Departure of lead attorney raises more questions about University of Louisville

By Joe Dunman

The University of Louisville is using hundreds of thousands of public dollars to keep departing leadership staff quiet.

On April 18, The Courier-Journal reported that the latest recipient of a big, green going-away present was University Counsel Angela Kosheva. Before her, former vice presidents Michael Curtain and Larry Owsley each received around $250,000 as part of separation agreements which require them not to “disparage, demean, or impugn the university or its senior leadership.”

Kosheva’s departure agreement is troubling for a number of reasons. First is Kosheva’s claim that she’s bound to silence by the attorney-client privilege.

Second is the university’s claim that her “settlement” is paid with money that is somehow not public.

Third is the implication that something worth ratting about is being covered up.

In The Courier-Journal report, Koshewa declined to comment on her departure because UofL is protected by the attorney-client privilege. That’s true but not entirely true.

While attorneys are generally bound to keep their mouths shut about their relationships with clients, they are not sworn to absolute secrecy. Lawyers are not obligated to cover up criminal behavior.

The Model Rules of Professional Conduct, which guide attorney behavior as professionals, carve out disclosure exceptions in order to “prevent [a] client from committing a crime or fraud.” And when attorneys represent organizations, as Kosheva has since she joined UofL in 1991, they are first obligated to go up the internal chain of command with concerns about wrongdoing, but can reveal otherwise privileged information if:
the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization.

Koshewa’s silence may mean UofL has done nothing wrong and there’s nothing to hide. If so, she runs no risk of violating her professional ethical obligations. But what of the anonymous reports from university officials that Koshewa openly questioned various actions by University President James Ramsey not long before her departure and preliminary leave of absence were discovered?

And why was over $362,00 in public money necessary to buy her silence?

Despite UofL’s claims that these “settlements” are paid with “private contributions,” money in UofL’s hands is very much public property, because UofL is a public entity. Private contributions — usually solicited for specific academic, athletic, or otherwise general university purposes — become public property once they hit UofL’s many bank accounts.

The university, by its very nature as a state actor, cannot distribute any funds that are truly private.

And what about the donors who gave those contributions? Does the University of Louisville maintain a separate gift account dedicated to fund hush money settlements? How many university donors actually gave money anticipating that their gifts would be used as silence-buying payouts to departing administrators?

Has University Advancement (UofL’s fundraising department) tailored its sales pitch to include an appropriate disclaimer that donations may not actually be used to further the educational mission of the school, but instead be used to keep people quiet? The answers to these questions are unknown but important to learn.

Finally, all of this simply looks bad.

The Courier-Journal quoted law professor Marcia McCormick who said deals like Koshewa’s create “reason to suspect that there is something worth hiding.”
Indeed. To modify an old authoritarian adage, “You’ve got no reason to receive hush money if you’ve got nothing to hide.”

Obviously, if no insiders ever report wrongdoing by the university, and nobody on the outside ever bothers to seriously investigate it, the public can never truly know if UofL or its top administrators have misused funds or broken the law. But the repeated use of large cash payments to outgoing leaders of the school certainly raises suspicions that something is amiss.

With UofL being subject to open records requests, I highly encourage enterprising local journalists (or attorneys) to start doing some serious digging. Hopefully there’s no wrongdoing to be found. It would be a tragedy if the reputation of an important public institution such as the University of Louisville was besmirched by the actions of a few rogue leaders or by a larger conspiracy afoot.

**Full disclosure:** I am a former University of Louisville employee and a graduate of the University of Louisville Brandeis School of Law. I have also represented employees and students in administrative disputes against UofL.