

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

PROFESSOR BARNES,

Plaintiff,

v.

**STATE UNIVERSITY and LOUIS
SANCHEZ,**

Defendant.

CAUSE NO. _____

NOT FOR FILING

DEFENDANTS' CONFIDENTIAL SETTLEMENT STATEMENT

Defendants' State University and Louis Sanchez submit their Confidential Settlement Statement in advance of the September 18, 2009, settlement conference in this matter.

I. Factual Background

State University ("State"), is an equal opportunity employer. State prides itself on its attention to and focus upon diversity and the combination of the interests, activities and special talents of all employees. State, like most other universities throughout the country, is facing enormous economic pressures. State has gone to great lengths to balance those economic pressures against its interest in maintaining a superior counseling program. Indeed, State recruited Dr. Sanchez away from an excellent position at Capital College specifically to cut costs and to put the counseling program into a balanced budget position. To do so, Dr. Sanchez has been required to consider and implement certain difficult decisions. Those decisions, at a minimum, challenged the status quo and were the antithesis of a "business as usual" approach. In particular, Professor Barnes has rejected the requested change. State is disappointed by her unwillingness to cooperate in this new economic era. She has acted as if every requested change was a personal attack. She appears to have no sense of the economic realities. She is inefficient

and poorly organized and, quite simply, is not producing at an acceptable level as required by these economic realities. She openly has challenged Dr. Sanchez's authority in faculty meetings, approached the President of State to challenge the authority of Dr. Sanchez and, ultimately, has filed this lawsuit in an attempt to destroy Dr. Sanchez's career.

To highlight specific facts, the supervising practicums previously were a full-time job. Under these economic times, State considered complete elimination of the program. However, Dr. Sanchez is aware of the importance of this aspect of the counseling program to Professor Barnes. Thus, he has made every effort to give her the opportunity to save the program. To that end, he reduced the size and assigned it specifically to her for her individual guidance and management. Unfortunately, her inefficiency and disorganization has hampered the program. Dr. Sanchez's requirement for monthly reports was a special effort to assist Professor Barnes to become better organized and more efficient. His hope was that through these reports, she would be able to identify problems and tasks, address them, and report her success. Unfortunately, she has focused exclusively upon objecting to the reporting requirements rather than understanding their numerous benefits.

II. State and Dr. Sanchez Anticipate Successful Motion for Summary Judgment Because Professor Barnes Cannot Prove Discrimination or Harassment and Her Complaint Fails to State Any Facts Upon Which She Can Support a State Tort Claim for International Infliction of Emotional Distress Against Dr. Sanchez

Professor Barnes has presented absolutely no evidence upon which she could pursue the direct method for her Title VII discrimination and harassment actions. Thus, State and Dr. Sanchez will not trouble the Court with a lengthy analysis. In addition, Professor Barnes has failed to identify any facts sufficient to pursue the indirect method inasmuch as she cannot establish: (a) she was performing her job satisfactorily; (b) she suffered an adverse employment action; or (c) similarly-situated employees outside the protected class were treated more

favorable. She continues to be employed by State, she is in the same position and receives the same pay. She is in a unique position with respect to the counseling program (which she acknowledges) and the fact that she has received additional responsibilities in order to save the program are insufficient to establish an adverse employment action. Moreover, her unique position in the counseling program demonstrates she is not similarly-situated to other employees. Finally, under even the most cursory analysis, Professor Barnes was not performing her job satisfactorily under the new economic conditions. The only alternative to the actions of Dr. Sanchez would be for State to eliminate entirely the counseling program. That is an option, State and Dr. Sanchez assume Professor Barnes would not prefer. She cannot have it both ways. If Professor Barnes wants to save her counseling program, she will be required to become more efficient, more productive and demonstrate the counseling program is worth saving. Neither State nor Dr. Sanchez holds any animosity towards Professor Barnes and she has proven none. Indeed, she can prove no action taken by State or Dr. Sanchez that is directed toward anything other than improving Professor Barnes' performance and/or the performance of the counseling program.

III. Damages

Professor Barnes has suffered absolutely no reduction in pay or compensation of any kind. Professor Barnes also has failed to provide any medical documentation of any alleged "emotional distress." Based on the evidence submitted to date, State and Dr. Sanchez demand immediate withdrawal of Professor Barnes' claims of punitive damages as nothing more than a "bully tactic" attempting to damage the professional reputation of Dr. Sanchez. Professor Barnes has wrongly included Dr. Sanchez as an individual defendant and he demands immediate dismissal.

IV. Settlement Analysis

To date, the parties have had only an initial exchange of settlement proposals in which Professor Barnes demanded One Million Dollars, continued employment and additional employment considerations. State and Dr. Sanchez rejected the demand as not being made in good faith and no further settlement discussion has occurred. State and Dr. Sanchez are not optimistic that they can maintain the excellent quality of the counseling program under the guidance of Professor Barnes in light of her poor performance and extremely negative attitude. Thus, their first option is to have her resign and provide her some minimal compensation for her efforts. In the alternative, if Professor Barnes can demonstrate and will pledge a positive team approach, State and Dr. Sanchez will consider ongoing employment.

Respectfully submitted,

Al B. Fair

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