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TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2011-CA-000631-MR

ABC, INC.

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE PHILLIP SHEPHERD, JUDGE  
ACTION NO. 11-CI-00119

COMMONWEALTH OF KENTUCKY,  
EX REL. JACK CONWAY, IN HIS  
OFFICIAL CAPACITY AS ATTORNEY  
GENERAL OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING IN PART, REVERSING IN PART,  
AND REMANDING

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BEFORE: LAMBERT, NICKELL, AND TAYLOR, JUDGES.

LAMBERT, JUDGE: ABC, Inc., has appealed from two orders of the Franklin Circuit Court upholding the issuance of a subpoena and civil investigative demand (CID) by the Attorney General of Kentucky pursuant to Kentucky's Consumer

Protection Act (KCPA), Kentucky Revised Statutes (KRS) 367.110 to KRS 367.300. Having considered the record and the parties' arguments in their briefs, we affirm the summary judgment related to the Attorney General's authority to issue the CID and the documentation used to support it, but we reverse and remand this matter for consideration of the scope of the CID.

This suit began on January 24, 2011, with the anonymous filing of a three-count petition by National College of Kentucky, Inc., (National College)<sup>1</sup> seeking to quash a CID served on it the previous month pursuant to KRS 367.240 and 367.250 by Jack Conway, in his official capacity as Attorney General of Kentucky, (hereinafter "the Attorney General"). National College is a Kentucky corporation operating a for-profit proprietary college for undergraduate studies. Its principal place of business is in Fayette County, Kentucky.

In its petition, National College stated that the CID the Attorney General issued contained fifty detailed and exhaustive requests for production of information and documents on a variety of subjects, including corporate information, admission criteria, National College's administrative structure, licensure and accreditation information and history, student complaints, advertising and marketing documentation, recruiting information, employee compensation structures and policies, student job placement data, and student financing

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<sup>1</sup> National College's ability to proceed under a pseudonym was contested before the circuit court and was listed as an issue in its prehearing statement. However, subsequent to the filing of the notice of appeal, its identity became publically known and disseminated in the media, and National College is no longer pursuing an appeal related to this particular issue. Therefore, this Court shall refer to the appellant as National College in the remainder of this opinion, rather than "ABC, Inc." as the appellant is listed in the notice of appeal.

information. National College stated that the Attorney General did not have reason to believe that it had violated, or was about to violate, the KCPA or that the public interest required his investigation into any potential past or present violation.

Therefore, National College contended that the subpoena constituted an unreasonable investigative action pursuant to KRS 367.260 under Count 1 of the petition. Under Count 2, National College stated that if the court did not quash the CID, its scope should be modified and narrowly restricted to areas of the KCPA the Attorney General had reasonable grounds to believe that it had violated, or was about to violate. Finally, under Count 3, National College alleged that its due process rights were violated because the information sought by the Attorney General in the subpoena was too vague and indefinite, and it was not reasonably relevant to the subject inquiry. National College also moved to seal the record and proceedings.

The Attorney General moved to dismiss the petition for failure to include the name of the petitioner in the caption of the complaint or issue process at the direction of the initiating party, as the named petitioner was fictitious. Alternatively, the Attorney General requested a more definite statement requiring the petition to be corrected so that the petitioner was identified as the real party in interest. Finally, the Attorney General moved to dismiss the petition for failure to state a claim upon which relief could be granted because he maintained that the CID was properly served in accordance with Kentucky law. The Attorney General included documentation supporting its claim that the CID should not be quashed,

including a redacted copy of the CID as well as redacted e-mails regarding the release of financial aid funds to several students. For purposes of this opinion, we shall only focus on the Attorney General's global motion to dismiss, and not consider any pleadings or arguments regarding the use of a pseudonym or the sealing of the record.

