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05-CV-01315-CMP

FILED ENTERED
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JUL 27 2005 MR.

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PERRY MILLS,

Plaintiff,

vs.

ANDREW BODMAN,

Defendant.

NO. **CV05-1315**

COMPLAINT FOR INJUNCTIVE
RELIEF AND FOR DAMAGES

COMES NOW the plaintiff, Perry Mills, and alleges as follows:

I. PARTIES

1. Perry Mills is a resident of Bellingham, Washington, and a tenured professor at Western Washington University.

2. Andrew R. Bodman is a resident of Bellingham, Washington, and the Provost and Vice President for Academic Affairs for Western Washington University.

ORIGINAL

COMPLAINT FOR INJUNCTIVE
RELIEF AND FOR DAMAGES - 1

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1 10. On October 18, 2004, defendant Bodman advised Professor Mills in writing
2 that he had received a memorandum from Dean Carol Edwards recommending that
3 Professor Mills be placed on suspension with pay, "pending review of complaints she has
4 received from faculty and students." Defendant Bodman advised Professor Mills that he
5 had reviewed the complaints, that he shared Dean Edwards' view that they were serious,
6 and that they should be investigated. Accordingly, defendant Bodman informed Professor
7 Mills: "I am suspending you, with pay, from your faculty duties effective immediately.
8 During this period of suspension, you will be permitted access to campus only with the
9 prior notification of your department chair, who will make appropriate arrangements for a
10 University Police escort. Failure to comply with these arrangements may be considered a
11 criminal violation and subject to further disciplinary action."

12 11. In the same letter, defendant Bodman advised Professor Mills that he was
13 making arrangements to have someone else take over Professor Mills' classes for the rest
14 of the fall quarter.

15 12. The *Faculty Handbook* of Western Washington University provides that the
16 suspension of a faculty member, whether it be with or without pay, constitutes a "severe
17 sanction." *Handbook, Art. VXi: Severe Sanctions Other Than Dismissal.*

18 13. The *Handbook* further provides that in order to warrant a severe sanction
19 other than dismissal, there must be misconduct which falls within one or more of the
20 following five categories:
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- 1) A serious and persistent neglect of faculty duties.

COMPLAINT FOR INJUNCTIVE
RELIEF AND FOR DAMAGES – 3

MIL060.1 plds ge244202 7/27/05

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- 1
- 2 2) Unlawful discrimination or sexual harassment. (*See Appendix C of*
- 3 *WWU FH*)
- 4 3) Serious scientific or scholarly misconduct, consisting of, but not limited
- 5 to, significant misrepresentation of credentials, falsification of data,
- 6 plagiarism, abuse of confidentiality, violation of regulations applicable
- 7 to research, or failure to meet minimum standards of professional
- 8 competence.
- 9 4) Conviction of a felony.
- 10 5) Intentional and malicious interference with the scientific, scholarly, and
- 11 academic activities of others.

12 *Handbook, Art.XV(F)(B) and Art. XVI.*

13 14. None of the misconduct which Professor Mills is alleged to have engaged

14 in falls within any of the enumerated categories for which a suspension is a permissible

15 sanction.

16 15. The *Faculty Handbook* describes in considerable detail the procedures

17 which must be followed when a "severe sanction" such as suspension is imposed.

18 *Handbook, Art. XVII, Procedures for Imposition of Severe Sanctions or Dismissal for*

19 *Cause. Article XVII* specifically states that a suspension may only be imposed if three

20 conditions are met:

- 21 (1) the faculty member's continued presence threatens to cause "immediate harm";
- (2) formal disciplinary charges have been filed before the suspension is imposed;
- and

1 (3) the provost consults with the Executive Council of the Faculty Senate before
2 imposing any suspension and within ten days of the filing of the formal
3 statement of charges.¹

4 16. None of the conditions specified by Article XVII were satisfied in this case.
5 Defendant Bodman never contended that there was any threat of "immediate harm" to
6 anyone if an immediate suspension was not imposed. In fact, several of the complaints
7 against Professor Mills which defendant Bodman relied upon involved conduct alleged to
8 have been committed several years earlier. No formal Statement of Charges was filed
9 prior to the October 18, 2004 suspension. And the Provost did not consult with the
10 Executive Council of the Faculty Senate concerning the propriety, the length, and the
11 other conditions of the suspension. Nor was the length of the suspension specified.

12 17. On or about June 6, 2005, a document entitled "Statement of Charges,"
13 written by Andrew R. Bodman and addressed to Perry Mills, was delivered to plaintiff
14 Mills.

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18 ¹ The complete text of Article XVII § 2(a) provides:

19 "From the time at which charges are specified, the faculty member may be suspended, or
20 assigned to other duties in lieu of suspension, only if immediate harm to the faculty member
21 or others is threatened by continuance. Before suspending a faculty member, pending an
ultimate determination of the faculty member's status through the institution's hearing
procedures, the provost will consult with the Executive Council of the Faculty Senate
concerning the propriety, the length, and the other conditions of any suspension. This
consultation will occur within 10 working days of the filing of the statement of charges. No
suspension or assignment to other duties in lieu of suspension will be final, for that would
constitute dismissal. Salary will continue during the period of the suspension."

