

MINUTES OF THE SPECIAL MEETING OF THE
BOARD OF TRUSTEES OF THE
UNIVERSITY OF LOUISVILLE

January 26, 2022

In Open Session

Members of the University of Louisville Board of Trustees met in the Ballrooms of the University Club, Belknap Campus, both in-person and virtually at 4:01 p.m., with members present and absent as follows:

| | | |
|----------|-----------------------|------------------------|
| Present: | Ms. Mary Nixon, Chair | Ms. Ugonna Okorie |
| | Mr. Jerry Abramson | Ms. Diane Porter |
| | Dr. Larry Benz | Mr. James Rogers |
| | Mr. Scott Brinkman | Dr. David Schultz |
| | Dr. Raymond Burse | Mr. John Smith |
| | Mr. Al Cornish | Ms. Sherrill Zimmerman |
| | Ms. Diane Medley | |

From the
University:

- Dr. Lori Gonzalez, Interim President
- Dr. Gerry Bradley, Interim University Provost
- Mr. Dan Durbin, Executive Vice President for Finance & Administration, CFO
- Ms. Angela Curry, General Counsel and Vice President for Legal Affairs
- Mr. Josh Heird, Interim Athletic Director and Vice President for Athletics
- Ms. Mary Elizabeth Miles, Vice President for Human Resources
- Dr. Jasmine Farrier, Vice President for University Advancement
- Mr. John Drees, Sr. Assoc. Vice President for Communications and Marketing
- Mr. Mark Watkins, Sr. Associate Vice President and Chief Operations Officer
- Mr. Jeff Spoelker, Sr. Associate Athletic Director for Finance
- Ms. Shannon Rickett, Associate Vice President for Government Relations
- Ms. Brigid Gies, Associate Vice President and Deputy Counsel
- Mr. Jake Beamer, Dir. of Governance & Strategic Initiatives & Asst. Secretary

From ULAA Board
of Directors:

- Prof. Claudia Angeli, Faculty
- Prof. Eric Berson, Faculty
- Mr. Ryan Bridgeman, At-large
- Prof. Jeremy Clark, Faculty
- Prof. Meg Hancock, Faculty
- Mr. Dennis Heishman, At-large
- Ms. Sydney Finley, Student
- Mr. Andrew Grubb, Staff
- Mr. Steve Jones, At-large
- Mr. Tom Meeker, At-large
- Prof. Eugene Mueller, Faculty
- Prof. Whitney Nash, Faculty

Mr. Sam Rechter, At-large
Ms. Gayle Saunders, At-large
Prof. Karen Turner, Faculty
Prof. Krista Wallace-Boaz, FAR
Dr. Ron Wright, At-large

I. Call to Order

Chair Nixon called the roll. Having determined a quorum present, she called the meeting to order at 4:01 p.m.

Conflict of Interest Affirmation

The Chair reminded all members of the board of their responsibility to avoid conflicts of interest and appearances of conflicts of interest. She stated each member has received the agenda and related information for this Board of Trustees' meeting.

Chair Nixon requested if any board member knows of any conflict of interest or appearance of conflict of interest with respect to any matter coming before the Board of Trustees at this meeting, to please identify the conflict or appearance of conflict at this time.

No conflicts were identified.

Approval of Minutes, 1-20-2022

Ms. Okorie made a motion, which Ms. Medley seconded, to approve the minutes of the January 20, 2022 meeting.

The motion passed.

II. Executive Session

Ms. Okorie made a motion, which Mr. Smith seconded, to recess to executive session to discuss proposed or pending litigation and personnel matters pursuant to KRS 61.810(1)(c) and (f).

The motion passed, and the open meeting recessed at 4:06 p.m.

III. Open Meeting Reconvenes

The open meeting reconvened at 5:34 p.m. Chair Nixon reported that the board discussed proposed or pending litigation and personnel matters.

