

**IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT
COUNTY OF DEKALB, ILLINOIS**

MISTY HAJI-SHEIKH,)

Plaintiff,)

v.)

THE BOARD OF TRUSTEES OF)
NORTHERN ILLINOIS UNIVERSITY,)

Defendant.)

Case No.17CH103

NOTICE
BY ORDER OF COURT THIS CASE IS
HEREBY SET FOR CASE MANAGEMENT
CONFERENCE TO BE CONDUCTED AT
THE DeKALB COUNTY COURTHOUSE,
SYCAMORE, IL IN ACCORDANCE WITH
SUPREME COURT RULE 213 BEFORE
JUDGE WALLER
ON 09/22/2017 AT 9:00AM
FAILURE TO APPEAR MAY RESULT IN
THE CASE BEING DISMISSED OR AN
ORDER OF DEFAULT BEING ENTERED

1703712392

Maureen A. Josh
Electronically Filed
DeKalb County, Illinois
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**VERIFIED COMPLAINT
FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiff Misty Haji-Sheikh and state as follows as her Complaint against Northern Illinois University:

INTRODUCTION

1. On June 15, 2017, the Northern Illinois University, acting through its Board of Trustees, approved a controversial (and lucrative) severance package for the College’s current president, Dr. Douglas Baker (the “Severance Agreement”) and appointed a new, interim president starting June 31, 2017. The Board took these actions without providing the required notice to the public, without any opportunity for the public to participate in the meeting or comment on the terms of the Severance Agreement and in violation of 110 ILCS 685/30-195 and 200. Indeed, the Board did not release a copy of the contract before the meeting and, did not identify the substance of the contract on its agenda (or any other pre-meeting notices) until after a seven (7) hour closed session at 6:45 p.m. As a result of the content of the agenda and the manner in which the June 15, 2017 meeting was conducted, the public was given no opportunity to: (1) know that the Board was going to approve a severance agreement with Dr. Baker or

appoint a new interim president effective June 30, 2017 contemplated; or (2) to comment on the terms of the proposed Severance Agreement and appointment of a new president.

2. This is an action for injunctive and declaratory relief arising from violations of the Open Meetings Act and 110 ILCS 685/30–195 and 200 associated with the June 15, 2017 meeting of the Northern Illinois University Board of Trustees to enjoin any action under those ordinances, and to declare the Board’s approval of the Severance Agreement and the appointment of Dr. Freeman as interim president void *ab initio*.

PARTIES

3. Plaintiff Misty Haji-Sheikh is a resident of DeKalb County, Illinois.

4. Defendant Board of Trustees of Northern Illinois University, commonly known as the “Board,” is a “Public body” as defined under the Illinois Open Meetings Act, 755 ILCS §120/1.02 with its principal place of operation in DeKalb, Illinois in the County of DeKalb.

JURISDICTION AND VENUE

5. This Court has jurisdiction and venue over this matter pursuant to 735 ILCS § 5/2-109(b) and (c) and 735 ILCS §5/2-701 because the parties reside in DeKalb County, and the actions at issue occurred in DeKalb County.

6. This Court has jurisdiction to grant injunctive and declaratory relief pursuant to the Open Meetings Act, 5 ILCS §120/1 *et seq.* and 735 ILCS §5/2-701 because an actual controversy exists between the parties, and a declaration of the parties’ rights will fully resolve that controversy.

7. Plaintiff has standing to bring this action pursuant to 5 ILCS §120/3(a).

FACTUAL BACKGROUND

8. Dr. Baker became the Northern Illinois University president on July 1, 2013.

9. In 2015 and 2016, the Governor's Office of Executive Inspector General (the "OEIG") investigated Dr. Baker and issue a report as to its investigation (the "OEIG Report").

10. On August 23, 2016, the OEIG Report was provided to the Board.

11. On May 31, 2017, Executive Ethics Commission (EEC) publicly released the OEIG Report.

12. The OEIG Report found that Dr. Baker and three of his administrators routinely skirted ethics requirements to hire consultants in 2013 and 2014, employing them under the wrong classification, then keeping them on staff for too long and paying them well in excess of allowable limits.

13. In the wake of the OEIG Report being made public, the Board decided that it needed to take action with respect to Dr. Baker and his continued association with Northern Illinois University.

