

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Howard Charles Sparks)
)
 Plaintiff,)
)
 vs.)
)
 State of Alaska, University of Alaska)
 and Maurice W. Marr Jr.)
 Defendants.)
 _____) Case No.

COMPLAINT

Comes now Plaintiff, Howard Charles Sparks, By and through his attorney of record, Thomas R. Lucas and complains and alleges as follows.

I. PARTIES

1. Howard Charles Sparks (Sparks) is an individual residing at 117 Concordia Dr., Fairbanks, Alaska and at Thai Inn PO Box 833, Dillingham, Alaska.
2. The University of Alaska (University) is an educational institution with campuses across the State of Alaska, including a campus in Anchorage, Alaska.
3. Maurice W. Marr Jr. (Marr) is an individual residing at 397 Forest Hills CT, Fairbanks, Alaska.

II. EMPLOYMENT RELATIONSHIP

4. At all times material to this Complaint, the University has employed Sparks as a tenured Associate Professor of Accounting.
5. During his entire 11-year career with the University and until March 16, 2005, Sparks was employed at the University's Fairbanks, Alaska campus in the School of Management (SOM) Accounting Department.

6. On March 16, 2005 Sparks was involuntarily transferred to the University's Bristol Bay campus located in Dillingham, Alaska.

7. The reasons given for the involuntary, forced transfer were as follows:

“You are the only person in the School of Management who: 1) has the necessary background, 2) is a senior faculty member, 3) is full time, and 4) is available for assignment”.

III. THE REAL REASON FOR THE TRANSFER

8. In February 2005, the University received The Association to Advance Collegiate Schools of Business's (AACSB) report concerning accreditation for the SOM and Accounting programs.

9. Because the report identified above in paragraph 8 was not entirely positive, there ensued open and frank discussions concerning what needed to be done to insure continued accreditation of the Accounting program.

10. During the discussions described above in paragraph 9, Sparks voiced several opinions, among them his opinion that the Accounting faculty should seek self-governance for the Accounting program as a part of their participation in efforts to maintain accreditation.

11. On March 2, 2005 the final proofs for the fall schedule of classes showing Sparks teaching in Fairbanks were distributed.

12. On March 8, 2005, Marr, Dean of SOM informed the SOM faculty that a decision had been made to allow the AACSB accreditation of the Accounting program to lapse.

13. On March 11, 2005 Marr sent Sparks an e-mail informing him that he would be transferred to teach at the University's Dillingham, Alaska campus.

14. Marr blamed Sparks' expressed opinions described above in paragraph 10 as the reason why SOM would not seek continued AACSB accreditation for the Accounting program.

15. On March 30, 2005, Marr informed several Accounting program students that he would have fired Sparks if he had the authority to do so, but being unable to fire him

did not mean he could not take other punitive measures such as transferring him to work in the remote community of Dillingham.

V. HOW THE TRANSFER AFFECTED SPARKS' PERSONAL LIFE

16. Fairbanks, Alaska is in the Fairbanks North Star Borough, a thriving community of approximately 85,000 people enjoying first class shopping, recreational, educational and cultural facilities.

17. Dillingham, Alaska, accessible only by air and sea, has a population of approximately 2,500 people with limited shopping, recreational, educational and cultural facilities.

18. Sparks was born and raised in Fairbanks, Alaska.

19. Until his transfer to the remote site of Dillingham, Sparks has pursued his entire professional academic career in Fairbanks, Alaska.

20. Sparks enjoys joint custody of two children from a previous marriage, both of whom live in Fairbanks, Alaska.

21. Sparks has a seriously ill mother, aged 84 residing in a nursing home in Fairbanks, Alaska.

22. Sparks has a wife who is gainfully employed and pursuing her career in Fairbanks, Alaska.

23. If Sparks were to move his entire household to the remote site of Dillingham, Alaska it would require him to give up joint custody of his two children..

24. If Sparks were to move his entire household to the remote site of Dillingham, Alaska, his wife would have to give up her gainful employment and career in Fairbanks, Alaska.

25. Because of the transfer, Sparks has been unable to visit his seriously ill, elderly mother as often as he was able to prior to the transfer.

26. Because of the transfer, Sparks suffers from the fear that he will not be readily available if his mother's health takes a sudden turn for the worst.

27. In order to accommodate his concerns expressed above in paragraphs 23 and 24, Sparks has been forced to maintain two residences – one in Fairbanks, Alaska and the other in Dillingham, Alaska.

28. Because Dillingham, Alaska is only accessible by air and sea, Sparks has been forced to expend significant sums for frequent flights to Fairbanks, Alaska in order to maintain his relationship with his wife, children and mother.

29. The University, through its agents, including, among others, Wayne Marr, was well aware of the facts alleged above in paragraphs 16-22 at the time it decided to transfer Sparks to teach at its campus in the remote community of Dillingham.

VI. HOW THE TRANSFER AFFECTED SPARKS' PROFESSIONAL LIFE AND CAREER

30. To be successful in his career, Sparks must engage in research and publish.

31. The Dillingham campus has no library facilities.

32. At the Dillingham campus Sparks is unable to continue teaching in his primary program areas: auditing and informational systems.