Separation Agreement

Ms. Okorie made a motion, which Mr. Smith seconded, to approve the

Chair’s recommendation that the Board of Trustees authorize approval of the execution of the separation agreement under which Coach Chris Mack (“Mack”) and the University of Louisville Athletic Association, Inc. (“ULAA”) formally separate Mack’s employment with ULAA by mutual agreement.


The motion passed unanimously.

IV. Adjournment

Having no other business to come before the board, Dr. Burse made a motion, which Ms. Okorie seconded, to adjourn.

The motion passed and the meeting adjourned at 5:35 p.m.

Approved by:


Signature on file
Assistant Secretary

MINUTES OF THE SPECIAL MEETING OF THE
BOARD OF TRUSTEES OF THE
UNIVERSITY OF LOUISVILLE

January 26, 2022

In Executive Session

Present: Ms. Mary Nixon, Chair
Mr. Jerry Abramson
Dr. Larry Benz
Mr. Scott Brinkman
Dr. Raymond Burse
Mr. Al Cornish
Ms. Diane Medley
Ms. Ugonna Okorie
Ms. Diane Porter
Mr. James Rogers
Dr. David Schultz
Mr. John Smith
Ms. Sherrill Zimmerman

From the
University: Dr. Lori Gonzalez, Interim President
Dr. Gerry Bradley, Interim University Provost
Mr. Dan Durbin, Executive Vice President for Finance & Administration, CFO
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Mr. Josh Heird, Interim Athletic Director and Vice President for Athletics
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Mr. Jake Beamer, Dir. of Governance & Strategic Initiatives & Asst. Secretary

From ULAA Board
of Directors: Prof. Claudia Angeli, Faculty
Prof. Eric Berson, Faculty
Mr. Ryan Bridgeman, At-large
Prof. Jeremy Clark, Faculty
Prof. Meg Hancock, Faculty
Mr. Dennis Heishman, At-large
Ms. Sydney Finley, Student
Mr. Andrew Grubb, Staff
Mr. Steve Jones, At-large
Mr. Tom Meeker, At-large
Prof. Eugene Mueller, Faculty
Prof. Whitney Nash, Faculty
Mr. Sam Rechter, At-large
Ms. Gayle Saunders, At-large
Prof. Karen Turner, Faculty
Prof. Krista Wallace-Boaz, FAR
Dr. Ron Wright, At-large

I. Call to Order

Chair Nixon called the Executive Session to order at 4:06 p.m.

II. Proposed or Pending Litigation and Personnel Matters



Ms. Curry and Mr. Heird discussed proposed or pending litigation and personnel matters.

III. Adjournment

Dr. Benz made a motion, which Ms. Zimmerman seconded, to adjourn the executive session.

The motion passed and the session adjourned at 5:29 p.m.

Approved by:


 **Signature on file** _____
Assistant Secretary

RECOMMENDATION TO THE
UNIVERSITY OF LOUISVILLE BOARD OF TRUSTEES
REGARDING THE EMPLOYMENT OF CHRIS MACK

January 26, 2022

RECOMMENDATION:

The Chair of the Board recommends that the Board of Trustees authorize approval of the execution of the separation agreement under which Coach Chris Mack (“Mack”) and the University of Louisville Athletic Association, Inc. (“ULAA”) formally separate Mack’s employment with ULAA by mutual agreement.

BOARD ACTION:

Passed X

Did Not Pass

Other

 RS
Signature on file
Assistant Secretary

SEPARATION AGREEMENT

This Separation Agreement (“Agreement”) is between the University of Louisville Athletic Association (“ULAA”), and Christopher L. Mack (“Mack”) (ULAA and Mack are collectively referred to as the “Parties”).