National College responded to the Attorney General's motion, asserting that it was in fact a motion for summary judgment because the pleading relied on materials outside of the record. However, National College objected to the expedited nature of the request for final adjudication and requested that it be afforded the right to conduct reasonable discovery. It then contended that the materials tendered with the Attorney General's motion should be disregarded because they had not been authenticated and therefore did not have a proper evidentiary foundation. Regarding the merits of the motion, National College argued that the Attorney General did not have a reasonable basis to issue the CID. In its cross-motion for summary judgment, National College requested a judgment in its favor quashing the subpoena and terminating the Attorney General's investigation. In the alternative, National College requested that the court modify the scope of the subpoena to those issues for which the Attorney General had a reasonable belief.

Following the hearing, but prior to the issuance of any order, the Attorney General filed a response to National College's cross-motion for summary judgment, in which he continued to argue that he had a sufficient basis to issue the

CID. He also pointed out that while National College suggested that it wanted the opportunity to address the individual requests to modify the scope of the CID, it never identified any request as being overly burdensome or in any other way objectionable, and accordingly it never identified a basis of objecting to any of the requests. In this response, the Attorney General addressed National College's argument that the records it submitted with its original motion were unauthenticated. In reply, National College contended that the Attorney General was choosing which records to include, omitting documentation that indicated that any concerns or complaints had been resolved.

Following a hearing,<sup>2</sup> the court entered an order on March 4, 2011, related to the threshold issue of whether National College had the right to anonymously file the petition and invoke the jurisdiction of the court. The court determined that National College failed to articulate any basis for anonymity other than its concern that there might be negative publicity related to the issuance of the CID. Furthermore, the court noted the absence of any controlling case, statute, or civil rule allowing National College to proceed anonymously. Therefore, the court denied National College's motion to seal and indicated it would grant the Attorney General's motion to dismiss if National College was unwilling to disclose its identity and litigate the subject of the petition in an open forum. The court permitted National College ten days to file an amended petition identifying the true

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<sup>2</sup> At the conclusion of the February 28, 2011, hearing, National College requested the opportunity to address the scope of the CID if the court were to determine that the threshold was met and the investigation was proper. The court indicated that it would take that request under advisement as it considered the parties' motions.

plaintiff and real party in interest, and it held the Attorney General's motion to dismiss and National College's cross-motion for summary judgment in abeyance pending the filing of the amended complaint. The court then provided that if National College failed to file an amended complaint, it would dismiss the action without prejudice.

On March 11, 2011, National College filed a motion to alter, amend, or vacate the court's order pursuant to Kentucky Rules of Civil Procedure (CR) 59.05, continuing to argue that it had a right to proceed anonymously with the record being sealed. Likewise, the Attorney General filed a motion to alter, amend, or vacate the order, requesting that if National College did not amend its complaint, the complaint should be dismissed with prejudice rather than without prejudice. In addition, the Attorney General requested that the court rule on both its motion to dismiss and National College's cross-motion for summary judgment at the same time. The court permitted the parties to argue their respective positions at a hearing on March 21, 2011. At the conclusion of the hearing, National College again indicated that if the court were to uphold the issuance of the CID and the parties were unable to reach an agreement concerning its scope, it wanted to litigate the broadness and scope of the CID to ensure that it met the public interest component.

On March 25, 2011, the circuit court entered an opinion and order ruling on both parties' motions to alter, amend, or vacate. The court ultimately denied National College's motion, granted the Attorney General's motion, and

dismissed the action with prejudice. After determining that no basis existed for the identity of the plaintiff to remain confidential, the court extensively addressed the merits of the case; namely, whether the Attorney General had the power to issue the CID at issue.

[T]he two Kentucky cases addressing the power of the Attorney General to investigate consumer protection concerns through the use of a CID both strongly support a finding that the CID at issue here was a proper use of the Attorney General's power under KRS 367.240. In *Commonwealth v. Pineur*, 533 S.W.2d 527, 529 (Ky. 1976), the Kentucky Supreme Court cited with approval the seminal U.S. Supreme Court case, holding that “[b]ecause judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry.” *United States v. Morton Salt Co.*, 338 U.S. 632, 70 S.Ct. 357, 94 L.Ed. 401 (1950). Here, the plaintiff seeks to prohibit the Attorney General from making an initial inquiry into whether it has complied with its legal obligations under the consumer protection statute. If the theory of the plaintiff is accepted, it would erect an unjustified and significant practical obstacle to legitimate consumer protection investigations, essentially requiring the Attorney General to go to court and reveal his evidence and legal theories before ever obtaining the relevant information from the business whose practices are under scrutiny.

