

**NO. 89-CI-05256
C/W 90-CI-01480**

**JEFFERSON CIRCUIT COURT
DIVISION TEN
JUDGE ANGELA McCORMICK
BISIG**

**COMMONWEALTH OF KENTUCKY, ex
rel.
CHRIS GORMAN, ATTORNEY GENERAL**

PLAINTIFFS

and

MARGURITE BROOKINGS, et al.

v.

**LOUISVILLE CREMATORY AND
CEMETERIES, INC., et al.**

DEFENDANTS

ORDER

The University of Louisville, by counsel, having moved to amend the Court's February 14, 2001 Order concerning the administration of the Eastern, Greenwood and Schardein cemeteries ("the Cemeteries"), and the Court being otherwise sufficiently advised;

WHEREAS, on February 14, 2001, the Court entered an order concerning the governance of the Cemeteries;

WHEREAS, pursuant to the Court's order, the University of Louisville, Department of Anthropology provided on-site supervision for each grave opening permitted by the Court to insure that the proper location is opened and to record the burial/disinterment information on the appropriate documents;

WHEREAS, prior to and following the entry of the Court's order, Professor Philip J. DiBlasi, a forensic archaeologist, supervised grave openings pursuant to the Court's order;

WHEREAS, Professor DiBlasi retired from the University of Louisville in April 2018;

WHEREAS, since his departure, the University of Louisville's Department of Anthropology no longer employs personnel with Professor DiBlasi's expertise in forensic archaeology;

AND WHEREAS, certain community organizations have expressed to the Court their respective interests in caring for the Cemeteries;

NOW, THEREFORE IT IS HEREBY ORDERED that the University of Louisville's (the "University") Motion is GRANTED.

IT IS HEREBY FURTHER ORDERED AS FOLLOWS:

COMMUNICATIONS AND PROCESS WITH UNIVERSITY OF LOUISVILLE

1. Individuals or organizations requesting burial, disinterment, or other activities involving subsurface disturbance at the Cemeteries will send requests to the University's designated email address, ceminfo@louisville.edu.

2. The University will monitor the email to address requests as noted below according to the nature of the request.

PROCEDURE FOR BURIAL OR DISINTERMENT REQUESTS

3. The next of kin or other authorized representative seeking burial or disinterment of human remains at one of the Cemeteries shall first submit a request to the designated University email address.

4. In the case of disinterment, and under the guidance of the Director of the Department of Anthropology's Center for Archaeology and Cultural Heritage ("CACHE Director"),¹ the University shall review the record database and determine whether the individual grave can be identified. In the case of burial, the University under the guidance of the CACHE

¹ As of the date of the entry of this Order, the CACHE Director is Dr. Thomas Jennings.

Director, shall review the record database and determine whether the proposed grave site is available for burial.

5. The University, under the guidance of the CACHE Director, will assist with preparing the petition for burial or disinterment for the next of kin or other authorized representative, and will assist with forwarding the petition to the Court with supporting documentation regarding, in the case of disinterment, the identification of the grave, and in the case of burial, identification of the proposed grave site.

6. The petition shall include the following information:

- a. The name and address of the petitioner seeking burial or disinterment;
- b. The nature of the relationship to the deceased;
- c. The name of the deceased person and other identifying information such as date of birth and date of death;
- d. In the case of disinterment, the location of the present grave site, or, in the case of burial, location of the proposed grave site;
- e. In the case of disinterment, the name of the cemetery to which the remains will be interred and the location of the grave; and
- f. A statement that the necessary permits from the Cabinet for Health and Family Services or its local designee have been or will be obtained prior to burial or disinterment.

7. The University shall include a recommendation with the petition, advising the Court whether it should be granted. The recommendation shall include, where available, copies of supporting documentation, including maps, inventories, etc., indicating whether the individual grave site can be reasonably identified.

8. The petition and accompanying recommendation shall be emailed to the Court at _____ or sent to the following address:

Circuit Court, Division 10
RE: DISINTERMENT (or BURIAL) PETITION
700 W. Jefferson St.
Louisville, KY 40202

9. The Court may approve or deny a petition for burial where there is no capacity to bury human remains in the location set forth in the petition, the archaeological information is inadequate or incomplete, or any other reason in the sound discretion of the Court.