33. The Dillingham campus cannot provide research support.

34. The Dillingham campus cannot provide colleagues who are also engaged in research.

35. At the Dillingham campus, Sparks is isolated from the rest of the School of Management faculty located in Fairbanks, Alaska.

36. Sparks' forced transfer to the Dillingham campus seriously disrupts his ability to research and publish; and successfully pursue his career.

VII. HOW THE TRANSFER AFFECTS THE UNIVERSITY

37. Sparks is a nationally recognized accounting scholar (he has received a Notable Contribution Award from the American Accounting Association); and a tenured professor with over 11 years experience.

38. Sparks' professional expertise centers on auditing and information systems.

39. It is well known in the business school community that business schools are having severe difficulty recruiting qualified professors in general and are having a particularly

difficult time in recruiting qualified professors to teach auditing and information systems.

40. In Dillingham, Sparks teaches entry level, essentially “community college” type courses at an expense to the University in excess of \$162,000 per year in wages and benefits.

41. The University could hire adjunct personnel to teach the same entry-level courses and save up to \$147,000 or more per year in addition to what it would save by not being required to hire individuals to teach the SOM courses Sparks used to teach in Fairbanks, Alaska.

42. By transferring Sparks to Dillingham the SOM lost a nationally recognized accounting scholar and its one professor with expertise in both auditing and information systems.

43. Because Sparks is no longer in Fairbanks the SOM has had to actively recruit for a replacement professor with auditing and information systems expertise-the same expertise that the University originally recruited Sparks to provide to the University.

44. Because qualified candidates with auditing and information systems expertise are so difficult to find and recruit, the University has been forced to offer a salary higher than what it paid Sparks when he was at the Fairbanks campus.

45. Because qualified candidates with auditing and information systems expertise are so difficult to find and recruit, the University has been, through the date of this complaint, unsuccessful in finding a replacement for Sparks.

46. By transferring Sparks to Dillingham, the University is wasting taxpayer money and its own faculty assets.

VIII. FIRST CAUSE OF ACTION AGAINST THE UNIVERSITY

(Breach of Contract)

47. The University has a Collective Bargaining Agreement with United Academics – AAUP/AFT.

48. Sparks is a member of the collective bargaining unit and a beneficiary of the Agreement’s terms.

49. By transferring Sparks to the remote community of Dillingham in retaliation for his exercise of academic speech, the University breached the Collective Bargaining Agreement referred to above in paragraph 47.

IX. SECOND CAUSE OF ACTION AGAINST THE UNIVERSITY
(Breach of the covenant of good faith and fair dealing)

50. The Alaska Supreme Court has implied a covenant of good faith and fair dealing in all Alaskan contracts of employment.

51. By transferring Sparks to the remote community of Dillingham in retaliation for his exercise of constitutionally protected speech, the University has breached the covenant of good faith and fair dealing.

X. THIRD CAUSE OF ACTION AGAINST THE UNIVERSITY
(Infliction of Emotional Distress)

52. The University's retaliation against Sparks simply because he exercised his right to academic and constitutionally protected speech was extreme and outrageous.

53. The University's conduct towards Sparks was intentional or reckless.

54. The University's retaliatory transfer of Sparks to the remote community of Dillingham caused Sparks to suffer severe emotional distress.

XI. FIRST CAUSE OF ACTION AGAINST MARR
(Intentional Interference with Contractual Relations)

55. A valid contract existed between the University and Sparks.

56. Marr possessed knowledge of the existing contract between the University and Sparks.

57. Marr induced the University to breach its contract with Sparks.

58. Marr induced the University to breach its contract with Sparks because Marr desired to silence Sparks' exercise of academic and constitutionally protected speech.

59. Marr had no proper justification for his conduct alleged above in paragraph 57.

XI. SECOND CAUSE OF ACTION AGAINST MARR
(Infliction of emotional distress)

60. Marr's retaliation against Sparks simply because he exercised his right to academic and constitutionally protected speech was extreme and outrageous.

61. Marr's conduct towards Sparks was intentional or reckless.

62. Marr's actions causing the University to transfer Sparks to the remote community of Dillingham caused Sparks to suffer severe emotional distress.

WHEREFORE, Sparks prays that the Court enter judgement against the University and Marr for the following:

1. Against the University for breach of contract and breach of the covenant of good faith and fair dealing damages in excess of \$250,000.00, the exact amount to be proven at trial and reinstatement to his previous position in the SOM ;
2. Against the University for infliction of emotional distress, damages in excess of \$750,000.00, the exact amount to be proven at trial;
3. Against Marr for intentional interference with contractual relations, damages in excess of \$250,000.00, the exact amount to be proven at trial;
4. Against Marr for infliction of emotional distress, damages in excess of \$750,000.00, the exact amount to be proven at trial;
5. Against Marr, punitive damages in excess of \$250,000.00, the exact amount to be proven at trial;
6. Against both the University and Marr, reasonable attorney fees, costs and pre-judgement interest; and
7. Such other and further relief as the Court deems equitable and just.

DATED this _____ day of February 2007 at Anchorage, Alaska.

LAW OFFICE OF THOMAS R. LUCAS
Attorney for plaintiff

Thomas R. Lucas
ABA # 8504019

