

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

JASMIN HERNANDEZ,

Plaintiff,

v.

BAYLOR UNIVERSITY BOARD OF
REGENTS; ART BRILES, in his official
capacity as head football coach; IAN
MCCAW, in his official capacity as
athletic director,

Defendants.

Civil Action No. 6:16-CV-00069-RP-JCM

**DEFENDANT ART BRILES'S EMERGENCY MOTION FOR SUBSTITUTION OF
COUNSEL AND CLARIFICATION OF MOTION TO EXTEND THE TIME FOR
FILING AN ANSWER**

Defendant Art Briles files this Motion for Substitution of Counsel and to Clarify Motion to Extend the Time for Filing an Answer as follows:

I. FACTUAL BACKGROUND

On March 30, 2016, Jasmin Hernandez filed the above-styled lawsuit against the Baylor University Board of Regents, Head Football Coach Art Briles, and Athletic Director Ian McCaw. Coach Briles was never served with the lawsuit. On or around April 7th, 2016, Coach Briles met with Doug Welch, an attorney on staff with the Office of the General Counsel of Baylor University, and Lisa Brown, an attorney from Houston. Welch and Brown informed Coach Briles that they represented him as his attorneys in the Hernandez lawsuit.

At the same time, Welch and Brown interviewed Coach Briles in Welch's office for purposes of this litigation and discussed the case and allegations with him. Coach Briles provided his attorneys, Welch and Brown, with extensive personal information related to this

case and other matters during the interview. Coach Briles believed that Welch and Brown were looking after his interests in all respects. Meanwhile, between April 7, 2016 and this date, Welch and Brown have:

(1) waived Service of Process on behalf of Coach Briles without informing Coach Briles or seeking his permission;

(2) made public comments on behalf of Coach Briles without his permission or even notifying Coach Briles (*See, e.g., Documents: BU, Briles Want to Settle Rape Victim's Lawsuit Quickly*, GRAY TELEVISION 10 KWTX, (June 10, 2016), <http://www.kwtx.com/content/news/Documents--BU-Briles-want-to-settle-rape-victims-lawsuit-quickly-382526751.html>, attached as Ex. A);

(3) requested an extension of time to settle this lawsuit and implied to the Court that all defendants agreed and requested an extension of time without ever informing or conferring with Coach Briles;

(4) used statements, text messages, emails, and other personal information obtained for the purpose of this litigation in the above-referenced interview with Coach Briles in support of Baylor University's termination of Coach Briles from his job as Head Football Coach on May 26, 2016;

(5) scheduled a mediation with the Plaintiff in this litigation for this Friday, June 17, 2016, without ever notifying Coach Briles;

(6) failed to honor the attorney-client relationship, the attorney-client privilege, and Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas¹ relating to conflicts

¹ Specifically, under Article X of the Disciplinary Rules, attorneys Welch and Brown have violated Rule 1.02(a)(1) and (2); Rule 1.03(a) and (b); Rule 1.05(a) and (b)(1)(II) and (2) and (4); Rule 1.06(b)(1) and (e); Rule 1.08(f); Rule 3.04(a) and Rule 3.07(a).

of interest and confidentiality by continuing to represent Coach Briles after using his personal information obtained for purposes of this litigation, to support his termination and thereby take advantage of a direct conflict of interest. Attached as Exhibit B to this pleading is a letter sent to the Baylor Office of the General Counsel that provides a complete recitation of these facts.

It is also clear that any joint representation of Baylor University and Coach Briles before after his termination resulted in liability to Coach Briles for damages under Texas statutory and common law for breach of contract, fraud, libel and slander, misrepresentation, breach of fiduciary duty, negligence, and intentional infliction of emotional distress, among others.

II. RELIEF REQUESTED

WHEREFORE, Defendant Art Briles prays for the following:

1. Substitution of counsel for Defendant Art Briles to be represented by Ernest H. Cannon and Janet Hansen;
2. Clarification of Defendant Baylor University's Board of Regents' Motion to Extend the Time for Filing an Answer;
3. A Court Order requiring attorneys Welch and Brown to refrain from continued violation of the attorney-client relationship and the attorney-client privilege by ceasing all use of any information obtained through the representation of Defendant Art Briles against him in any termination proceedings, mediations, or arbitrations.
4. A Court Order requiring attorneys Welch and Brown to produce all statements, text messages, emails, oral or video recordings, interview notes, and any information of any kind obtained in the representation of Defendant Art Briles.

