22, 15:23, 16:10, 16:13, 16:17, 16:19, 16:20, 16:23, 17:1, 19:6, 19:8, 20:1, 20:4, 20:18, 20:22, 20:24</p> <p>dr [1] - 20:1</p> <p>drafted [1] - 12:24</p> <p>duly [2] - 5:1, 26:10</p> <p>during [1] - 9:7</p>	<p style="text-align: center;">E</p> <p>E-mail [2] - 3:17, 3:18</p> <p>e-mail [6] - 18:22, 19:2, 19:8, 19:17, 19:24, 20:11</p> <p>Edwards [2] - 2:15, 4:2</p> <p>effect [4] - 12:10, 12:15, 14:7, 14:19</p> <p>either [2] - 18:17, 24:7</p> <p>elected [1] - 11:22</p> <p>encountered [2] - 15:23, 15:25</p> <p>endeavors [1] - 24:16</p> <p>enforced [1] - 23:13</p> <p>et [1] - 4:9</p> <p>evidence [1] - 1:20</p> <p>EXAMINATION [2] - 3:6, 5:3</p> <p>examined [2] - 5:1, 26:10</p> <p>example [1] - 23:12</p> <p>exceptions [1] - 13:17</p> <p>exclusively [1] - 17:21</p> <p>excuse [2] - 16:11, 20:19</p> <p>executive [1] - 13:9</p> <p>Executive [2] - 11:13, 11:17</p> <p>Exhibit [4] - 5:24, 6:13, 18:21, 19:21</p> <p>EXHIBIT [4] - 6:1, 6:20, 19:3, 19:18</p> <p>expires [1] - 26:19</p> <p>explained [2] - 11:12, 21:3</p> <p>express [6] - 9:8, 9:24, 12:6, 12:11, 12:19, 24:6</p>	<p>fall [1] - 8:1</p> <p>falling [1] - 24:21</p> <p>falls [1] - 24:17</p> <p>familiar [6] - 15:16, 16:10, 16:12, 16:18, 17:4, 18:22</p> <p>far [3] - 13:13, 25:2, 25:4</p> <p>fax [1] - 20:10</p> <p>FAYETTE [2] - 1:1, 26:2</p> <p>Fayette [1] - 4:8</p> <p>federal [1] - 22:20</p> <p>few [1] - 17:13</p> <p>field [1] - 17:7</p> <p>filed [1] - 1:19</p> <p>fine [1] - 15:14</p> <p>first [3] - 5:1, 17:2, 18:13</p> <p>five [1] - 17:3</p> <p>flow [1] - 15:4</p> <p>folks [1] - 16:5</p> <p>follow [2] - 18:15, 24:15</p> <p>followed [2] - 24:8</p> <p>follows [1] - 5:2</p> <p>FOR [6] - 2:5, 2:10, 6:1, 6:20, 19:3, 19:18</p> <p>foregoing [1] - 26:13</p> <p>forth [1] - 14:24</p> <p>Fred [3] - 10:24, 11:7</p> <p>funds [1] - 15:4</p>	<p>hidden [1] - 23:19</p> <p>hold [5] - 16:2, 16:16, 16:18, 17:10, 17:24</p> <p>holds [3] - 16:13, 16:21, 16:23</p> <p>Hollie [2] - 12:22, 16:21</p> <p>Hon [2] - 2:3, 2:8</p> <p>hour [1] - 1:18</p> <p>human [1] - 24:17</p> <p>hurry [1] - 8:11</p>
<p style="text-align: center;">D</p> <p>d'Orazio [1] - 20:4</p> <p>date [3] - 4:10, 5:18, 5:19</p> <p>DATED [3] - 6:19, 19:2, 19:17</p> <p>dated [3] - 3:16, 3:17, 3:18</p> <p>Davy [1] - 16:9</p> <p>de [4] - 10:24, 11:7, 11:9</p> <p>Dean [3] - 10:24, 11:7, 11:9</p> <p>dean [1] - 11:6</p> <p>Dean's [1] - 20:8</p> <p>dean's [1] - 20:15</p> <p>December [2] - 1:17, 4:10</p> <p>decided [1] - 24:9</p> <p>decision [3] - 