

NEWS RELEASE – Thursday March 29, 2018

CONTACT

Mike Mitchell, Faculty
Association President

602-828-12364

FACULTY ASSOCIATION FLES NOTICE FOR DAMAGES AGAINST THE MCCCCD BOARD

Breach of Contract and Violation of Constitutional Rights cited.

They're serious.

Just in case the Maricopa County Community College District board (MCCCCD) thought a lawsuit filed by the Faculty Association wasn't serious, they might want to rethink that conclusion. Each of the board members was served with what's called a Notice of Claim that was filed today as part of the Faculty Association's lawsuit.

This document spells out in some detail the specific claims made by the Faculty Association members and the Association itself. Two main areas of claims are noticed: Breach of Contract and Denial of Constitutional Rights.

The Breach of Contract points to a decision by the board to

“...unilaterally without the consent of the claimants or the faculty at large and, as a result, in this fashion, the District, the Governing Board and the named individual Defendants engaged in a breach of contract by violating the terms of the RFP.”

The “RFP” stands for Residential Faculty Policies, the agreement governing how faculty and administration will work together in order to provide students the quality education they expect and deserve.

Another breach of the RFP contract relates to a decision by the board as described in the claim document:

“...issuing a prohibition against the Faculty Association from speaking at the regular governing board meetings, only to be rescinded after being reminded by the Faculty Executive Council that such a prohibition was itself a breach of contract.”

The Claim document also charges the Board with violation of constitutional rights:

“...removing provisions from the RFP, namely meeting and conferring and reassigned time, and the

ban imposed on the Faculty Association from addressing the board at regularly scheduled meetings were done in retaliation for civic and public involvement through the exercise of speech and association freedoms by the Faculty Association in support of clerical employees and faculty members including the individually named claimants who engaged in the same activity.”

“Damages” spelled out in the lawsuit Claims document is asking the court for damages totaling over \$800,000. That figure includes amounts claimed by individual members of the Faculty Association as well as the association itself. All of that is specifically cited in claims document.

The Notice of Claims document is attached.

MICHAEL NAPIER
ANTHONY J. COURY
KATHRYN R.E. BAILLIE*
**Also Admitted in Kentucky*
ERIC R. WILSON
CASSIDY L. BACON



NAPIER COURY BAILLIE PC
ATTORNEYS AT LAW

March 28, 2018

VIA HAND DELIVERY TO:

Leslie Cooper, Esq.
General Counsel
2411 West 14th Street
Tempe, Arizona 85281

Maricopa County Community College District
2411 West 14th Street
Tempe, Arizona 85281

Ms. Johanna Haver
2411 West 14th Street
Tempe, Arizona 85281

Ms. Tracy Livingston
2411 West 14th Street
Tempe, Arizona 85281

Mr. Dana Saar
2411 West 14th Street
Tempe, Arizona 85281

Maria Harper-Marinick, Chancellor
2411 West 14th Street
Tempe, Arizona 85281

Mr. Laurin Hendrix
2411 West 14th Street
Tempe, Arizona 85281

Mr. Augustine Bartning
2411 West 14th Street
Tempe, Arizona 85281

Ms. Jean McGrath
2411 West 14th Street
Tempe, Arizona 85281

Dr. Linda Thor
2411 West 14th Street
Tempe, Arizona 85281

Re: Notice of claim pursuant to A.R.S. §12-821.01

Dear Madames and Messieurs:

This correspondence is to notify Maricopa County Community College District (hereinafter referenced the "District"), the Governing Board, the individual members thereof, namely: Laurin Hendrix, Johanna Haver, Augustine Bartning, Tracy Livingston, Jean McGrath, Dana Saar, and Linda Thor, and Chancellor Maria Harper-Marinick of claims brought against them by the Faculty Executive Council, the governing body for the Faculty Association comprised of 1,017 faculty members, and faculty members Patricia Finkenstadt, Mike Mitchell (President of the Faculty Association and member of the Faculty Executive Council), Camille Newton (Senate President of South Mountain Community College and a member of the Faculty Executive Council), and, Barry Vaughn as putative class representatives, on behalf of

themselves, and similarly situated faculty members of the District. This firm represents the claimants and the class of similarly situated faculty members.