The Attorney General has a statutory right to invoke his investigative authority to require businesses or individuals to produce relevant information whenever “he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any act or practice declared to be unlawful by KRS 367.110 to 367.300.” KRS 367.240. There is no credible allegation on the part of the plaintiff that the

Attorney General does not in good faith “believe it to be in the public interest” that such an investigation be undertaken with regard to the plaintiff in this case. The plaintiff may disagree with the Attorney General’s determination in that respect, but unless the plaintiff can come forward with some credible evidence to support its allegation, the Attorney General is entitled to judgment affirming his right to obtain the evidence sought. No such evidence has been alleged or produced by the plaintiff, who simply continues to maintain that it has never engaged in any “false, misleading or deceptive” practices, but remains adamantly unwilling to allow an examination of its business records that contain the best evidence on that question.

Here, unlike *Ward v. Commonwealth*, 566 S.W.2d 426 (Ky. App. 1978), the Attorney General has a well documented and reasonable basis to seek information from the plaintiff regarding the plaintiff’s compliance with the Consumer Protection Act. In *Ward*, the Attorney General issued a CID based solely on an allegation that a news media report had questioned the quality of a consumer product that was being marketed in Kentucky. *Id.* at 528. The Court of Appeals held that such a media report, without more, is insufficient to justify a CID.

Here, by contrast, the Attorney General has produced numerous complaints by students regarding the business practices of the plaintiff, as well as broader national studies indicating potential systemic problems in the administration of public grant and loan programs by private for-profit colleges. While the plaintiff argues that all the student complaints were favorably resolved, that does not diminish the validity of the questions raised nor does it undermine the authority of the Attorney General to investigate. Rather than invoking the maxim, “trust but verify,” the plaintiff argues that the Attorney General is legally required to simply take the plaintiff’s word for it. The plaintiff’s argument, as a practical matter, would render the Attorney General powerless to investigate until *after* he can prove an allegation of misconduct.

The Court of Appeals, in *Ward*, simply held that “it is the duty of the court to examine the documentation and facts upon which the Attorney General based his decision to issue the demand. . . . The responsibility of the court is to protect against arbitrary orders.” *Id.* at 429. Here, the Court finds that the CID issued by the Attorney General is reasonable, and is supported by valid concerns under the Consumer Protection Act, and the Court further finds that it is “in the public interest that an investigation should be made to ascertain whether [the plaintiff] in fact has engaged in, is engaging in or is about to engage in, any act or practice declared to be unlawful by KRS 367.110 to 367.300.”

The legal theory of the plaintiff is entirely at odds with both the letter and the well documented legislative intent of the Kentucky Consumer Protection Act. As Chief Justice Minton recently wrote for the Kentucky Supreme Court, “Kentucky’s legislature created a statute which has the broadest application in order to give Kentucky consumers the broadest possible protection for allegedly illegal acts.” *Craig & Bishop, Inc. v. Piles*, 247 S.W.3d 897, 904, n. 11 (Ky. 2008), citing *Stevens v. Motorist Mutual Insurance Co.*, 759 S.W.2d 819 (Ky. 1988). Thus, the Kentucky Supreme Court has recognized the “broadest possible” application of the KCPA, and these rulings are consistent with, and indeed required by, the expressed legislative intent of the statute, in which the General Assembly stated that “the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services.” KRS 367.120.

Here, the public interest in reviewing the business practices of the plaintiff is heightened because of the undisputed fact that the plaintiff’s business is highly dependent upon the receipt of taxpayer dollars in the form of student grant and loan programs. The public has an overwhelming interest in determining that its limited tax dollars are well spent in the area of public support of education. Accordingly, the need for transparency and

openness that applies to all businesses in the marketplace under the Consumer Protection Act, applies with even greater force to those businesses, like the plaintiff, which directly and indirectly benefits from tax dollars in its for-profit educational enterprise.

