

CAUSE NO. DC-17-1225

COLIN SHILLINGLAW	}	IN THE DISTRICT COURT OF
Plaintiff	}	
	}	
v.	}	DALLAS COUNTY, TEXAS
	}	
BAYLOR UNIVERSITY, ET AL.	}	
Defendants	}	116TH JUDICIAL DISTRICT

AFFIDAVIT OF GINA MAISTO SMITH

Before me, the undersigned authority on this day personally appeared Gina Maisto Smith, who upon first being duly sworn, on her oath did state:

1. My name is Gina Maisto Smith. I am over 18 years of age, of sound mind, and have never been convicted of a felony. I am competent to testify to the matters stated herein. I am personally acquainted with the facts in this affidavit from my work for Baylor University as outlined below, and I affirm the following is true and correct.

2. I am a lawyer, licensed to practice in Pennsylvania. Throughout the years 2015 and 2016, I was a partner in the law firm Pepper Hamilton, LLP (“Pepper Hamilton”).

3. In August 2015, a special committee of the Board of Regents on behalf of Baylor University engaged Pepper Hamilton to conduct an independent and external review of Baylor’s institutional responses to Title IX of the Education Amendments of 1972 and related compliance issues. Specifically, Pepper Hamilton was engaged to provide legal advice and guidance to Baylor University in connection with that independent and external review, and other matters related to Baylor’s institutional response to ongoing matters under Title IX, the Jeanne Cleary Act, as amended by the Violence Against Women Reauthorization Act of 2013, and related authority. I was one of the Pepper Hamilton attorneys who participated in rendering those legal services. I

have personal knowledge of the facts set out in this declaration because of my participation in the legal work Pepper Hamilton performed for Baylor.

4. As part of the legal services rendered by Pepper Hamilton to Baylor concerning Baylor's institutional response to Title IX and related compliance issues, Pepper Hamilton gathered information from and conducted interviews of Baylor employees.

5. Baylor instructed its employees to cooperate and communicate with Pepper Hamilton so that Pepper Hamilton could provide legal services and advice to Baylor.

6. Communications between Pepper Hamilton and Baylor and/or Pepper Hamilton and employees of Baylor were for the purpose of facilitating Pepper Hamilton's rendition of legal services to Baylor. The information and communications gathered were used by Pepper Hamilton as the basis of its recommendations to Baylor related to Title IX and related compliance issues.

7. Communications between Pepper Hamilton and Baylor and/or Pepper Hamilton and employees of Baylor were intended to be, and were kept, confidential. Third parties were not present during the communications between Pepper Hamilton and Baylor and/or Pepper Hamilton and employees of Baylor, and both Baylor and Pepper Hamilton instructed Baylor and its employees to keep the communications confidential. The confidential communications were not disclosed to third parties other than individuals at Baylor who received the information in furtherance of the rendition of Pepper Hamilton's legal services and to enable appropriate administrators and Board members, on a need-to-know basis, to carry out Pepper Hamilton's recommendations.

8. During the course of the representation of Baylor, Baylor and Pepper Hamilton exchanged confidential and privileged information. Baylor and Pepper Hamilton shared communications that they intended would not be disclosed to third persons other than those to

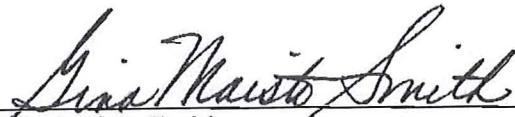
whom disclosure was made in furtherance of the rendition of professional legal services. The privilege that attaches to these communications belongs to Baylor and can only be waived by them.

9. The information that Pepper Hamilton learned from Baylor is confidential according to Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct and Rule 1.6 of the ABA Model Rules of Professional Conduct, as well as privileged according Texas Rule of Evidence 503 and Federal Rule of Evidence 501.

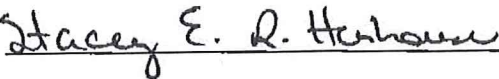
10. Additionally, during the course of Pepper Hamilton's representation of Baylor, Pepper Hamilton prepared material and developed mental impressions in anticipation of potential litigation which included attorney thought processes, strategy decisions, issue formulations, opinions, conclusions, and legal theories, as well as the mechanical compilation of information that revealed our thought processes. This information and these documents are Pepper Hamilton's core work product and are privileged. Again, the privilege that attaches to that work product belongs to Baylor and can only be waived by them.

11. Baylor has not authorized Pepper Hamilton to waive their attorney-client or work product privilege.

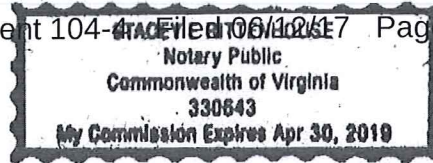
Further the affiant sayeth naught.


Gina Maisto Smith

Subscribed and Sworn to before me by Gina Maisto Smith, on March 31, 2017, to certify which witness my hand and seal of office.


Stacey E. R. Henhouse

Notary Public in and for the State of VA



(Printed or Stamped Name of Notary)

My commission expires: 4/30/2019