Recitals

WHEREAS, ULAA and Mack wish to formally separate Mack’s employment with ULAA by mutual agreement;

WHEREAS, the Parties agree that the existence of this Agreement or any payment made under this Agreement is not and shall not be construed as an admission of liability or wrongdoing by the Parties;

WHEREAS, ULAA and Mack agree that this Agreement terminates and supersedes all prior written and oral agreements between them with respect to Mack’s employment with ULAA; and

WHEREAS, Mack’s employment with ULAA will end effective January 26, 2022;

NOW, THEREFORE, for and in consideration of the execution of this Agreement and the mutual covenants contained in the following paragraphs, ULAA and Mack agree as follows:

1. **Disclosure Concerning Prior Violations.** Mack represents that he has disclosed to ULAA and the University of Louisville accurate and materially complete information concerning litigation to which he is or has been a party, as well as any previous violations, facts, occurrences, circumstances, or states of affairs that could reasonably be expected to give rise to violations committed by Mack or any individual under Mack’s direct or indirect supervision and actually known to Mack as of the date of this Agreement. Mack acknowledges that ULAA is relying on this representation, that this representation is a material inducement for ULAA to enter into this Agreement, and that a material breach of this representation shall constitute a material breach of this Agreement. In the event that ULAA, in its reasonable discretion, determines that Mack has breached this Paragraph of the Agreement, it reserves the right to immediately cease payment of any Severance or other benefits described in Paragraph 2.

2. **Severance Benefits.** ULAA and Mack agree that, provided that Mack complies with all terms of this Agreement, ULAA agrees to provide Mack with severance payments (“Severance”), paid in accordance with ULAA’s regular payroll practices and on ULAA’s regularly scheduled paydays, less applicable taxes and withholdings from those payments as required by law. ULAA does not make any representations or warranties to Mack regarding any tax consequences or liabilities for Mack. ULAA agrees to pay Mack a total severance in the amount of four million, eight hundred thousand dollars (\$4,800,00.00) to be paid as follows:

Monthly payments of one hundred thirty-three thousand three hundred thirty-three dollars and thirty-three cents (\$133,333.33) beginning on or about February 28, 2022 and ending on or about January 31, 2025.

ULAA shall recoup all accelerated taxes from each monthly installment on a *pro rata* basis.

The Severance shall not be subject to offset or reduction related to Mack's employment status or income subsequent to the Effective Date of the Agreement.

In addition to the Severance payments, ULAA agrees to provide Mack with payments commensurate with the cost of monthly COBRA payments for health insurance for Mack and any eligible dependents until June 30, 2023. At the time of his separation, ULAA also agrees to provide Mack with the opportunity to convert the term life insurance policy in the amount of \$12,000,000 into a personal policy. In the event Mack elects to do so, Mack shall be solely responsible for the payment of any premiums associated with this life insurance policy.

Mack expressly acknowledges that he would not be entitled to the Severance and other benefits but for his execution of this Agreement.

3. Release of All Claims. Mack acknowledges that by entering into this Agreement, he releases and forever discharges ULAA as well as its successors, assigns, agents, representatives, employees, officers, directors, trustees, and any affiliated corporations or entities of any type or nature, including the University of Louisville, and their respective officers, directors, representatives, and employees from any and all causes of action, claims, demands, suits, damages, sums of money and/or judgments (hereinafter "damages") arising at any time prior to and through the date of the execution of this Agreement, and hereby specifically waives and releases all claims, including, but not limited to, those arising under Title VII of the Civil Rights Act of 1964; as amended, the Civil Rights Act of 1991; the Equal Pay Act, as amended; the Americans With Disabilities Act of 1990, as amended; the Rehabilitation Act of 1973, as amended; the Age Discrimination in Employment Act ("ADEA") as amended; Sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Immigration Reform and Control Act, as amended; the Workers Adjustment and Retraining Notification Act, as amended; the Occupational Safety and Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Consolidated Omnibus Budget Reconciliation Act (COBRA); the Employee Retirement Income Security Act of 1974, as amended; the National Labor Relations Act; the Kentucky Civil Rights Act, KRS Ch. 344 *et seq.*; the Kentucky Wage and Hour Law, KRS Ch. 337 *et seq.*, the Kentucky Equal Opportunities Act, KRS Ch. 207 *et seq.*, any claim arising under the Medicare Secondary Payer Statute and/or 42 U.S.C. § 1395y(b)(3)(A) thereof, and any and all federal, state or local statutes, ordinances, or regulations, as well as all claims arising under federal, state, or local law involving any tort, employment contract (express or implied), fraud, fraudulent misrepresentation, quantum meruit, promissory estoppel, breaches of fiduciary duty, conversion, intentional infliction of emotional distress, harassment, hostile work environment, constructive discharge, defamation, violation of public policy, wrongful discharge, claims pertaining to employment or employment discrimination, false imprisonment, or any other claim. Mack also releases any and all claims he may have that arose prior to the date of this Agreement under the Family and Medical Leave Act.