The Board Failed To Provide Proper Public Notice Of The June 15, 2017 Meeting.

14. The Board of Trustees of Northern Illinois University (the "Board") is a public body as defined in the Open Meetings Act.

15. The Board conducted a regularly scheduled meeting on Thursday, June 15, 2017 (the "Meeting") at 9:00 a.m.

16. Pursuant to 5 ILCS § 120/2.02(a), a public body must post an agenda for such a meeting at least forty-eight (48) hours in advance of such meeting. Because Northern Illinois University maintains a website, the notice must also be posted on its website.

17. The agenda for the Meeting contained Item 13, which read "PRESIDENTIAL EMPLOYMENT (Review and Approval)." The agenda did not describe the substance of any proposed changes to President Baker's contract. Nor did it specify what the subject of any

employment review or approval might be. Nor did it mention that the Board would appoint a new president, Dr. Freeman.

18. In addition, Northern Illinois University did not provide any materials relating to the Agenda.

19. A true and accurate copy of the Meeting Agenda is attached hereto as Exhibit A.

**The Board Holds A Seven Hour Closed Session And Then
Provided No Opportunity For Public Comment.**

20. Section 120/2 of the Open Meeting Act provides that “[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a,” and that all meetings “shall be held at specified times and places which are convenient and open to the public.”

21. Prior to June 15, 2017, it was the Board’s practice to address all open session agenda items and then hold its closed session at the end of the meeting and then adjourn.

22. In stark departure from past practice, the Board scheduled the open discussion of Item 13 concerning “PRESIDENTIAL EMPLOYMENT” after the Board’s closed session.

23. The June 15, 2017 meeting began at 9:05 a.m. The meeting proceeded for 2 hours, 31 minutes and 36 seconds and covered Items 1 through 12 on the Agenda, then the Board went into closed session. At the time, it was announced that the closed session may last several hours.¹

24. Over seven (7) hours later, the meeting reconvened on June 15, 2017 at 6:43 p.m. The remainder of the meeting lasted 13 minutes and 10 seconds.

25. The post-closed session portion of the meeting concerned only Item 13 on the Agenda.

¹ Audio recordings of the meeting are available on the Northern Illinois University website. (<http://www.niu.edu/board/meetings/2017/index.shtml>).

26. Of the thirteen (13) minutes spent in open session concerning Item 13, the first nine (9) minutes amounted to an announcement by the Chairman that in light of the OEIG Report the Board had determined that it would be in the best interest of the University for Dr. Baker to leave the University and that Dr. Freeman had accepted an appointment as the acting president of Northern Illinois University. Dr. Freeman also spoke.

27. The Board then displayed a summary of the terms of the Severance Agreement on a visual screen while the Chairman of the Board read the summary, which is found on the audio transcript, part 2 of the meeting from 9:10 to 12:21.

28. Following the reading of the summary, the chairman then called for an immediate vote to approve the Severance Agreement. The vote and the opportunity for board discussion lasted 45 seconds. Following the unanimous vote, a motion was made to adjourn the meeting.

29. During the discussion of Item 13, no one other than the chairperson spoke.

30. During the discussion of Item 13, the Board members did not discuss the proposed Severance Agreement.

31. As a consequence, members of the public could not offer comment on the matter, because Northern Illinois University had not disclosed what was being considered and arranged and conducted the meeting so as to prevent any opportunity for public comment.

32. Since that time, the public has learned that the Board approved a lucrative severance package that includes the following:

- a. Payment of an additional year of salary, \$450,000.00;
- b. A lump sum payment of \$137,500.00; and
- c. Up to \$30,000.00 for unpaid expenses and legal fees.

33. The Board's actions violated the letter and the spirit of the Open Meetings Act, as well as 110 ILCS §685/30-195 and 200..

34. Indeed, the Board's conduct strongly suggests that the Board intended to and took steps to vote on the Severance Agreement without any input whatsoever from the public.

COUNT I: OPEN MEETINGS ACT VIOLATIONS

35. Plaintiff restates and re-alleges Paragraphs 1-34 as though fully restated and realleged as this Paragraph 35 herein.