If litigation ensues, claimants intend to seek certification of the plaintiff class. If the class is later certified, this notice of claim shall serve as notice for all of the class members. *See Arena v. Superior Court*, 163 Ariz. 423, 426, 788 P.2d 1174, 1177 (1990).

Claimants hereby make claims for damages pursuant to A.R.S. §12-821.01 as more specifically described herein. If you believe that any portion of this notice fails to completely comply with the claim provisions set forth in Title 12 of the Arizona Revised Statutes or any other law or regulation, please immediately provide me with written notice of the purported deficiency so that this notice can be appropriately supplemented.

These claims are brought against the District, the Governing Board, and the Chancellor, including any and all agents thereof and all individuals named herein and or involved in the determination, acts or omissions that are alleged to constitute the following claims which accrued on February 27, 2018 as set forth below:

- 1) Breach of contract;
- 2) Title 42, U.S.C. Section 1983 claim for denial of equal protection, violation of free speech and violation of freedom of association constitutional rights;

The named individual Defendants are officials at a policy level for the District.

I. FACTS SUPPORTING CLAIMS

The District, the Governing Board of the District and a majority of individual board members thereof enacted a Resolution on February 27, 2018 whereby they, collectively, eliminated certain sections of the existing contract by and between the parties, the Residential Faculty Policies effective July 1, 2017, namely the meet and confer process as set forth in Sections 1.2 and 7.6. In addition, the Defendants eliminated all paid “reassigned time” for any member of the Faculty Executive Council and for any employee of the District who currently participates in the meet and confer process.

Elimination of these provisions from the existing contract between the parties was predicated on declarations set forth in the Resolution, namely that the Defendants based the afore-referenced action on a perceived violation of ARS §11-410 prohibiting employees of the District from engaging in activities for a political action committee while on duty. The chair of the Governing Board, Laurin Hendrix, specifically stated, in support of this resolution, that the Plaintiffs violated this statute, referencing documents designed for fund raising purposes authored by a faculty member of the District. However, those documents, upon which the Board acted, were mischaracterized and falsely described. The documents were not created nor was there any effort to engage in fund raising activities while on duty or in the capacity of faculty for the District; to the contrary, the documents which were referred to as support for the afore-referenced Resolution were entirely produced and sent while in an off duty, non-working capacity.

In addition, the part of the Resolution eliminating the meet and confer process for the Faculty Association was based on an erroneous interpretation of the law, namely, A.R.S. §15-1444 relating to collective bargaining, a law that does not, as the Resolution claims, outlaw meeting and conferring. As such, the Resolution was based on a flawed legal premise.

II. BREACH OF CONTRACT

1. Meet and Confer: RFP

The written contract by and between the parties hereto, the Faculty Association, and the individual members thereof as named plaintiffs, and all faculty as will be identified in the class to be certified at a later date, and the District, by the Governing Board and the individual members thereof, was breached by the actions taken by the Defendants as above-described. The contract was the product of engaging in meeting and conferring which resulted in a signed document between the parties known as the Residential Faculty Policies (“RFP”). The RFP contains provisions 1.2 and 7.6, ensuring to the faculty and the individual claimants herein as well as the Faculty Association, as the non-exclusive representative and the signatory to the RFP, that meeting and conferring would remain in effect during the duration of the contract, the RFP, which extended from July 1, 2017 to June 30, 2018. Nevertheless, the Defendants violated that contract by adopting the Resolution dated February 27, 2018 whereby the provisions of the RFP pertaining to meeting and conferring, namely Sections 1.2 and 7.6, were eliminated from the contract. This was done unilaterally without the consent of the claimants or the faculty at large and, as a result, in this fashion, the District, the Governing Board and the named individual Defendants engaged in a breach of contract by violating the terms of the RFP. In addition, the removal of those sections of the RFP pertaining to meeting and conferring violated the Arizona Constitution Contracts Clause, Article II, Section 25.