13:5,</p>	<p style="text-align: center;">D</p>	<p style="text-align: center;">F</p> <p>fact [4] - 8:14, 15:17, 16:2, 18:6</p> <p>facts [1] - 26:6</p> <p>faculty [11] - 10:7, 10:12, 11:22, 14:14, 14:21, 14:24, 17:10, 17:23, 18:2, 20:18</p> <p>Faculty [17] - 6:14, 8:23, 10:8, 11:20, 11:24, 12:3, 12:19, 14:12, 19:10, 19:23, 20:2, 20:19, 20:23, 21:23, 23:20, 24:7, 24:14</p> <p>faculty's [2] - 14:10, 14:13</p> <p>failure [1] - 18:15</p>	<p style="text-align: center;">G</p> <p>general [3] - 5:8, 11:12, 12:18</p> <p>generally [1] - 23:5</p> <p>given [2] - 24:14, 26:14</p> <p>governing [2] - 22:25, 23:3</p> <p>GRANT [1] - 26:23</p> <p>Grant [4] - 1:12, 4:3, 26:4, 26:23</p> <p>guest [3] - 11:23, 12:1, 12:2</p> <p>guests [1] - 10:23</p>	<p style="text-align: center;">I</p> <p>ID [1] - 26:24</p> <p>idea [2] - 20:16, 20:17</p> <p>IDENTIFICATION [4] - 6:2, 6:21, 19:4, 19:19</p> <p>identify [1] - 10:18</p> <p>identity [2] - 10:6, 10:12</p> <p>Ill [1] - 1:2</p> <p>implies [1] - 13:2</p> <p>imply [2] - 24:11, 24:13</p> <p>impression [2] - 7:25, 24:13</p> <p>impressions [1] - 8:5</p> <p>IN [1] - 26:20</p> <p>including [1] - 13:9</p> <p>incorrect [1] - 24:13</p> <p>independently [1] - 5:15</p> <p>individual [1] - 14:20</p> <p>individuals [2] - 15:17, 17:7</p> <p>information [6] - 9:1, 9:3, 9:4, 9:9, 9:11, 10:11</p> <p>input [1] - 14:23</p> <p>inquire [1] - 24:25</p> <p>inspection [1] - 13:8</p> <p>intend [1] - 14:9</p> <p>intended [1] - 24:20</p> <p>internal [1] - 18:15</p> <p>INTERRUPTION [1] - 7:16</p> <p>introduce [2] - 4:12, 5:5</p> <p>IS [2] - 5:25, 19:17</p> <p>Ishmael [1] - 8:7</p> <p>issue [7] - 7:8, 7:12, 7:15, 7:19, 20:18, 23:9, 23:12</p> <p>issues [7] - 7:10, 7:20, 7:22, 7:25, 8:2, 19:9, 19:13</p>
			<p style="text-align: center;">H</p> <p>half [2] - 8:21, 18:13</p> <p>hand [2] - 4:19, 26:21</p> <p>Health [2] - 11:14, 11:17</p> <p>Healthcare [1] - 15:5</p> <p>hereto [2] - 26:6, 26:8</p> <p>heretofore [1] - 1:19</p> <p>hereunto [1] - 26:20</p>	

<p style="text-align: center;">J</p> <p>January [1] - 26:22 jeopardy [1] - 18:8 job [1] - 24:24 John [1] - 11:20 jones [4] - 16:10, 16:13, 16:17 Jones [5] - 12:8, 12:12, 15:23, 16:9, 16:11 jones' [1] - 16:19 Judge [1] - 8:7</p>	<p>21:7, 21:10, 21:13, 21:16, 22:2, 22:6, 22:9, 22:10, 23:9, 23:12 letter [1] - 20:21 Lexington [5] - 1:16, 2:4, 2:9, 4:6, 20:9 likewise [3] - 15:1, 16:20, 18:5 limitation [1] - 6:10 limited [2] - 6:4, 17:2 line [1] - 15:1 lines [1] - 20:14 Lisa [4] - 1:12, 