

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS OF OHIO

2013 JAN 28 PM 3: 14

JAMES M. FLEMING,

Plaintiff,

v.

KENT STATE UNIVERSITY

Defendant.

Case No. 2011-09365

Judge Patrick M. McGrath

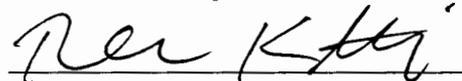
DEFENDANT'S MOTION FOR
COMMISSION FOR OUT-OF-
STATE SUBPOENA DUCES
TECUM TO THE UCF
ATHLETICS ASSOCIATION,
INC.

Now comes Defendant, Kent State University ("KSU"), by and through counsel, and respectfully moves this Court pursuant to Ohio Civ. R. 45, O.R.C. § 2319.09 and Fla. Stat. § 92.251 (2012) for commission authorizing the issuance of an Out-of-State Subpoena *duces tecum* to the UCF Athletics Association, Inc., a non-party to this action, located in Orange County, Florida.

A Memorandum in Support is attached and incorporated by reference.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



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COUNSEL FOR DEFENDANT

ON COMPUTER

MEMORANDUM IN SUPPORT

Defendant KSU now moves this Court for a Commission authorizing KSU to issue an Out-of-State Subpoena for an employment/personnel file, including but not limited to, contracts for employment, compensation records and correspondence between the UCF Athletics Association, Inc. ("UCFAA"), and Plaintiff James M. Fleming (Plaintiff).

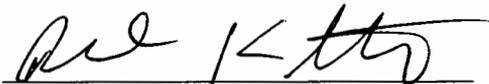
In support of this Motion, KSU states:

1. The UCFAA has information and knowledge, in the form of documents that will assist KSU in evaluating Plaintiff's claim alleging damages.
2. The UCFAA, its documents and records are in the possession, custody or control of the Office of General Counsel, Attn: Custodian of Records, 4000 Central Florida Boulevard, Millican Hall, Suite 360, Orlando, Florida 32816-0015.
3. The documents and records sought from the UCFAA are not subject to service under an Ohio subpoena for use in this matter unless this Court issues a Commission authorizing KSU, through its counsel, to issue a Subpoena for Records under the laws of the State of Florida.
4. The UCFAA's response to the subpoena at issue may give rise to the need for KSU to depose the record custodian and/or certain other individuals with first-hand knowledge or the facts relating to Plaintiff's hiring and retention. Therefore, for purposes of efficiency, KSU also requests that this Court, in its Commission, permits it to also serve a subpoena and/or notice of deposition directed to the UCFAA in the same document.

KSU respectfully request that this Court grant its motion and issue the attached Commission authorizing KSU to obtain records from the UCFAA within the State of Florida and requesting the issuance of an appropriate subpoena by the Clerk of Court in Orange County Circuit Civil Court.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



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CERTIFICATE OF SERVICE

On January 28, 2013, I mailed a copy of this document to counsel for record for Plaintiff.



RANDALL W. KNUTTI (0022388)
Assistant Attorney General

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COMMISSION FOR OUT-OF-
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On January 28, 2013, Defendant Kent State University (“KSU”) filed a “Motion for Commission for Out-of-State Subpoena to the UCF Athletics Association, Inc.” Therein, KSU requests the Court issue a Commission, pursuant to Ohio Civ. R. 45, O.R.C. § 2319.09 and Fla. Stat. § 92.251 (2012) for commission authorizing the issuance of an Out-of-State Subpoena *Duces Tecum* to the UCF Athletics Association, Inc. (“UCFAA”), a non-party to this action located in Orlando, Florida. For good cause shown, KSU’s Motion is GRANTED.

Accordingly, the Court hereby ORDERS the following:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that KSU is hereby authorized, appointed, and commissioned to serve said subpoena, to hear oral examination, and/or to obtain documents from the UCFAA pursuant to the subpoena.

Case No. 2011-09365

TO THE HONORABLE PRESIDING JUDGE OF ORANGE COUNTY
CIRCUIT COURT, ORLANDO, FLORIDA AND TO THE CLERK OF COURT,

YOU ARE HEREBY REQUESTED AND COMMISSIONED to issue to
counsel for Kent State University such subpoenas from your Court as may be
available and necessary for service upon the UCF Athletics Association, Inc.
and/or its representative(s) to assure the production of records and documents
and/or attendance of witnesses. This Commission is intended to be that form of
order, mandate, writ or commission pursuant to which the Courts of the State of
Florida may issue orders and process to compel the production of documentary
evidence and the taking of testimony.

HONORABLE JUDGE PATRICK M. MCGRATH

cc:

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