2. Failure to Pay Reassigned Time: RFP

In addition, the Defendants eliminated all reassigned time for the Faculty Association thereby again breaching the contract between the parties and immediately refused to pay any reassigned time for faculty business by the named claimants. As a result, the District ceased payment of reassigned time for Faculty Association business as was promised and set forth in the written agreement, known as the RFP, the contract by and between the parties, thereby breaching that contract. Again, this violated the Arizona Constitution Contracts Clause, Article II, Section 25.

3. Prohibition Against Faculty Association Speaking at Board Meetings

The District has also breached Section 2.81 of the RFP by issuing a prohibition against the Faculty Association from speaking at the regular governing board meetings, only to be rescinded after being reminded by the Faculty Executive Council that such a prohibition was itself a breach of contract.

III. SECTION 1983: EQUAL PROTECTION; FREEDOM OF ASSOCIATION; FREEDOM OF SPEECH

The actions of the Defendants, and each of them as afore-described, violated Section 1983 of the Civil Rights Act of 1871 (42 U.S.C. Section 1983) and the Arizona and United States Constitutions whereby the acts of the Defendants in removing provisions from the RFP, namely meeting and conferring and reassigned time, and the ban imposed on the Faculty Association from addressing the board at regularly scheduled meetings were done in retaliation for civic and public involvement through the exercise of speech and association freedoms by the Faculty Association in support of clerical employees and faculty members including the individually named claimants who engaged in the same activity. These claims are brought against the individual members of the governing board in their official capacities. These claims are brought against board members Laurin Hendrix, Johanna Haver, Tracy Livingston, and Jean McGrath, in both their official and individual capacities and Chancellor Maria Harper-Marinick in her official and individual capacity. All actions were taken under color of law and accomplished by adoption and implementation of policy which was retaliatory and discriminatory on its face and in its application.

The removal of the reassigned time was directed specifically and exclusively at the claimant Faculty Association thereby depriving that claimant of the opportunity to exist and the individual members thereof, including the individually named claimants herein, the opportunity to associate for a common purpose and goal, namely to address wages, hours and working conditions with their employer, the Maricopa County Community College District. The removal of reassigned time was exclusively applied to the Faculty Association and no other association. This is a denial of equal protection and a violation of 42 U.S.C. Section 1983.

The afore-referenced actions on the part of the named Defendants in their individual and official capacity, also violated 42 U.S.C. Section 1983 and the First Amendment of the United States and Arizona Constitutions by denying freedom of speech to the named claimants, Faculty Association and the putative class of the faculty by engaging in retaliation and punitive action for the exercise of protected speech, a First Amendment right. In so doing the named Defendants, by eliminating the meet and confer provisions and the reassigned time for the Faculty Association have damaged the Faculty Association and the acts as described have had a chilling effect on the exercise of constitutional rights by the Faculty Association itself and the individual members thereof, including the named claimants. This claim is brought against the Chancellor in her individual and official capacity and the individual members of the board in their official and individual capacities, as afore-described. All actions were taken under the color of law and accomplished by the adoption and implementation of a policy which was retaliatory and discriminatory on its face and in its application.

Further, the actions as afore-described, in violation of 42 U.S.C. Section 1983 and the First Amendment of the United States and Arizona Constitutions have violated the freedom of association guaranteed therein in that the District and other named Defendants, individually and in their official capacities, as afore-described, have engaged in retaliation, and interfered with the exercise of fundamental constitutional rights, under color of law by adopting and implementing

the Resolution. In this fashion, the individually named Defendants engaged in the deprivation of rights secured by the Constitution. The individually named Defendants violated clearly established constitutional rights by taking retaliatory actions against claimants for participating in the constitutionally protected activity of freedom of association.

IV. INJUNCTIVE RELIEF

In addition, claimants may seek injunctive relief seeking to stay the implementation of the afore-described Resolution.

