

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) CASE NO.: 2016-CP-10-3774

Robert T. Dillon, Jr., PhD.,
Plaintiff,

v.

The College of Charleston and Brian McGee, in his
individual capacity,
Defendants.

ANSWER
BY JULIE J. ARMSTRONG
CLERK OF COURT
2016 SEP - 7 PM 1:16
FILED

Defendants, through undersigned counsel, answer Plaintiff's complaint as follows. Each and every allegation of the complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE
(Responding to Each Paragraph of the Complaint)

JURISDICTION AND VENUE

1. Admitted upon information and belief.
2. Admitted.
3. The first sentence is admitted. The remainder of the paragraph states a legal conclusion to which no response is required; to the extent a response is required, denied.
4. Defendants do not know what actions Plaintiff deems "pertinent" and therefore deny that "all" such actions took place in Charleston County. By way of further response, Defendants agreed that Charleston County is the proper venue for this case. All other or contrary allegations of the paragraph are denied.
5. This paragraph states a legal conclusion to which no response is required. By way of further response, Defendants do not at this time challenge the Court's jurisdiction or venue in Charleston County.

BACKGROUND/FACTS

6. Admitted.

7. Admitted.

8. Defendants admit only that Plaintiff has taught a Genetics lab with some regularity over the past few years. All other or contrary allegations of the paragraph are denied.

9. Admitted.

10. This paragraph states a conclusion of law to which no response is required. To the extent a response is required, denied. Further, Defendants crave reference to the FAM, which speaks for itself.

11. Defendants lack information as to what words a prior general counsel may have used to describe the FAM and therefore deny the allegations.

12. Denied.

13. Defendants lack information as to what, if any, disagreements Plaintiff and Dr. Hillenius may have had over the years and therefore deny the allegations.

14. Defendants lack information as to Plaintiff's views vis-à-vis Dean Auerbach's re-appointment and therefore deny the allegations.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Defendants admit only that Plaintiff was directed to include appropriate, course-specific learning outcomes in his syllabus in accordance with College policy. All other or contrary allegations of the paragraph are denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied. By way of further response, the College objected to Plaintiff's failure to include appropriate, course-specific learning outcomes as required by College policy.

26. Defendants crave reference to Plaintiff's syllabus, which speaks for itself, and deny any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

27. Defendants crave reference to Dr. Hillenius's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

28. Defendants crave reference to Dr. Hillenius's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

29. Defendants crave reference to Plaintiff's syllabus, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

30. Denied.

31. Defendants crave reference to the FAM, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Defendants admit only that Plaintiff refused to include appropriate, course-specific learning outcomes in his syllabus as directed by his department chair. All other or contrary allegations of the paragraph are denied.

38. Defendants crave reference to Dean Auerbach's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

39. Defendants crave reference to the FAM, which speaks for itself, and denies any allegations inconsistent therewith. Defendants specifically denied that the policies cited by Plaintiff are the only policies relevant in faculty discipline matters. All other or contrary allegations of the paragraph are denied.

40. Defendants crave reference to the FAM, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

41. Defendants crave reference to Dean Auerbach's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

42. Admitted with the important clarification that FAM Section IV B incorporates by reference and requires tenured professors to follow myriad other College policies and procedures.

43. Defendants crave reference to the FAM, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

44. Denied.

45. Defendants crave reference to the FAM, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

46. Denied.

47. Defendants crave reference to Dr. Hillenius's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

48. Denied.

49. Denied.

50. Defendants crave reference to Provost McGee's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

51. Defendants crave reference to Provost McGee's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

52. Defendants crave reference to the FAM, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

53. Denied.

54. Defendants crave reference to Plaintiff's correspondence, which speaks for itself. Plaintiff's characterization of the dispute as one concerning academic freedom and integrity is denied. All other or contrary allegations of the paragraph are denied.

55. Defendants crave reference to Provost McGee's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

56. Defendants crave reference to Provost McGee's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

57. Defendants admit only that Provost McGee appointed a disinterested investigative review panel in accordance with College policy. All other or contrary allegations of the paragraph are denied.

58. Denied.

59. Denied.

60. Defendants admit only that the investigative panel conducted an appropriate investigation, which included correspondence with Plaintiff. All other or contrary allegations of the paragraph are denied.