Subject to other limitations imposed by law, this Agreement does not prohibit Mack from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission ("EEOC"), the U.S. Department of Labor ("DOL"), the National Labor Relations Board ("NLRB"), the Office of the Inspector General ("OIG"), or any other federal, state or local labor board or agency charged with enforcing employment laws. However, by signing this Agreement, Mack understands and agrees that he is waiving any right to recover money or other

individual relief based on claims asserted in such a charge in any proceeding brought by Mack or on his behalf.

Except as otherwise provided herein, Mack understands and agrees that he is releasing ULAA and the University of Louisville from any and all claims, by which he is giving up the opportunity to recover any compensation, damages, or any other form of relief in any proceeding brought by Mack or on his behalf. Mack further promises and agrees not to file suit, institute any legal or administrative proceedings, or otherwise pursue or prosecute a lawsuit, or other legal or administrative action seeking damages, compensation, benefits, attorney fees or any other remedy or relief, based upon any rights, claim or cause of action described above or otherwise arising out of his employment with and separation from ULAA. Provided, however, that Mack does not release ULAA or the University of Louisville from any obligation pursuant to this Agreement, nor does Mack give up any right related to the enforcement of this Agreement.

4. **Affirmations.** Mack affirms that he is not presently a party to any claim against ULAA or the University of Louisville. Mack affirms that he has been paid and/or has received all compensation, wages, bonuses, commissions, leave, and/or benefits to which he is entitled as of January 26, 2022. Mack affirms that he has no unreported workplace injuries or occupational diseases. Mack affirms that he has not been retaliated against for exercising any right.

5. **Continued Cooperation.** Mack's employment with ULAA will cease as of January 26, 2022. However, Mack hereby agrees that he will provide cooperation and support in connection with any litigation, investigations, or other administrative or legal matters, including, but not limited to, serving as a witness in any matters involving ULAA or the University of Louisville or any matter in which ULAA or the University of Louisville is a subject of any citation, lawsuit, charge, complaint, investigation, or other action, or where such action has been threatened against ULAA. In addition to claims of a legal nature, this Paragraph specifically requires Mack to cooperate with any current or future NCAA investigations related to events occurring during Mack's employment with ULAA. Mack further agrees that Mack shall furnish to ULAA or the University of Louisville, upon request, any information that is under Mack's possession or control that ULAA or the University of Louisville reasonably deems necessary for purposes of any investigation of any potential infraction of any requirement, policy, procedure, rule, or regulation. Mack further agrees that, except as required by law or the rules of the relevant process, he will not communicate with any party or attorney adverse to ULAA or the University of Louisville with respect to any pending or threatened citations, charges, investigations, litigation, or legal action without first providing two weeks' notice to the ULAA's Director of Athletics and the opportunity for counsel for ULAA to be present during any such communication.

Mack also agrees that he will give ULAA's Director of Athletics the opportunity to review and approve any comments or statements he may make to the media regarding the University of Louisville, the University of Louisville men's basketball program (including, but not limited to, any current or future NCAA investigations related to events occurring during Mack's employment with ULAA), or his employment with and separation from ULAA, provided that such approval shall not be unreasonably delayed or withheld.