V. DAMAGES

1. Breach of Contract

a. Loss of Value of Reassigned Time

The deprivation of reassigned time by the named Defendants has deprived the Faculty Association and individual claimants of the value of that reassigned time.

b. Compensatory Damages for Harm to Faculty Association

As a result of the actions of the Defendants as above-described, the Faculty Association has suffered compensatory damages of a general nature as a result of the harm to the Faculty Association itself by the removal of reassigned time and the contractual right to meet and confer with regard to wages, hours and working conditions. In addition, the actions of the Defendants have deprived the Faculty Association of the entitlement to contract as was guaranteed by the RFP, resulting in further general compensatory damages to the Faculty Association and the individual members thereof, including the individually named claimants. This is an injury to each and every member of the putative class comprised of faculty.

2. Section 1983: Compensatory Damages, General; Emotional Distress, Punitive

The claimants are seeking general compensatory damages for the denial and interference of constitutional rights, for the intentional infliction of emotional distress, and for the denial of equal protection of the law as a result of the violations of Article 42 of Section 1983, as described herein.

In that the actions of the Defendants, and each of them, were willful, done with malice or intentionally done or in reckless disregard for the constitutional rights of the claimants, and each of them, the claimants are entitled to punitive damages in an amount to be set by a jury at the trial hereon.

3. Attorneys' Fees

The claimants are entitled to attorneys' fees for the breach of contract and the 1983 action. Each claimant and similarly situated faculty member will suffer additional damages in

the form of costs and attorneys' fees and will perhaps incur additional costs in the preparation of this matter for an evidentiary hearing on triable issues. Pursuant to A.R.S. § 12-341.01, claimants and similarly situated putative class members are entitled to an award of attorneys' fees and costs associated with pursuing these claims.

VI. OFFERS OF SETTLEMENT

For purposes of properly adhering to the requirements of the Arizona Notice of Claim statute, particularly with regard to the claim for breach of contract, claimants hereby notify the District and the named Defendants, each and all, that the following sums certain will be sufficient for settlement of their individual claims in the amount of actual damages they will suffer from the District's and each individuals' breach and diminishment of their constitutional rights; in addition, the sums certain will encompass the spectre of punitive damages that the claimants anticipate will be awarded in this matter.

1. The Faculty Association's claims may be settled for Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) plus an additional twenty five percent of that amount as and for attorneys' fees.

2. Faculty Member Patricia Finkenstadt claims may be settled for One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), plus an additional twenty five percent of that amount as and for attorneys' fees.

3. Faculty Member Mike Mitchell claims may be settled for One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), plus an additional twenty five percent of that amount as and for attorneys' fees.

4. Faculty Member Camille Newton claims may be settled for One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), plus an additional twenty five percent of that amount as and for attorneys' fees.

5. Faculty Member Barry Vaughn claims may be settled for One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), plus an additional twenty five percent of that amount as and for attorneys' fees.

These offers are extended to each named Defendant. Each Defendant can satisfy each claim by paying to the claimant the sum certain as stated above, whether that is paid by the individual Defendant or as a result of a payment from one or more of said Defendants, totaling the sum of \$250,000, plus an additional twenty-five percent of that amount for the Faculty Association and the sum of \$150,000, plus an additional twenty-five percent of that amount for each named claimant.

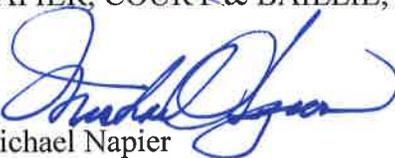
In addition to these sums certain, claimants demand that the Resolution in question be rescinded.

Should the Defendants fail to settle these claims, the Faculty Association hereby provides the District notice that the Faculty Association will fully enforce their claims by initiating a class action lawsuit on behalf of all faculty members who have experienced the above-described ongoing damages. In addition, the claimants will seek punitive damages against those named board members, identified as acting in their individual capacities, who voted to support the Resolution of February 27, 2018 and the Chancellor, likewise identified as acting in her individual capacity, who implemented it beyond its original scope.

It is our hope that this matter can be resolved quickly and amicably.

Very truly yours,

NAPIER, CORY & BAILLIE, P.C.



Michael Napier

MN:mds