The court then directed National College to comply with the CID within ten days of the entry of the order and dissolved an earlier agreed order temporarily permitting National College to shield its identity to respond to the Attorney General's motion to dismiss. Finding no genuine issues of material fact, the court found that the Attorney General was entitled to a judgment as a matter of law under CR 56 and dismissed National College's claims with prejudice. This appeal follows.

On appeal, National College confines its arguments to the merits of its petition below – whether the Attorney General had the power to issue the CID and whether the scope of the CID should be modified. National College also addressed the propriety of the materials the Attorney General attached to its motion to dismiss. The Attorney General, in his responsive brief, addresses his power to issue the CID in question and argues that the circuit court properly upheld the CID. The Attorney General also argues that the materials in question were properly authenticated and were properly considered by the court. Furthermore, the Attorney General contends that the scope of the CID was before the court and argued at the hearings.

Before we address the merits of National College's arguments, we shall set forth our standard of review in this matter. We note that the Attorney General's

pleading was captioned as a motion to dismiss. However, he attached numerous documents in support of the motion that were outside of the pleadings, converting this motion into one for summary judgment. “Since the trial court apparently considered matters outside of the pleadings . . . in arriving at its decision to dismiss the appellants’ claim against Cumberland, we must treat the motion as one for summary judgment.” *Waddle v. Galen of Kentucky, Inc.*, 131 S.W.3d 361, 364 (Ky. App. 2004) (footnote omitted). *See also* CR 12.02 (“If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.”). Kentucky case law regarding summary judgment is well-settled that:

The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. [CR] 56.03. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue.

*Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). “Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court’s decision and will review the issue *de novo*.” *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App.

2001). Here, there are no disputed issues of fact. Therefore, we shall review the circuit court's order to determine whether it erred as a matter of law.

### I. The Attorney General's Authority to Issue the CID

National College's first argument addresses the Attorney General's authority to issue the CID in this case. The General Assembly created the KCPA for a specific reason as set forth in KRS 367.120(1): "The General Assembly finds that the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services[.]" The General Assembly declared as unlawful, "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce[.]" KRS 367.170(1).

In the KCPA, the General Assembly provided the Attorney General with certain powers to effectuate the intent of the Act:

To accomplish the objectives and to carry out the duties prescribed by KRS 367.110 to 367.300, the Attorney General, in addition to other powers conferred upon him by KRS 367.110 to 367.300, may issue subpoenas to any person, administer an oath or affirmation to any person, or conduct hearings in aid of any investigation or inquiry, provided that information obtained pursuant to the powers conferred by KRS 367.110 to 367.300 shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law enforcement purposes in the public interest.

KRS 367.250. The resolution in this case turns on the application of KRS 367.240:

(1) When the Attorney General has reason to believe that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by

KRS 367.110 to 367.300, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any act or practice declared to be unlawful by KRS 367.110 to 367.300, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation. Provided however, that no person who has a place of business in Kentucky shall be required to appear or present documentary material or physical evidence outside of the county where he has his principal place of business within the Commonwealth.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the Circuit Court where the person served with the demand resides or has his principal place of business or in the Franklin Circuit Court.

As provided in the seminal case of *Hancock v. Pineur*, 533 S.W.2d

527 (Ky. 1976), KRS 367.240 provides two bases upon which the Attorney

General may issue a CID:

KRS 367.240(1) authorizes the Attorney-General to execute and cause an investigative demand to be served in either one of two instances, as follows:

(a) When he ‘has reason to believe that a person has engaged in, is engaged in, or is about to engage in any act or practice declared to be unlawful by KRS 367.110 to 367.300,’ or

(b) When ‘he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any act or practice’ made unlawful by the aforementioned statutes.