Dated: June 16, 2016

Respectfully Submitted,

/s/ Ernest H. Cannon

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**ATTORNEYS FOR
DEFENDANT ART BRILES**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served upon opposing counsel on June 16, 2016, via the Court's ECF/CMF electronic filing and service system as follows:

Mr. Alexander Zalkin
12444 High Bluff Drive, Suite 301
San Diego, California 92130
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Ms. Susan Hutchinson 509 Pecan St., Suite 201
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EXHIBIT A

Documents: BU, Briles want to settle rape victim's lawsuit quickly



By Staff and Wire Repots | Posted: Fri 4:32 PM, Jun 10, 2016 | Updated: Mon 9:23 AM, Jun 13, 2016

AUSTIN, Texas (AP) Court documents indicate Baylor University and former football coach Art Briles want to quickly settle a federal civil rights lawsuit filed by a woman who says the Baptist school was indifferent to her complaints that she was raped by a player.

Jasmin Hernandez sued the school in March amid the school's investigation into how it mishandled cases of assault.

The Associated Press generally doesn't identify sexual assault victims, but Hernandez has spoken publicly to draw attention to the case.

Baylor lawyers this week asked for extra time to respond to Hernandez's lawsuit.

The request said the "primary reason" is to "explore early resolution" and avoid litigation.

It said Hernandez's lawyers agreed to the extension.

On May 26, Baylor regents reassigned President and Chancellor Ken Starr, fired Briles and put Athletic Director Ian McCaw on probation in the wake of the scathing report of a review of the sexual assault scandal that engulfed the school's football program.

Truett Seminary professor Dr. David Garland was named to serve as interim president, a role he played from August 2008 until May 2010, before Starr was hired.

McCaw announced his resignation on May 30 after earlier announcing that Baylor had hired Jim Grobe, 64, as acting head football coach effective immediately.

Grobe was head coach from 1995 to 2000 at Ohio University and who finished his career from 2001 to 2013 at Wake Forest. ⊗

Starr resigned as chancellor on June 1, but remains on the Baylor Law School faculty.

EXHIBIT B

ERNEST H. CANNON
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Phone: (254) 918-1006
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JUNE 16, 2016

Mr. Stephen C. Dillard
Norton Rose Fulbright US LLP
1301 McKinney, Suite 5100
Houston, Texas 77101
BY FAX: (713) 651-5246

Mr. Gary Douglas Welch
Baylor University Office of General Counsel
One Bear Place #97034
Waco, Texas 76798
BY FAX: (254) 710-3843

Dear Mr. Dillard and Mr. Welch

As you know, I represent Coach Art Briles in the matter of his termination, in breach of his written contract, as Head Football Coach on May 26, 2016. Attached is a copy of my motion to substitute counsel which is being filed today on his behalf in Case No. 6:16-CV-00069; Jasmin Hernandez, Plaintiff v. Baylor University Board of Regents; Art Briles, in his official capacity as head football coach; Ian McCaw, in his official capacity as athletic director, Defendants; United States District Court, Western District of Texas, Waco Division.

The allegations made against Coach Briles in the Hernandez lawsuit are similar to

and, in some instances, identical to the allegations made against Baylor University and the Baylor Board of Regents. The conflict between the named Defendants is obvious from and inherent in the pleadings filed, of which Baylor University, and of course, Mr. Welch have had notice since the date of its filing on March 30, 2016. We have just learned that Baylor is scheduled to mediate the Hernandez case on Friday, June 17, 2016, and it has been publicly announced in the media that "Baylor University and former football coach Art Briles want to quickly settle" the Hernandez federal civil rights law suit.

As of the date that Baylor University terminated Coach Art Briles as Head Football Coach, May 26, 2016, Mr. Welch and any other lawyer who represents both Baylor and Coach Art Briles in the Hernandez case, or any other case, are in direct violation of numerous provisions of Article X, Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, relating to conflict of interest and confidentiality, including but not limited to the following: Rule 1.02(a)(1) and (2); Rule 1.03(a) and (b); Rule 1.05 (a) and (b)(1)(II) and (2) and (4); rule 1.06(b)(1) and (e); Rule 1.08(f); Rule 3.04(a) and Rule 3.07(a).