6. **Confidential Information.** As part of Mack's employment with ULAA, he occupied a position of trust and confidence and received and had access to Confidential Information. For purposes of this Agreement, Confidential Information is defined as any

information not generally available to the public regarding ULAA, the University of Louisville or their respective actual or prospective students, employees, alumni, or donors, including without limitation information regarding actual or potential activities of ULAA and/or the University of Louisville; admissions information; fundraising information; financial statements; budgets, projections, or other financial information; the identities of persons under consideration for positions as trustees, directors, officers, or employees of ULAA or the University of Louisville; vendor contracts and/or pricing; customer information and/or pricing; information regarding actual or potential NCAA, Conference, governing body, legal, or regulatory proceedings; and any other information that should by its nature or context be recognized as proprietary and/or confidential. Mack acknowledges that such Confidential Information is specialized, unique in nature and of great value to ULAA and/or the University of Louisville, and that such information gives ULAA and/or the University of Louisville a competitive advantage. Mack agrees that he shall not use or divulge Confidential Information to any third party unless (i) authorized to do so by ULAA; (ii) to comply with applicable law, regulations, governing body requirements or accreditation standards; or (iii) to the extent such Confidential Information shall have become public other than by Mack's unauthorized use or disclosure. Notwithstanding the foregoing, in no event shall Mack use or disclose Confidential Information if such use or disclosure could reasonably be expected to expose ULAA or the University of Louisville to competitive disadvantage or legal liability, or will otherwise harm ULAA or the University of Louisville.

7. **Remedies for Breach of Mack's Covenant of Continued Cooperation and/or Covenant of Non-Disclosure of Confidential Information.** In the event of a breach or threatened breach of any of the covenants in Paragraphs 5 or 6, ULAA shall have the right to seek monetary damages for any past breach and equitable relief, including specific performance by means of an injunction against Mack or against Mack's partners, agents, representatives, employers, executives, family members and/or any and all persons acting directly or indirectly by or under the direction of Mack to prevent or restrain the breach. In the event of a breach or threatened breach of Paragraphs 5 or 6, ULAA reserves the right to stop providing Mack with Severance payments until the breach or threatened breach is cured. Resort by ULAA to equitable relief shall not be construed as a waiver of any other rights it may have for damages or otherwise.

8. **Non-Solicitation of Employees.** Mack agrees that, for a period of 12 months following the Effective Date of this Agreement, he shall not directly or indirectly solicit, recruit, or hire any employee of ULAA or the University of Louisville.

9. **Return of ULAA's Information and Property.** Mack hereby covenants and agrees that he has returned all ULAA property, including but not limited to documents, keys, credit cards, cellular phones and accessories, computers, tablets, identification badges, all other items that are the property of ULAA and/or that contain confidential information of ULAA, all written or electronically recorded materials that Mack has in his possession or under his control or subsequently come into his possession or control concerning confidential information; and, in the case of documents, has returned, destroyed, or deleted (at ULAA's discretion) any and all materials of any kind and in whatever medium (including cloud-based storage), including, without limitation, all hard disk drive and diskette data, CDs, USB drives, microfiche, photographs, negatives, blueprints, printed materials, audio recordings, and video recordings that Mack has obtained during the course of his employment with ULAA. In addition, Mack agrees that neither he or his attorneys or other agents will keep any originals or copies of any of the foregoing retained or acquired by Mack. Mack will also provide ULAA with his voicemail and network passwords.