*Pineur*, 533 S.W.2d at 528 (footnote omitted). The *Pineur* Court specifically held that there was no statutory or constitutional requirement that the CID “recite on its face the reason or grounds for its issuance[.]” *Id.* Citing the United States Supreme Court’s opinion in *United States v. Morton Salt Co.*, 338 U.S. 632, 70 S.Ct. 357, 94 L.Ed. 401 (1950), the Court went on to state:

‘Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest.’

‘Of course a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power. But is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.’ 338 U.S. at p. 652, 70 S.Ct. at p. 369.

*Pineur*, 533 S.W.2d at 529.

National College attempts to distinguish *Pineur* from the present case and urges this Court to rely upon the later decision in *Ward v. Stephens*, 566 S.W.2d 426 (Ky. App. 1978). In *Ward*, the Court of Appeals held:

In *Pineur*, the court held that while the investigative demand did not have to set forth the reason for its issuance, the courts would look behind the demand. Judicial review of administrative rulings is a basic part of our legal system and is designed to protect against mistaken or arbitrarily issued investigative orders. The constitutionality of the whole Consumer Protection Act was before the court in *Pineur*. By holding the act constitutional, the court did not vest the Attorney General with the unbridled authority he seeks in the present case.

*Ward*, 566 S.W.2d at 428. While the Court ultimately declined to uphold the CID in *Ward* due to lack of a sufficient basis, we fail to see how this case requires a reversal or differs from the holding in *Pineur*. *Ward* merely required that a sufficient basis must be met to establish either of the two prongs of KRS 367.240(1) before the Attorney General may issue a CID. Both *Pineur* and *Ward* support the issuance of the CID in the present case.

Here, National College argued that both prongs of KRS 367.240(1) are limited by later language in the subsection requiring that the information or other material sought must be “relevant to the alleged or suspected violation[.]” National College contends that because he was acting under the “public interest” prong, the Attorney General incorrectly believed he could investigate whatever he wanted without having to identify an alleged or suspected violation or believe that there was any wrongdoing at all. The Attorney General, on the other hand,

contends that the limiting language only applies to the first prong; the second prong does not require the Attorney General to believe the KCPA has been violated, but that it is in the public interest for him to determine if it has been or will be violated.

Based upon the plain language of KRS 367.240(1), we must agree with National College that the “relevant to the alleged or suspected violation” language applies to both prongs. However, we also agree with the Attorney General that he does not have to believe a person is in violation of the KCPA under the second prong. But there must be a suspicion of some wrongdoing or the Attorney General would not have a basis to begin an investigation. In the present case, though, the Attorney General did in fact suspect that National College had violated the KCPA in areas related to the withholding of financial aid, the loan default rate, job placement rates, and transferability of credits. Accordingly, we hold that the Attorney General met the threshold for the issuance of the CID in the present matter.

## II. Documentation Supporting the CID

For its second, four-part argument, National College contends that the circuit court failed to “look behind” the CID to determine its reasonableness based upon the documentation provided. First, National College argues that the majority of materials attached to the Attorney General’s memorandum were

unauthenticated.<sup>3</sup> The Attorney General disagrees, arguing that all of the materials attached to his memorandum were properly authenticated.

Kentucky Rules of Evidence (KRE) 901 provides, as a general matter, that, “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” KRE 901(a). As the Attorney General points out, “[t]he proponent’s burden of authentication is slight, which requires only a *prima facie* showing of authenticity to the trial court.” *Johnson v. Commonwealth*, 134 S.W.3d 563, 566 (Ky. 2004). KRE 901(b) also contains a non-exhaustive list of examples of authentication in conformity with the rule’s requirements. The list includes the testimony of a witness with knowledge, non-expert witness testimony as to the genuineness of handwriting, distinctive characteristics, and public records or reports.

We have reviewed the materials attached to the Attorney General’s memorandum, along with other documents cited to in his brief, and we are persuaded that these materials were properly authenticated. The materials are clearly what the Attorney General claims they are, including records obtained from the Council on Postsecondary Education (CPE) as well as materials in the public domain. We hold that the circuit court did not abuse its discretion in considering these materials.