61. Defendants crave reference to the investigative panel's report, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

62. Denied. Plaintiff is capable of reading the investigative panel's report and understanding the panel's competence to reach the conclusions stated therein.

63. Defendants crave reference to the investigative panel's report, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

64. Defendants crave reference to Dr. Kingsley-Smith's correspondence with Plaintiff, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

65. Denied.

66. Defendants admit only that the College has now approved a new syllabus policy, which was conceived and drafted well before the events at issue in this case. All other contrary allegations of the paragraph are denied.

67. Denied. The policy is incorporated by reference in the FAM.

68. Defendants crave reference to the new syllabus policy, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Defendants crave reference to the FAM, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

77. Defendants crave reference to the AAUP correspondence referenced in this paragraph, which speaks for itself, and denies any allegations inconsistent therewith. Defendants note that the AAUP has no formal authority and does not set College policy. All other or contrary allegations of the paragraph are denied.

78. Defendants crave reference to the AAUP correspondence referenced in this paragraph, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

79. Denied.

80. Defendants crave reference to the AAUP correspondence referenced in this paragraph, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

81. Defendants crave reference to the sanctions document referenced in this paragraph, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

82. This paragraph states an incorrect legal conclusion to which no response is required; to the extent a response is required, denied.

83. Admitted.

84. Defendants admit only that Plaintiff filed a grievance with the Faculty Hearing Committee. All other or contrary allegations of the paragraph are denied.

85. Denied.

86. Denied.

87. Defendants crave reference to the Grievance Committee record, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

88. Denied.

89. Defendants crave reference to the Grievance Committee record, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

90. Defendants crave reference to the correspondence from the President, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of the paragraph are denied.

91. This paragraph states a legal conclusion to which no response is required; to the extent a response is required, denied.

AS TO THE FIRST CAUSE OF ACTION
(DEFAMATION PER SE AGAINST DEFENDANT COLLEGE ONLY)

92. Defendants incorporate all allegations and defenses as if fully set forth herein.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

AS TO THE SECOND CAUSE OF ACTION
(RETALIATION IN VIOLATION OF SOUTH CAROLINA
CONSTITUTION'S FIRST AMENDMENT AS TO DEFENDANT COLLEGE ONLY)

106. Defendants incorporate all allegations and defenses as if fully set forth herein.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

112. Denied.

113. Denied.

AS TO THE THIRD CAUSE OF ACTION
(SOUTH CAROLINA CONSTITUTIONAL DUE PROCESS VIOLATION
AS TO BOTH DEFENDANTS)

114. Defendants incorporate all allegations and defenses as if fully set forth herein.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. Defendants deny that Plaintiff is entitled to any of the relief set forth in the unnumbered WHEREFORE clause at the end of the Complaint.

FOR A SECOND DEFENSE

123. Plaintiff's Complaint fails to state claims upon which relief can be granted.

FOR A THIRD DEFENSE

124. Plaintiff's claims are barred, in whole or in part, by the after-acquired evidence doctrine.

FOR A FOURTH DEFENSE

125. Any and all actions taken with regard to Plaintiff were based solely on legitimate, business-related, non-discriminatory, non-retaliatory reasons and were not unlawful.

FOR A FIFTH DEFENSE

126. Defendants are entitled to recover attorneys' fees and court costs incurred in this action provided by the South Carolina Frivolous Civil Proceedings Act, S.C. Code Ann. 15-36-10, *et seq.*

FOR A SIXTH DEFENSE

127. Plaintiff's claims for damages are barred by his failure to mitigate the consequences of the actions of which he complains.

FOR A SEVENTH DEFENSE

128. Plaintiff's constitutional claims are barred to the extent that no private right of action for money damages exists for such claims.

FOR AN EIGHTH DEFENSE

129. In the event that any purported statement would otherwise be actionable or defamatory, which is denied, Defendants allege that any such statement was made in good

faith and without malice concerning matters which Defendants would have a legitimate interest, including business interest.

FOR A NINTH DEFENSE

130. Plaintiff's claims are barred to the extent Defendants would have taken the same action regardless of any impermissible motive.

FOR A TENTH DEFENSE

131. Plaintiff's claims are barred in whole or in part by the South Carolina Tort Claims Act.

FOR AN ELEVENTH DEFENSE

132. Plaintiff's claims are barred in whole or in part by the doctrines of absolute and/or qualified immunity.

FOR A TWELFTH DEFENSE

133. Plaintiff's claims are barred to the extent that he is a public official, limited purpose public official, and/or any complained-of speech was on a matter of public concern, and Plaintiff cannot show actual malice.