Additionally, as of the date that Baylor University terminated Art Briles as Head Football Coach, Baylor University, Mr. Welch and any other lawyer who represents Baylor and Coach Art Briles jointly in the Hernandez case, or any other case, are legally, morally and ethically liable to Art Briles and responsible for damages under Texas statutory and common laws for breach of contract, fraud, libel and slander, misrepresentation, breach of fiduciary duty, negligence and intentional infliction of emotional distress, among others.

In light of the foregoing, this will serve as notice to you, Baylor University and any lawyer who is currently representing Baylor University and Art Briles jointly in any litigation against them that Mr. Briles does not waive any of his rights under the Disciplinary Rules of Professional Conduct pertaining to conflict of interest, breach of confidentiality, breach of contract, release of information whether privileged or non-privileged, and whether to accept an offer of settlement of a matter. Further, without being provided current information and without having an opportunity to consider this information, Mr. Briles does not wish to settle the Hernandez civil rights litigation and does not consent to any settlement in that case or in any other case in which is is jointly named as a defendant and currently

outstanding or filed in the future.

This letter will serve as notice to Baylor University and any lawyer who is currently representing Baylor University and Art Briles jointly to immediately turn over to me the entire contents of each and every one of their litigation files, including any and all privileged or non-privileged information contained in such files. Such information must specifically include (1) all of the investigation documentation and interview notes and materials, oral or video recordings, emails, text messages and any information of whatever type that was gathered by the law firm of Pepper Hamilton from Baylor University and Coach Art Briles which concluded in its published Findings of Fact; (2) any and all documentation including minutes of meetings of the Board of Regents which considered or lead to the firing of Art Briles as Head Football Coach of Baylor University; (3) any and all notices of claims from other potential plaintiffs to Baylor University; and (4) any and all investigative material including statements, videos, photographs or other documentation pertaining to crimes alleged to have been committed by any Baylor athlete; (5) any and all policies and procedures of Baylor University in existence at the time of Plaintiff Hernandez's allegations that Art Briles had in place as Head Football Coach to supervise faculty and staff, implement safeguards for female students, monitor or supervise football athletes, train and/or educate student-athlete members of the Baylor football team regarding sexual misconduct and monitor or ensure that student athletes are not brought on to campus with regard to the safety of other students; (6) all correspondence, including emails, with opposing counsel; (7) any and all information obtained by Pepper Hamilton from Coach Art Briles; (8) all pleadings and discovery received or filed in any case in which Coach Art Briles is a named Defendant along with Baylor University; (9) any and all of the investigation documentation and interview notes and materials, oral or video recordings, emails, text messages and any information of whatever type that was obtained by Doug Welch, Lisa Brown, or any other representative of Baylor University for purposes of the Hernandez litigation or any other civil litigation involving allegations against Coach Art Briles.

By way of background, Pepper Hamilton first met with Coach Art Briles in February of 2016. Baylor University's General Counsel met with Coach Art Briles in early April of 2016. Baylor University release the Pepper Hamilton Findings of Fact and summarily terminated Coach Art Briles, in breach of his employment contract on May 26, 2016. The date of his termination without the contractually

required notice of hearing and pre-termination hearing, was several weeks after the Hernandez litigation was filed. The conclusion is inescapable that the motive of Baylor University and the Board of Regents was to use its Head Football Coach and the Baylor Athletic Department as a camouflage to disguise and distract from its own institutional failure to comply with Title IX and other federal civil rights laws. It is equally clear from the actions of Baylor University and the Board of Regents, both in the media and in its oral and written communications with Coach Briles since his wrongful termination, that they have ignored and repeatedly violated the clear duties that they owe under Texas law and by contract to Art Briles. Baylor University and the Board of Regents have refused to provide Coach Art Briles with any information or grounds which they used to support the termination of his employment. Anything that Baylor University or the Board of Regents have discovered or learned pertaining to Coach Art Briles is privileged and confidential and must be turned over to me immediately.

Prior to and since the date of the filing of the Hernandez lawsuit, Baylor University and the Board of Regents have taken a multitude of actions that are in direction violation of their fiduciary duties to Art Briles and represent a clear and undeniable conflict of interest between Art Briles and Baylor University and the Board of Regents. Baylor's immediate compliance with the requests made in this letter is both mandatory and in accordance with all applicable law.

Yours very truly,

ERNEST H. CANNON

EHC:jph