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<sup>3</sup> National College also argued that it had the right to conduct discovery on all of the materials in the Attorney General’s possession, not just those provided as exhibits, which we shall consider in a later argument.

For its next argument on this issue, National College contends that the Attorney General should not have been permitted to rely on materials unrelated to National College, including minutes from meetings of the Kentucky General Assembly's Interim Joint Committee on Education, DVD recordings of those meetings, a Government Accountability Office report regarding for-profit colleges, testimony from before the United States Senate, and announcements by the United States Department of Education. National College argues that the circuit court should not have cited to these national studies when it decided whether the Attorney General had a sufficient basis to issue the CID. Again, we do not find any merit in National College's argument on this issue, and we agree with the Attorney General that such information contributed to his good faith belief that an investigation should be made in the public interest.

Third, National College contends that because complaints the Attorney General relied on had been resolved, those complaints could not serve as a basis for the issuance of the CID. National College also argues that the small number of complaints cannot support any suspicion that the KCPA had been violated. We disagree with this theory because, as the Attorney General stated in his brief, "[t]he consequences of such a rule would be to allow a business to continue unlawful activity so long as it cures the harm to the complaining consumer." We hold that the fact that a complaint is resolved does not foreclose a later investigation into whether the KCPA was violated.

Fourth, National College argues that the Attorney General improperly withheld exculpatory materials and that it should be permitted to discover and have the circuit court review those records. Again, we disagree with this assertion. National College obtained all of the same documents from the CPE as the Attorney General obtained through its own open records request. The statute does not require the Attorney General to provide all of the records it obtained; rather, he needs to include enough documentation to provide a sufficient basis for his reasonable belief that an investigation should be made.

### III. Scope of the CID

For its final argument, National College asserts that the trial court erred in failing to consider the scope of the CID, which National College has contended throughout the litigation is overly broad and unreasonable. National College states that it requested the opportunity to address the scope of the demand at both the February 28 and March 21, 2011, hearings, and that the court acknowledged this request and stated it would take that request under advisement. However, National College points out that the circuit court granted a complete summary judgment in favor of the Attorney General without permitting it to first challenge the scope of the CID. The Attorney General contends that this issue was squarely before the court and that National College had never contacted his office to discuss any modifications to the CID.

We have reviewed the 50-count CID issued by the Attorney General, and it contains such requests as National College's standards for admission; its

administrative structure; all accreditations and licenses it has obtained; data regarding teacher and course evaluations; complaints made to the Kentucky Board for Proprietary Education; complaints received from students or former students; school catalogs; the student handbook; written, print, internet, radio, and television advertisements for the years 2008, 2009, and 2010; methods for finding new students; financial aid service employee training materials; the compensation structure and policy for employees and managers in recruitment and financial aid services; and funding sources for the students. Furthermore, in our review of the February and March hearings, National College focused on the propriety of the issuance of the CID, and specifically requested the opportunity to contest its scope if the court upheld the issuance of the CID.

Based upon our review of the record and the circuit court's orders, we must agree with National College that it is not been provided the opportunity to contest the scope of the CID. While the issue was certainly raised below, National College never actually went any further than stating that the CID was overly broad and burdensome because it had requested the opportunity to address the scope later in the litigation if the trial court did not find in its favor on the threshold issue. This is not to say that any of the requests were inappropriate or unrelated to the matters the Attorney General wished to investigate. Rather, that is a question for the parties to debate and for the court to decide if they are unable to reach an agreement. Accordingly, we hold that we must reverse the summary judgment in

this case and remand this matter to the circuit court to consider the scope of the CID in relation to the Attorney General's investigation.

For the foregoing reasons, we affirm the summary judgment in favor of the Attorney General, in part, on the issues of his authority to issue the CID and the documentation used to support his reasonable beliefs, and we reverse the summary judgment, in part, and remand this matter to the circuit court for further proceedings in order for the circuit court to consider the scope of the CID.

ALL CONCUR.

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