10. Compliance with the Older Workers Benefit Protection Act. Mack understands that the releases set forth in Paragraph 3 include a release of any claims Mack may have against ULAA, up to the date this Agreement is executed, under the Age Discrimination in Employment Act (“ADEA”), as amended by the Older Workers Benefit Protection Act (“OWBPA”). Mack understands and acknowledges that:

A. ULAA provided Mack, at Mack’s option, twenty-one (21) days from the date this Agreement was first presented to Mack to consider the Agreement;

B. Mack has carefully read and fully understands all of the terms and provisions of the Agreement;

C. Mack understands that the ADEA is a federal statute that prohibits discrimination on the basis of age in employment, benefits, and benefit plans;

D. Mack is, through this Agreement, waiving, releasing, and forever giving up any and all claims that he may have against ULAA that may have existed on or prior to the date upon which Mack executes the Agreement;

E. Mack knowingly and voluntarily agrees to all of the terms and provisions of the Agreement;

F. Mack knowingly and voluntarily intends to be legally bound by all of the terms and provisions of the Agreement;

G. Mack has hereby been advised in writing to consult with an attorney of Mack’s choice before executing the Agreement;

H. Mack is receiving consideration for his waiver of any and all claims under the ADEA that is in addition to anything of value to which Mack is already entitled;

I. Mack has a period of seven (7) days following his execution of this Agreement to revoke the Agreement (“Revocation Period”) by delivering a letter of revocation to ULAA’s Director of Human Resources; and

J. Mack has been advised in writing that this Agreement shall not become effective until the Revocation Period has expired.

11. Effective Date. The Agreement will become effective only if (i) Mack signs this Agreement and delivers it to ULAA; and (ii) the Revocation Period has expired. The Effective Date of the Agreement will be the eighth (8th) day after Mack executes the Agreement without revocation.

12. Release Binding on Successors and Heirs. Mack acknowledges that his release of claims under this Agreement is binding on him and his heirs, personal representatives, successors and assigns.

13. Waiver. A party’s failure to insist on compliance or enforcement of any provision of this Agreement shall not affect the validity or enforceability or constitute a waiver of future

enforcement of that provision or any other provision of this Agreement by that party or any other party.

14. **Section 409A.** This Agreement is intended to comply with Section 409A of the Internal Revenue Code and the guidance issued thereunder ("Section 409A") or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any payments under this Agreement that may be excluded from Section 409A as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Notwithstanding the foregoing, ULAA makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall ULAA be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by Mack on account of non-compliance with Section 409A.

15. **Notice.** Any and all notices required or permitted by this Agreement shall be deemed delivered if delivered personally or if mailed by registered or certified mail, addressed as follows, or at such other address or addresses as either party may designate in writing to the other. If to ULAA:

Chair of the Board of Directors
Office of the President
Grawemeyer Hall, Suite 103
2301 S. Third Street
Louisville, Kentucky 40292

With copies to:

Vice President for Intercollegiate Athletics/Director of Athletics
University of Louisville
2100 South Floyd Street, SAC 3rd Floor
Louisville, Kentucky 40292

Office of University Counsel
Grawemeyer Hall, Suite 206
2301 S. Third Street
Louisville, Kentucky 40292

If to Mack:

The address last shown on ULAA's records for Mack.

With copies to:

Jason Charney
Charney Management Group
1157 Fulton Hall Lane
Mt. Pleasant, SC 29466

16. **Entire Agreement.** The Parties agree that this Agreement constitutes the entire agreement between them as to employment, compensation, and severance, superseding all prior written and oral agreements including, but not limited to, the 2018 employment agreement between Mack and ULAA, which is hereby null and void. The Parties agree that any provisions in the 2018 employment agreement regarding payment upon Mack's separation from ULAA are null and void and are superseded by the obligations specified in this Agreement.

17. **Amendments in Writing and Signed by Both Parties.** The Parties agree that the terms of this Agreement may not be waived, modified or supplemented except in writing signed by both Mack and ULAA.

18. **Drafting.** This Agreement will be construed without regard to the drafter of the same and will be construed as though each party participated equally in the preparation and drafting of this Agreement.

19. **Severability.** Should any term of this Agreement be held invalid or unenforceable (in whole or in part), the other terms shall remain in full force and effect.

20. **Governing law.** This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky.

DATED: 1/26/22

Christopher L. Mack:

Signature on file

(Signed)

University of Louisville Athletics Association

DATED: 1/26/2022

Signature on file

(Signed)