FOR A THIRTEENTH DEFENSE

134. Plaintiff's claims are barred in whole or in part for Plaintiff's failure to plead or prove special damages.

FOR A FOURTEENTH DEFENSE

135. Plaintiff's claims are barred by the doctrines of wavier and/or estoppel.

FOR A FIFTEENTH DEFENSE

136. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or laches.

FOR A SIXTEENTH DEFENSE

137. Plaintiff's claims are barred in whole or in part by the doctrines of unclean hands and/or *in pari delicto*.

FOR A SEVENTEENTH DEFENSE

138. Plaintiff's claims are barred in whole or in part by the doctrine of election of remedies.

FOR AN EIGHTEENTH DEFENSE

139. Plaintiff's claims are barred to the extent that any of the complained-of conduct was undertaken by Defendants or Defendants' agents outside the scope of their duties.

FOR A NINETEENTH DEFENSE

140. Defendant reserves the right to assert any other defenses that may become available or appear during discovery proceedings or otherwise in this case and reserves the right to amend its answer to assert any such defenses.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendants deny that Plaintiff is entitled to any of the relief. Defendants pray that the Complaint be dismissed, with prejudice, and that the plaintiff recover nothing from Defendants, that Defendants be awarded their fees and costs, and for such other relief as the Court may deem just and proper.

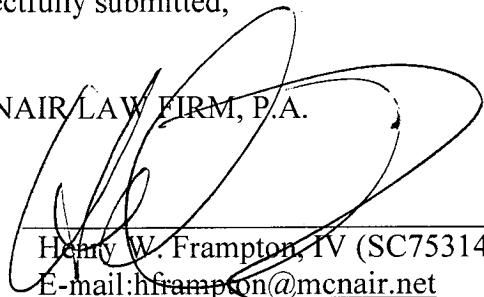
SIGNATURE PAGE FOLLOWS

Respectfully submitted,

Dated: September 6, 2016

MCNAIR LAW FIRM, P.A.

By



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McGee, in his individual capacity

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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)
) CASE NO.: 2016-CP-10-3774

Robert T. Dillon, Jr., PhD.,

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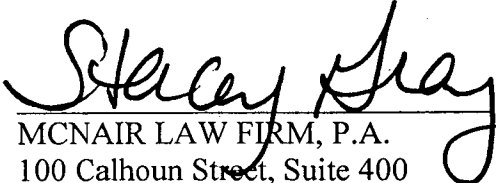
The College of Charleston and Brian McGee, in his
individual capacity,

Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that as an employee of McNair Law Firm, P.A., she served a copy of the foregoing **Answer of Defendants College of Charleston and Brian McGee, in his individual capacity** on the following U.S. Mail, postage prepaid and addressed as follows:

Nancy Bloodgood
Bloodgood & Sanders, LLC
895 Island Park Drive
Charleston, SC 29492
Attorney for Plaintiff


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September 6, 2016

September 6, 2016

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The Honorable Julie J. Armstrong
Clerk of Court
100 Broad Street
Suite 106
Charleston, SC 29401-2210

Re: *Robert T. Dillon, Jr., PhD., vs. The College of Charleston and Brian
McGee, in his individual capacity*
Case No.: 2016-CP-10-3774

Dear Ms. Armstrong:

Enclosed for filing, please find the original and one copy of the Answer of Defendants The College of Charleston and Brian McGee, in his individual capacity regarding the above-referenced case. Please file these documents and return a stamp-filed copy to me in the enclosed self-addressed stamped envelope.

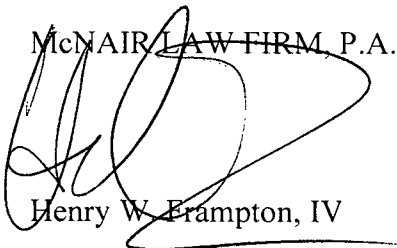
By copy of this letter, I am providing a copy of the same to all counsel of record.

If you have any questions, please let me know.

With kind regards, I am

Very truly yours,

McNAIR LAW FIRM, P.A.



Henry W. Frampton, IV

HWF:sag

Enclosures: as stated

cc: Nancy Bloodgood, Esq.

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