36. Defendant violated the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*) and 110 ILCS 685/30–195 and 200 in one or more the following ways:

- a. By failing to post an agenda that adequately identified the subject matter of Item No. 13 in the agenda for the June 15, 2017 meeting;
- b. By arranging the open discussion the Severance Agreement to take place after the closed session, thus preventing public from participating or having any opportunity to comment on the Severance Agreement or the appointment of a new president;
- c. By failing to comply with the disclosure requirements of 110 ILCS 685/30-195 and 200; and
- d. By conducting the meeting in a manner that effectively prevented public participation because the meeting was not held at a specific time and place that was convenient to the public.

37. Plaintiff seeks a declaration that Defendant has violated the Open Meetings Act by one or more of the actions and omissions enumerated in Paragraph 36, as well as a declaration that the Severance Agreement and the appointment of a new president are null and void.

38. A declaration of rights in this case will terminate the controversy as it relates to the validity of that Severance Agreement.

39. In addition, Plaintiff seeks injunctive relief to bar the College from taking any actions to implement or effectuate the terms of the Severance Agreement until such time as the Court adjudicates this claim.

COUNT II: VIOLATIONS 110 ILCS 685/30-195 AND 200

40. Plaintiff restates and re-alleges Paragraphs 1-39 as though fully restated and realleged as this Paragraph 40 herein.

41. Sections 195 and 200 of 110 ILCS 685/30 provide in part:

(5) Final action on the formation, renewal, extension, or termination of the employment contracts of the president or all chancellors of the University must be made during an open meeting of the Board.

(6) Public notice, compliant with the provisions of the Open Meetings Act, must be given prior to final action on the formation, renewal, extension, or termination of the employment contracts of the president or all chancellors of the University and must include a copy of the Board item or other documentation providing, at a minimum, a description of the proposed principal financial components of the president's or all chancellors' appointments.

(7) Any performance-based bonus or incentive-based compensation to the president or all chancellors of the University must be approved by the Board in an open meeting. The performance upon which the bonus is based must be made available to the public no less than 48 hours before Board approval of the performance-based bonus or incentive-based compensation.

(8) Board minutes, board packets, and annual performance reviews concerning the president or all chancellors of the University must be made available to the public on the University's Internet website.

* * *

Executive accountability. The Board must complete an annual performance review of the president and any chancellors of the University. Such annual performance review must be considered when the Board contemplates a bonus, incentive-based compensation, raise, or severance agreement for the president or all chancellors of the University.

110 ILCS 685/30-195 and 200.

42. The Board violated these statutes in one or more of the following ways:

- a. Upon information and belief, the Board has not completed an annual performance review of Dr. Baker for 2017;
- b. The Board has not made available to the public an annual performance review of Dr. Baker for 2017;
- c. The Board did not make Dr. Baker's performance upon which Severance Agreement is based available to the public 48 hours before Board approval of the Severance Agreement; and
- d. The Board did not provide public notice, compliant with the provisions of the Open Meetings Act, prior to final action on termination of Dr. Baker's employment contract.

43. Plaintiff seeks a declaration that Defendant has violated the 110 ILCS 685/30 by one or more of the actions and omissions enumerated in Paragraph 42, as well as a declaration that the Severance Agreement is null and void.

44. A declaration of rights in this case will terminate the controversy as it relates to the validity of that Severance Agreement.

45. In addition, Plaintiff seeks injunctive relief to bar the College from taking any actions to implement or effectuate the terms of the Severance Agreement until such time as the Court adjudicates this claim.

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in favor of him and grant the following relief:

(1) Enter a preliminary injunction barring effectuation or implementation of the Severance Agreement or the appointment of a new president;

- (2) Declare that Defendant has violated the Open Meetings Act and 110 ILCS 685/30–195 and 200;
- (3) Declare the Severance Agreement null and void;
- (4) Enjoin Defendant from future violations of the Open Meetings Act and 110 ILCS 685/30–195 and 200; and
- (5) Award Plaintiff any other such relief as this Court deems just and necessary.

Dated: June 26, 2017

Respectfully submitted,

RATHJE & WOODWARD, LLC

By: s/ Charles L. Philbrick
Charles L. Philbrick

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Attorneys for Plaintiff MISTY HAJI-SHEIKH

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

By: 
MISTY HAJI-SHEIKH

Anyone needing special accommodations to participate in the NIU Board of Trustees meetings should contact Ellen Andersen, Director of Special Events (815) 753-1999, as soon as possible.

