

RECOMMENDATION TO THE BOARD OF TRUSTEES
UNIVERSITY OF LOUISVILLE
REGARDING DELEGATION TO THE EXECUTIVE COMMITTEE

RECOMMENDATION:

The President recommends that, pursuant to Section 2.7.B of the By-Laws of the Board of Trustees, the Board delegate to its Executive Committee full authority to act on behalf of the Board in all matters related to the negotiation, mediation, and settlement of Civil Action No. 13-C1-1060 pending in Franklin Circuit Court and titled Norton Healthcare, Inc. vs. University of Louisville and Commonwealth of Kentucky, Finance and Administration Cabinet. At each meeting of the full Board, the Executive Committee shall report on any action taken on behalf of the Board since the last meeting of the full Board. This delegation to the Executive Committee shall expire upon the final resolution of the lawsuit.

BACKGROUND:

The University is a defendant in a lawsuit filed against it in September 2013 by Norton Healthcare, Inc. In July, 2015, the Special Master Commissioner assigned to the case issued a Mediation Order. The Mediation Order mandates that, by September 18, 2015, each party submit a confidential statement outlining the parameters of two to three settlement proposals acceptable to that party. **By order of the Special Master Commissioner, the confidential statements are not to be shared with the other parties to the litigation or with the Special Master Commissioner.**

Failure to comply with the order of the Special Master Commissioner in any manner can lead to sanctions, including an award of attorney's fees and other costs.

Counsel for each party is required to certify that the party's primary decision maker and the party's board, if board action is required to approve settlement, has reviewed the settlement proposals and authorized the party to agree to them.

In October 2015, each party is scheduled to meet individually with the appointed mediators.

In November 2015, the parties are required to enter into five consecutive days of mediation. Each party's board is required by order of the Special Master Commissioner to be available by phone during the five (5) days of the mediation and able to act immediately on any new issue raised at the mediation necessary to effectuate a final and binding agreement.

At the same time, the University and Norton Healthcare are continuing to pursue settlement discussions separate and apart from the mediation overseen by the Special Master Commissioner.

This litigation has many facets and is fast moving. In order to be sure the University and the Board of Trustees are able to satisfy their obligation to confer swiftly and take approved action, delegation to the Executive Committee is recommended.

The University's Vice President for Strategy and General Counsel joins the President in making this recommendation.