4:3, 26:4, 26:23 LISA [1] - 26:23 list [2] - 10:23, 11:4 look [1] - 15:15 looked [1] - 6:25</p>	<p>9:10, 9:12, 10:5, 10:14, 18:9, 19:7, 20:3, 20:6, 20:23, 21:2, 21:12, 22:4 meetings [1] - 9:21 Meetings [1] - 13:18 member [2] - 11:21, 11:24 members [19] - 8:22, 9:5, 9:8, 9:25, 10:2, 10:3, 10:7, 10:12, 10:19, 12:3, 12:4, 14:21, 14:25, 15:2, 17:23, 18:2, 21:23 mendenhall [1] - 15:19 mental [1] - 8:5 mentioning [1] - 17:4 message [1] - 14:9 met [4] - 8:24, 9:20, 9:22, 17:2 Michael [1] - 11:14 might [4] - 7:22, 7:23, 15:11, 18:16 mind [1] - 6:10 minute [1] - 25:10 minutes [10] - 6:13, 6:17, 8:13, 9:20, 10:11, 10:13, 11:25, 12:2, 12:23, 21:19 Minutes [1] - 3:16 MINUTES [1] - 6:19 mistaken [1] - 12:24 Moloney [1] - 1:15 MOLONEY [1] - 2:8 moment [1] - 7:2 most [1] - 14:17 MR [32] - 4:14, 4:16, 5:22, 5:23, 6:7, 6:9, 7:17, 8:3, 8:9, 13:11, 13:12, 13:14, 13:19, 13:22, 13:24, 13:25, 14:2, 14:3, 15:8, 15:10, 15:12, 15:14, 18:10, 18:11, 19:15, 19:16, 24:23, 25:1, 25:3, 25:5, 25:8, 25:9</p>	<p>Notary [2] - 1:12, 26:4 note [1] - 10:3 noted [1] - 21:22 nothing [3] - 4:22, 17:17, 21:18 Notice [2] - 1:19, 4:7 NOTICE [1] - 1:5 notified [1] - 20:4 number [2] - 20:10 Number [2] - 3:13, 5:24</p>	<p>part [2] - 14:17, 23:16 parties [2] - 26:11, 26:17 party [1] - 26:16 PAUL [2] - 1:4, 2:6 Paul [2] - 4:8, 4:15 people [3] - 11:4, 13:4, 17:10 perhaps [1] - 22:8 permitted [1] - 1:22 personally [1] - 26:9 personnel [1] - 13:10 perspective [1] - 21:11 pertaining [2] - 7:10, 7:21 PhD [5] - 16:7, 16:14, 16:21, 16:23, 17:13 PhDs [1] - 16:2 phone [1] - 20:9 physician [1] - 14:18 physicians' [1] - 14:20 place [3] - 8:20, 18:7, 26:7 placed [1] - 7:13 PLAINTIFF [3] - 1:4, 1:5, 2:5 Plaintiff [1] - 1:20 PLAINTIFF'S [4] - 6:1, 6:20, 19:3, 19:18 Plaintiff's [3] - 6:13, 18:21, 19:21 Plaintiffs [1] - 5:24 Plan [19] - 7:11, 7:21, 8:1, 8:13, 8:16, 8:18, 8:24, 9:19, 9:21, 9:22, 10:1, 10:7, 10:13, 10:19, 14:17, 14:18, 14:21, 15:2, 19:11 plans [1] - 20:5 PLLC [2] - 1:15, 2:8 point [2] - 14:11, 17:6 policies [7] - 23:2, 23:4, 23:6, 24:1, 24:5, 24:7, 24:16 policy [2] - 23:11, 24:21 politely [1] - 6:8 possible [1] - 6:11 Practice [20] - 7:11, 7:21, 7:25, 8:13, 8:16, 8:18, 8:24, 9:19, 9:20, 9:22, 10:1, 10:7, 10:13, 10:19, 12:5, 14:16, 14:18, 14:21, 15:2, 19:11 precise [1] - 14:6 preface [1] - 18:8</p>