10. The Court may approve or deny a petition for disinterment where the archaeological information is inadequate or incomplete, or for any other reason in the sound discretion of Court.

11. In the event the Court permits the burial or disinterment, the University shall advise the next of kin or authorized representative, providing the next of kin a copy of the Order permitting disinterment and this Order.

12. The next of kin or authorized representative shall have 180 days from the entry of the Order to complete the burial or disinterment.

13. Any next of kin or authorized representative performing a burial or disinterment shall do so while a Qualified Archaeologist, as that term is defined by this Order, is on site at the location authorized by the Court and such party shall restore the grave site to as normal condition as possible. In order to complete the disinterment, the next of kin shall retain the services of an approved Qualified Archaeologist pursuant to Paragraph 15 herein, or, Melinda J. King Wetzel, MA, PRA, or, Alexandra D. Bybee, MA, RPA at:

Melinda J. King Wetzel, MA, PRA
Mindi.j.wetzel@gmail.com
(502) 550-0772

or

Alexandra Bybee, MA, PRA
bybee@crai-ky.com
859.252.4737

14. Once the disinterment or burial is completed, the Qualified Archaeologist shall communicate that fact to the University, sending an email to the designated University email address. The University shall update its database to reflect the burial or disinterment.

QUALIFIED ARCHAEOLOGIST

15. A “Qualified Archaeologist” minimally shall mean any archaeologist who has earned a Master’s degree or higher in archaeology, anthropology, or a related field and who has a minimum of three years of experience specifically in biological or forensic anthropology/archaeology, including excavating human remains and characterizing individuals by sex, age, and other identifiable biological and cultural features.

16. In the event the next of kin or authorized representative desires to retain his or her own Qualified Archaeologist for the purposes of the disinterment or burial, the next of kin or authorized representative shall include the curriculum vitae of the proposed Qualified Archaeologist with his or her petition. The next of kin or authorized representative shall include information demonstrating that the proposed archaeologist is a Qualified Archaeologist.

17. The University, under the guidance of the CACHE Director, will prepare and submit the proposed Qualified Archaeologist’s information with the request for burial or disinterment as provided in Paragraph 5, above. The Court may certify the proposed Qualified Archaeologist to be an approved Qualified Archaeologist or require the use of a previously approved Qualified Archaeologist.

PROCEDURE FOR ACTIVITIES INVOLVING SUBSURFACE DISTURBANCE

18. If an activity at the Cemeteries will involve a subsurface disturbance, the individual or organization will send a request to the designated University email address before the activity commences.

19. The request shall include the following information:

- a. The name and address of the petitioner seeking approval to conduct an activity;
- b. The location(s) (with photographs) of where the activity is proposed; and
- c. A description of the proposed activity, including the area impacted and an estimated subsurface disturbance depth, and the rationale for performing the activity.

20. The University, under the guidance of the CACHE Director, will review the request and the records involving the location and shall forward the request, including a recommendation advising the Court whether it should be granted. Such recommendation could include that the activity be supervised by an approved Qualified Archeologist or other appropriate individual.

21. In the event the Court permits the activity, the University shall advise the requestor, providing a copy of the Order permitting the activity including any conditions or requirements in order for the activity to be permitted.

ACTIVITIES NOT INVOLVING SUBSURFACE DISTURBANCE

22. It has come to the Court's attention that some activities at the Cemeteries such as cleanup projects and maintenance of vegetation do not involve significant disturbance of the soil and therefore, would not require an Order of the Court. Furthermore, the Court has been advised that certain community groups tending to the Cemeteries desire to care for the Cemeteries without Court approval.

23. It is now therefore ordered, that the following community groups shall be permitted to perform vegetation maintenance, grass cutting, and snow removal projects without approval of the Court, provided such activities do not involve any subsurface disturbance:

-Friends of Eastern Star Cemetery

-Friends of Graywood Cemetery

-Trees Louisville, Inc.


-Nab Vets

24. Any other project or work at the Cemeteries that would require disturbance of the soil that is not expressly permitted by this Order shall not be completed without an Order from this Court in accordance with the procedure outlined above.

IT IS SO ORDERED.

Dated: 2/17/2020

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
FEB 18 2020
BY _____
DEPUTY CLERK



HON. ANGELA MCCORMICK BISIG
DIVISION TEN (10)
JEFFERSON CIRCUIT COURT

Copies to: All parties