1 18. By a letter dated June 23, 2005 the Faculty Senate President Bill Lyne
2 notified Professor Mills that a five person Hearing Panel had been formed to hear his
3 case, but that a Hearing Officer had not yet been appointed.

4 19. As of the present date, no Hearing Officer has been appointed.

5 20. As of the present date, no date has been set for the holding of the hearing.

6 21. Professor Mills' indefinite suspension has continued without interruption
7 since October 18, 2004. On that date campus police escorted Professor Mills off the
8 campus. Since that date Professor Mills has only been allowed to return to campus on
9 three occasions, each time with a campus police escort. On those three occasions
10 Professor Mills returned to his office in the Performing Arts Center building in order to
11 retrieve personal possessions, books, and papers.

12 22. Professor Mills has not been able to teach any class since October 18, 2004.
13 Other professors assumed the duty of teaching the students who were enrolled in
14 Professor Mills' fall quarter classes. Professor Mills was not allowed to teach any class in
15 either winter or spring quarter of 2005, and the University's scheduling of classes for the
16 fall quarter of 2005 provides that he will not be teaching any classes then either.
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COMPLAINT FOR INJUNCTIVE
RELIEF AND FOR DAMAGES -- 6

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1 set forth in the *Faculty Handbook*, defendant breached the employment contract with
2 plaintiff.

3 **First § 1983 Action: Deprivation of Procedural Due Process**

4 27. Plaintiff realleges and incorporates by reference all previous allegations.

5 28. While acting under color of state law, defendant deprived plaintiff of his
6 14th Amendment right to procedural due process, by failing to follow the rules and
7 regulations set forth in the *Faculty Handbook* of Western Washington University.

8 **Second § 1983 Action: Deprivation of Procedural Due Process**

9 29. Plaintiff realleges and incorporates by reference all previous allegations.

10 30. While acting under color of state law, defendant suspended plaintiff from
11 his faculty position and evicted him from campus, without first affording him notice of
12 the complaints made against him, a summary of the evidence in support of those
13 accusations, and an opportunity to respond, thereby violating his right to pre-deprivation
14 procedural due process under the Fourteenth Amendment.

15 **Third § 1983 Action: Deprivation of Procedural Due Process**

16 31. Plaintiff realleges and incorporates by reference all previous allegations.

17 32. After he suspended plaintiff, and while acting under color of state law,
18 defendant deprived plaintiff of his 14th Amendment right to procedural due process, by
19 failing to provide plaintiff with a reasonably prompt post-deprivation hearing.
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21

**Fourth § 1983 Action: Deprivation of Freedom of Speech
By Imposition Of Prior Restraint**

33. Plaintiff realleges and incorporates by reference all previous allegations.

34. While acting under color of state law, defendant denied plaintiff his 1st Amendment right to freedom of speech, by imposing upon him two unconstitutional prior restraints.

Breach of Contract

35. Plaintiff realleges and incorporates by reference all previous allegations.

36. By initiating disciplinary proceedings against plaintiff on grounds which are not authorized by Article XV of the *Faculty Handbook*, defendant has breached the employment contract with plaintiff.

**Fifth § 1983 Action: First and Fourteenth Amendment Rights
By Reliance on Regulations Which Are Void for Vagueness**

37. Plaintiff realleges and incorporates by reference all previous allegations.

38. By relying upon regulations in the *Faculty Handbook* which are unconstitutionally vague as applied to the alleged conduct of the plaintiff, the defendant, while acting under color of state law, deprived the plaintiff of his First and Fourteenth Amendment rights to fair notice of prohibited behavior.

**Sixth § 1983 Action: Deprivation of
Freedom of Speech – Retaliatory Suspension**

38. Plaintiff realleges and incorporates by reference all previous allegations.

39. While acting under color of state law, defendant Bodman has denied plaintiff his 1st Amendment right to freedom of speech and freedom to petition, by suspending him from his faculty position in retaliation for plaintiff having made a complaint against Professor Mark Kuntz, Chair of the Drama Department.

**Seventh § 1983 Action: Deprivation of
Freedom of Speech – Protected Speech**

40. Plaintiff realleges and incorporates by reference all previous allegations.

41. While acting under color of state law, defendant Bodman has denied plaintiff his 1st Amendment right to freedom of speech, by suspending him from his faculty position for having made remarks to students and to other faculty members which some listeners found offensive, but which are within the protective ambit of the First Amendment.

V. JURY DEMAND

Plaintiff demands a jury of twelve.

VI. PRAYER FOR RELIEF

Wherefore, having stated his complaint against the defendant, plaintiff prays for the following relief:

I. Judgment against defendant Bodman for general damages in an amount to be proved at trial.

COMPLAINT FOR INJUNCTIVE
RELIEF AND FOR DAMAGES – 10

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