<p style="text-align: center;">K</p> <p>Karpf [9] - 10:6, 10:15, 10:20, 11:15, 11:16, 19:8, 20:1, 20:18, 20:22 karpf [3] - 10:11, 10:17, 19:6 Kearney [2] - 4:9, 4:15 KEARNEY [2] - 1:4, 2:6 keep [1] - 23:19 KENTUCKY [4] - 1:1, 1:7, 2:11, 26:1 Kentucky [12] - 1:13, 1:16, 1:22, 2:4, 2:9, 4:6, 4:10, 5:8, 15:5, 20:8, 22:14, 26:5 kept [1] - 13:3 knowledge [2] - 16:17, 16:24</p>	<p style="text-align: center;">M</p> <p>M.D [3] - 1:4, 2:6, 4:9 mail [6] - 3:17, 3:18, 18:22, 19:8, 19:24, 20:11 MAIL [2] - 19:2, 19:17 mark [1] - 5:24 MARKED [4] - 5:25, 6:19, 19:2, 19:17 marked [3] - 6:12, 18:21, 19:20 matter [17] - 12:20, 13:3, 19:22, 20:4, 20:20, 20:24, 20:25, 21:1, 21:4, 21:5, 21:8, 21:10, 21:13, 21:17, 22:6, 22:9, 22:10 matters [2] - 13:10, 22:2 MD [13] - 16:7, 16:16, 16:18, 16:21, 16:25, 17:4, 17:8, 17:12, 17:13, 17:14, 17:24, 18:4 MDs [1] - 16:3 mean [1] - 17:21 meant [1] - 6:9 mediation [1] - 8:10 Medical [1] - 15:5 Medicine [14] - 6:14, 8:23, 11:8, 11:10, 11:24, 17:8, 17:11, 17:15, 17:24, 18:1, 18:3, 18:18, 19:11, 20:8 meeting [22] - 6:15, 6:18, 7:7, 7:10, 7:20, 7:24, 8:15, 8:20, 9:7,</p>	<p style="text-align: center;">N</p> <p>name [1] - 5:7 named [1] - 26:8 nature [1] - 7:22 negative [1] - 17:22 NO [2] - 1:2, 1:2 none [5] - 12:20, 13:1, 13:2, 14:6, 14:10 NOTARY [2] - 26:24, 26:24</p>	<p style="text-align: center;">O</p> <p>object [1] - 8:3 objection [1] - 18:24 obvious [1] - 22:12 obviously [4] - 13:4, 13:17, 14:20, 22:10 occasionally [1] - 24:17 occurred [1] - 18:6 OF [10] - 1:1, 1:4, 1:7, 2:11, 6:1, 6:20, 19:3, 19:18, 26:1, 26:2 Office [3] - 19:6, 19:9, 20:8 office [2] - 19:12, 26:21 OFFICES [1] - 2:3 offices [1] - 1:14 ON [1] - 1:4 one [7] - 10:17, 15:11, 17:2, 21:22, 22:1, 22:8, 25:3 open [7] - 9:1, 13:5, 13:7, 21:14, 21:19, 21:20, 21:25 Open [3] - 13:18, 21:15 opinion [2] - 12:6, 12:12 opportunity [5] - 5:14, 6:15, 7:4, 14:22, 18:25</p>	<p style="text-align: center;">P</p> <p>Pafunda [2] - 2:3, 4:14 PAFUNDA [16] - 2:3, 4:14, 5:23, 6:9, 8:9, 13:12, 13:22, 13:25, 14:3, 15:10, 15:14, 18:11, 19:16, 25:1, 25:5, 25:9 pafunda [2] - 3:6, 5:4 page [1] - 16:6 Page [1] - 3:13 PAGES [1] - 3:2 pardon [1] - 7:17</p>
<p style="text-align: center;">L</p> <p>Large [2] - 1:13, 26:5 LARGE [1] - 26:24 last [2] - 5:22, 6:25 LAW [1] - 2:3 law [3] - 1:14, 22:18, 22:19 laws [3] - 22:7, 22:11, 22:18 Lawson [3] - 20:7, 20:13, 20:14 lawson [1] - 20:21 Lawson's [1] - 20:24 lead [1] - 10:18 Leader [1] - 20:9 lead [1] - 23:5 ledger [1] - 20:13 Legal [2] - 19:6, 19:9 legal [26] - 7:8, 7:12, 7:14, 7:19, 7:22, 8:2, 18:14, 19:13, 20:3, 20:19, 20:24, 20:25, 21:1, 21:4, 21:5,</p>	<p style="text-align: center;">M</p> <p>M.D [3] - 1:4, 2:6, 4:9 mail [6] - 3:17, 3:18, 18:22, 19:8, 19:24, 20:11 MAIL [2] - 19:2, 19:17 mark [1] - 5:24 MARKED [4] - 5:25, 6:19, 19:2, 19:17 marked [3] - 6:12, 18:21, 19:20 matter [17] - 12:20, 13:3, 19:22, 20:4, 20:20, 20:24, 20:25, 21:1, 21:4, 21:5, 21:8, 21:10, 21:13, 21:17, 22:6, 22:9, 22:10 matters [2] - 13:10, 22:2 MD [13] - 16:7, 16:16, 16:18, 16:21, 16:25, 17:4, 17:8, 17:12, 17:13, 17:14, 17:24, 18:4 MDs [1] - 16:3 mean [1] - 17:21 meant [1] - 6:9 mediation [1] - 8:10 Medical [1] - 15:5 Medicine [14] - 6:14, 8:23, 11:8, 11:10, 11:24, 17:8, 17:11, 17:15, 17:24, 18:1, 18:3, 18:18, 19:11, 20:8 meeting [22] - 6:15, 6:18, 7:7, 7:10, 7:20, 7:24, 8:15, 8:20, 9:7,</p>	<p style="text-align: center;">N</p> <p>name [1] - 5:7 named [1] - 26:8 nature [1] - 7:22 negative [1] - 17:22 NO [2] - 1:2, 1:2 none [5] - 12:20, 13:1, 13:2, 14:6, 14:10 NOTARY [2] - 26:24, 26:24</p>	<p style="text-align: center;">P</p> <p>Pafunda [2] - 2:3, 4:14 PAFUNDA [16] - 2:3, 4:14, 5:23, 6:9, 8:9, 13:12, 13:22, 13:25, 14:3, 15:10, 15:14, 18:11, 19:16, 25:1, 25:5, 25:9 pafunda [2] - 3:6, 5:4 page [1] - 16:6 Page [1] - 3:13 PAGES [1] - 3:2 pardon [1] - 7:17</p>	<p style="text-align: center;">P</p> <p>Pafunda [2] - 2:3, 4:14 PAFUNDA [16] - 2:3, 4:14, 5:23, 6:9, 8:9, 13:12, 13:22, 13:25, 14:3, 15:10, 15:14, 18:11, 19:16, 25:1, 25:5, 25:9 pafunda [2] - 3:6, 5:4 page [1] - 16:6 Page [1] - 3:13 PAGES [1] - 3:2 pardon [1] - 7:17</p>

<p>PRESENT [1] - 2:14 present [3] - 8:15, 11:15, 11:18 president [1] - 23:4 President [2] - 11:14, 11:17 presumably [1] - 14:23 pretty [1] - 18:20 printed [1] - 5:12 privilege [3] - 8:6, 13:19, 13:23 Procedure [1] - 1:23 proceed [1] - 6:11 product [1] - 8:6 pronounce [1] - 20:5 provide [2] - 14:22, 14:23 provided [1] - 9:4 provision [1] - 22:13 provisions [2] - 22:8, 22:12 Public [2] - 1:13, 26:5 public [1] - 13:7 PUBLIC [1] - 26:24 purpose [1] - 7:20 PURPOSES [1] - 1:22 PURPOSES [4] - 6:1, 6:20, 19:3, 19:18 pursuant [2] - 1:19, 4:7</p>	<p>21:19, 21:20, 21:25 Records [3] - 9:2, 13:18, 21:16 recount [1] - 9:15 reduced [1] - 26:12 referenced [1] - 15:3 referring [4] - 16:2, 22:14, 22:18, 22:20 reflect [3] - 12:2, 23:2, 23:3 reflected [3] - 12:1, 12:23, 21:19 reflection [1] - 10:14 reg [1] - 22:25 regard [3] - 12:12, 12:13, 22:5 regarding [4] - 10:12, 20:3, 20:19, 20:23 regulation [3] - 18:16, 24:20, 24:21 Regulation [3] - 12:7, 22:6, 22:23 regulations [5] - 22:7, 23:1, 23:3, 23:5 regulatory [3] - 22:23, 24:2, 24:4 