.. PUBLIC NOTICE ..

**Meeting of the
BOARD OF TRUSTEES OF NORTHERN ILLINOIS UNIVERSITY**

Thursday – June 15, 2017

Board of Trustees Room
315 Altgeld Hall - Northern Illinois University
DeKalb, Illinois

Schedule

9:00 a.m. Public Meeting of the Board of Trustees Convened – Board of Trustees Room

EXPECTED AGENDA FOR REGULAR MEETING

1. CALL TO ORDER AND ROLL CALL
2. VERIFICATION OF QUORUM AND APPROPRIATE NOTICE OF PUBLIC MEETING
3. MEETING AGENDA APPROVAL, INCLUDING ANY PROPOSED CONSENT AGENDA ITEMS
4. REVIEW AND APPROVAL OF MINUTES OF MARCH 9, 2017 AND MAY 3, 2017
5. PUBLIC COMMENTS*
6. CHAIR'S COMMENTS AND ANNOUNCEMENTS
7. REPORTS OF BOARD COMMITTEES AND BOARD LIAISONS
 - A. Executive Committee
 - B. Academic Affairs, Student Affairs and Personnel Committee (AASAP)
 - C. Compliance, Audit, Risk Management and Legal Affairs Committee (CARL)
 - D. Finance, Facilities and Operations Committee (FFO)
 - E. Legislative Affairs, Research and Innovation Committee (LARI)
 - F. Ad Hoc Committee on Enrollment
 - G. Ad Hoc Committee on Governance
 - H. Illinois Board of Higher Education
 - I. Universities Civil Service Merit Board
 - J. Northern Illinois University Foundation
 - K. Northern Illinois University Alumni Association
 - l. Northern Illinois Research Foundation

Exhibit A

8. PRESIDENT'S REPORT NO. 115

(Expected to include items for Board review and approval: Boiler Assessment and Phase I Design (Capital Project Amendment Approval); Fiscal Year 2018 Waste Management and Utilities – Solid Waste Removal and Recycling at NIU DeKalb Contract Renewal; Fiscal Year 2018 Intercollegiate Athletics Secondary Student Health Insurance Contract Renewal; Fiscal Year 2018 Intercollegiate Athletics Air Charter Services for Football Team; DoIT - Voice Trunking Services and Local Domestic/Long Distance Service Amendment; DoIT EMC Storage Lease; School of Nursing and Health Studies Study Materials; Fiscal Year 2018 NIU Foundation Professional Services Contract; Request for Deletion of Program; Request for Deletion of Emphasis; Oral English Proficiency Annual Report 2015-2016; Recommendation for Faculty Promotion, Tenure, and Promotion with Tenure for 2017-2018; Appointment Extension of Acting Vice President and General Counsel; Enrollment Management, Marketing and Communications Mobile Messaging; Fiscal Year 2018 Internal Budget. Review and information: Quarterly Financial Summary; Periodic Report on Investments; Quarterly Summary Report of Transactions in Excess of \$100,000; Facilities Update; Semi-Annual Progress Report of Active Capital Projects; Enterprise Risk Management Annual Review Cycle; External Audit Executive Summary – Fiscal Year 2016; State Budget Update; Federal Relations Report; Sponsored Programs Administration; Corporate Partnerships, Grants and Contract Awards. Possibly other matters for discussion only.)

9. CHAIR'S REPORT NO. 79

(Expected to include items for Board review and approval: Fiscal Year 2018 Election of Board Officers and Civil Service Representative; Closed Session Minutes Review and Release; Resolution Honoring Student Trustee Matthew W. Holmes. Review and information: None.)

10. OTHER MATTERS

11. NEXT MEETING DATE

12. CLOSED SESSION

13. PRESIDENTIAL EMPLOYMENT (review and approval)

14. ADJOURNMENT

*Individuals wishing to make an appearance before the Board should consult the [Bylaws of the Board of Trustees of Northern Illinois University, Article II, Section 4 – Appearances before the Board](#). Appearance request forms will be available in the Board Room the day of the meeting. For more information contact Kathleen Carey, (kjahns@niu.edu) Recording Secretary to the Board of Trustees, Altgeld Hall 300, DeKalb, IL 60115, 815-753-1273.