related [2] - 9:1, 19:10 relates [1] - 14:18 reporter [1] - 4:3 Reporter [1] - 1:12 REPORTER [2] - 4:18, 4:24 REPORTER'S [1] - 3:8 represent [1] - 4:13 representing [2] - 4:15, 4:17 request [3] - 21:20, 21:21, 21:25 requested [1] - 26:17 requests [1] - 9:1 reread [1] - 7:6 research [1] - 17:18 respect [6] - 8:18, 13:10, 15:4, 16:20, 18:18, 20:14 responded [1] - 9:3 response [2] - 12:12, 21:25 resume [1] - 5:10 revealed [1] - 10:8 review [7] - 5:15, 6:16, 7:2, 7:4, 18:25, 19:9, 19:13 reviewed [1] - 6:17 rise [1] - 23:12 role [1] - 15:4 Room [1] - 20:9 Rules [1] - 1:22 run [1] - 24:17</p>	<p style="text-align: center;">S</p> <p>SACS [1] - 18:17 scheme [1] - 22:23 Science [5] - 12:9, 15:16, 17:7, 18:3 Sciences [4] - 11:5, 12:5, 15:16, 16:5 scope [1] - 15:13 scratch [1] - 22:1 scream [2] - 6:6, 6:7 seal [1] - 26:21 second [1] - 25:6 secret [1] - 23:19 secretary [1] - 20:15 secretive [1] - 13:3 see [3] - 10:2, 11:1, 18:23 Senate [2] - 15:22, 15:24 send [1] - 10:11 sent [2] - 5:12, 5:20 serve [2] - 14:21, 15:3 served [1] - 15:22 Services [1] - 15:5 sessions [1] - 13:9 set [3] - 14:23, 19:7, 26:20 several [2] - 8:22, 21:23 short [2] - 24:17, 24:21 show [3] - 6:12, 18:21, 19:20 showing [1] - 18:23 signed [2] - 20:7, 26:18 skip [1] - 11:11 solemnly [1] - 4:19 soon [1] - 18:20 sounds [1] - 25:8 specific [1] - 9:16 specifically [2] - 10:15, 12:14 speculation [2] - 23:16, 23:17 sphere [3] - 14:14, 14:16, 14:20 State [2] - 1:13, 26:5 state [3] - 4:12, 22:12, 22:20 STATE [2] - 26:1, 26:24 STATE-AT-LARGE [1] - 26:24 states [2] - 19:8, 20:21 statutes [2] - 22:18, 22:21 stenotype [1] - 26:12</p>	<p>stop [1] - 14:3 Street [4] - 1:16, 2:4, 2:9, 4:6 structure [2] - 24:3, 24:4 STURGILL [1] - 2:8 Sturgill [1] - 1:15 styled [1] - 4:8 subject [4] - 13:5, 13:17, 19:22, 19:23 Suite [3] - 1:16, 2:4, 2:9 summation [1] - 23:15 suppose [1] - 21:9 swanson [2] - 16:23, 17:1 Swanson [4] - 12:22, 15:24, 16:21, 20:1 swear [1] - 4:19 sworn [2] - 5:1, 26:10</p>	<p>top [1] - 11:3 transcription [1] - 26:13 transparency [2] - 13:6, 23:25 trial [1] - 1:21 true [3] - 5:17, 26:7, 26:13 Trustee [1] - 11:20 Trustees [3] - 11:22, 15:21, 23:2 truth [3] - 4:21, 4:22 try [2] - 6:11, 23:6 Tuesday [2] - 1:17, 20:3 TURNER [1] - 2:8 Turner [1] - 1:15 tying [1] - 24:24</p>
<p style="text-align: center;">Q</p>				
<p>questions [3] - 6:4, 21:23, 24:24</p>				
<p style="text-align: center;">R</p>				
<p>raise [1] - 4:18 raised [1] - 19:9 raises [1] - 23:8 rapidly [1] - 6:11 rather [2] - 14:11, 16:3 read [5] - 1:20, 8:12, 19:21, 19:25, 20:13 reading [1] - 11:2 reads [1] - 19:24 really [2] - 8:11, 8:25 reason [1] - 7:13 reasoning [1] - 7:15 received [2] - 9:9, 9:11 recently [1] - 6:24 recognize [1] - 15:20 recollection [1] - 8:22 record [7] - 4:2, 5:6, 11:7, 19:22, 19:25, 25:11, 26:14 recording [1] - 1:14 records [5] - 9:1, 13:6,</p>			<p style="text-align: center;">T</p> <p>table [1] - 11:4 TAKEN [1] - 1:4 teach [6] - 17:7, 17:15, 17:17, 17:21, 17:25, 18:2 Technician [1] - 2:15 technician [1] - 4:3 TELEPHONE [1] - 7:16 tenor [1] - 14:7 terms [1] - 23:16 testified [1] - 5:2 testifying [1] - 26:18 testimony [3] - 4:20, 26:11, 26:14 TESTIMONY [1] - 26:20 text [1] - 19:24 THE [7] - 2:5, 2:10, 4:23, 6:1, 6:20, 19:3, 19:18 themselves [1] - 4:12 THEREUPON [1] - 25:14 three [1] - 8:21 THRO [5] - 1:8, 1:11, 3:2, 4:25, 25:15 Thro [3] - 4:5, 5:7, 20:1 thro [7] - 5:9, 6:9, 6:12, 13:13, 14:5, 18:25, 25:9 today [8] - 4:4, 5:10, 6:4, 6:16, 6:22, 6:23, 8:10, 21:7 tonight's [1] - 20:6 took [1] - 8:20</p>	<p style="text-align: center;">U</p> <p>U.S [1] - 22:14 UK [1] - 15:5 umbrella [1] - 8:1 unaware [2] - 9:25, 10:3 under [7] - 8:1, 8:13, 8:16, 10:22, 10:23, 15:3, 15:15 underneath [1] - 20:13 undersigned [1] - 26:4 University [14] - 4:9, 4:17, 5:8, 9:13, 11:13, 12:7, 13:5, 18:7, 20:7, 22:22, 23:6, 23:24, 24:15, 24:16 UNIVERSITY [2] - 1:7, 2:11 university [1] - 23:10 University's [6] - 9:2, 13:7, 21:15, 21:24, 22:7, 22:25 unsatisfactory [1] - 9:5 up [7] - 5:17, 5:19, 18:20, 19:7, 21:6, 23:23, 23:25 upsetting [1] - 18:16</p>
<p style="text-align: center;">V</p>				
<p>various [1] - 13:17 versus [1] - 4:9 Vice [2] - 11:13, 11:17 Video [1] - 2:15 video [2] - 4:1, 4:2 VIDEOGRAPHER [2] -</p>				

4:1, 25:11
videotape [1] - 1:14
view [1] - 20:25
views [1] - 14:24
Vine [3] - 1:16, 2:9,
4:6
violated [1] - 22:24
violating [2] - 23:10,
23:11
violation [2] - 23:25,
24:2
VITAE [1] - 5:25
Vitae [1] - 3:15
VS [1] - 1:6

W

walk [1] - 15:20
WAS [1] - 19:2
watchdog [1] - 15:4
week [2] - 5:22, 6:25
welcome [1] - 18:11
West [3] - 1:15, 2:9,
4:5
WHEREOF [1] - 26:20
whichever [1] - 24:8
whole [1] - 4:21
WILLIAM [5] - 1:8,
1:11, 3:2, 4:25,
25:15
William [2] - 4:5, 5:7
Wilson [3] - 11:20,
11:21, 15:19
wind [1] - 21:6
Witness [1] - 1:7
witness [4] - 4:25,
26:8, 26:15, 26:18
WITNESS [2] - 3:2,
4:23
words [5] - 12:25,
13:2, 14:6, 14:7,
14:8
wrap [1] - 18:20
writing [1] - 26:17

Y

years [2] - 8:21, 17:3
yourself [2] - 5:5,
11:11