

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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DR. SABINA BURTON,  
Plaintiff,

v.

Case No. 14-CV-274

BOARD OF REGENTS UNIVERSITY OF  
WISCONSIN, et al.,  
Defendants.

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**DECLARATION OF SABINA BURTON – CORRECTION OF MISTAKES IN THE  
BRIEF IN OPPOSITION OF SUMMARY JUDGMENT**

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Pursuant to 28 U.S.C. § 1746, Sabina L. Burton declares, as follows:

1. I am an adult resident of the State of Wisconsin, the Plaintiff in the above-named case, and I make this declaration based on personal knowledge.
2. My former attorneys, Tim Hawks and Michele Sumara failed to give me opportunity to proof-read, edit or authorize the Brief in Opposition to the Motion for Summary Judgment (Dkt. No. 57) before submitting it in my name. They failed to dispute material facts that I specifically told them to dispute and did not use the information I provided appropriately. I submit this declaration to correct significant misrepresentations of my claims.
3. On Dkt. No. 57, at page 2, correct “January 8, 2015” to read: “January 5, 2015”
4. On Dkt. No. 57, at page 11, in the first full paragraph, after the sentence:  
“Dr. Burton provided the international experience and intelligence background to get the funding,”

Insert the following citation to the record: (RPFOF, Dkt. No. 55, ¶¶75; APFF, Dkt. No. 56, ¶¶27-39).

5. On Dkt. No 57, at page 11, replace:

“The purpose of the meeting was to discuss the creation of a forensic investigation.”

With: “The purpose of the meeting was to discuss the possibility of building a new Cyber Security program to complement the existing Forensic Investigation Program within the CJ department.”

6. On Dkt. No 57, at page Page 13. Add the following:

“During Burton’s October 3 meeting with Throop she showed the websites to Throop. Throop approved of the websites.”

7. On Dkt. No 57, at page 15: Add the following:

“Burton had just received word that her father was in grave condition and informed Caywood of this in the morning of Jan 24, 2013.”

8. On Dkt. No 57, at page 17. Change:

“The adverse action went beyond the withdrawal of support. Dean Thorp's email to Ms. Erikson damaged Dr. Burton's reputation and her potential ability to maintain or increase future grants. A jury could certainly find that a reasonable employee in Dr. Burton's shoes would find the Dean's action in sending such a communication "" dissuaded a reasonable worker from making or supporting a charge of discrimination." Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. at”

To: “The adverse action went beyond Caywood’s withdrawal of support. Caywood’s communication to Dean Throop that Burton did not have his support caused Dean Throop to withdraw her support as well. Caywood defamed Burton to Throop by falsely telling her that

Burton had not obtained the department's support for her cybercrime efforts. This defamatory act caused Dean Throop to further defame Burton to Ms. Erikson in an email which damaged Dr. Burton's reputation with AT&T and her potential ability to maintain or increase future contributions. Caywood and Throop's withdrawal of support also blocked Burton from using the contribution money she had just secured. A jury could certainly find that Caywood's and the Dean's actions could "dissuade a reasonable worker from making or supporting a charge of discrimination." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. at 68."

9. On Dkt. No. 57 at page 19: in the first paragraph change:

"(6) his generalized adverse change in collegiality subsequent to the incident;"

To: "(6) his immediate and severe change in attitude toward Burton;"

10. On Dkt. No. 57 at page 19: In the first paragraph change

"(8) the pretextual, false content in his January 24 missive to Dr. Burton contradicting a statement that he had previously authorized to be made."

To: "his sudden, unexpected, unexplained, pretextual, false and defamatory withdrawal of support for her cyber-crime efforts which he timed for maximum emotional effect."

11. On Dkt. No 57 at page 19: In the first paragraph add the following:

"(9) his lack of empathy for her father's grave condition and the emotional strain it put on her;

10) his treating her in a demeaning and unfair way; 11) his inappropriate behavior toward her;

12) his ignoring her emails; 13) his failure to consider Burton to chair search and screen positions for which she was qualified."

12. On Dkt. No 57 at page 19: change the second paragraph to read:

"Dr. Burton identifies these facts among others as establishing circumstantial evidence sufficient for a jury to find illegal retaliatory motive on the part of Dean Throop: 1) her email to a

representative of AT&T that clearly, albeit implicitly, blamed Dr. Burton for providing misleading information. 2) her refusal to provide assistance when Dr. Burton complained of Dr. Caywood's retaliation for handling the student complaint. 3) A jury can reasonably infer that Dean Throop's comment that she couldn't interfere in faculty governance was attributable to the Dean's frustration that Burton wouldn't let the issue die.”

13. On Dkt. No. 57 at page 21, paragraph B: Replace the following text:

“Subsequent to filing the complaint during the 2013-2014 academic term, Dr. Michael Dalecki, who succeeded Dr. Caywood as Department Chair, repeatedly pressed Dr. Burton to drop her charges and later not to sue. (APFF ~197-201, 203, 209-212, Dkt. No. 56) This pressure was followed by adverse actions by Dean Throop. On October 29, 2014 Dean Throop issued Dr. Burton a disciplinary letter of direction, (Dkt. No. 35-15 at 4-6) then, on December 4, falsely accused her of skipping classes and promised discipline. (APFF ~245, Dkt. No. 56) On January 5, Dean Throop filed a complaint pursuant to Wis. Admin. Code Sec. UWS 6.01 ("Chapter 6 complaint") against Dr. Burton, which can result in serious discipline, and, depending on the results of the investigation following it, may result in UWS Chapter 4 charges for dismissal. (APFF ,1260, Dkt. No. 56) The context establishes that these were materially adverse actions supporting a claim for retaliation”

With: “Subsequent to filing the complaint during the 2013-2014 academic term, Dr. Michael Dalecki, who succeeded Dr. Caywood as Department Chair, repeatedly pressed Dr. Burton to drop her charges and later not to sue. (APFF ~197-201, 203, 209-212, Dkt. No. 56) In concert with Dalecki’s pressure Dean Throop attempted to bribe Burton by awarding her an equity pay adjustment which increased her annual salary. Equity pay is given only after an employee

requests it but in this instance Throop acted without a request from Burton and thereby treated her disparately from her colleagues. The act was financially beneficial to Burton but as evidenced by Defendants' motion for summary judgment it damaged her legal case and thereby was more beneficial to Throop than to Burton. The equity adjustment was not sufficient to bring Burton's pay to equity with colleagues in the department. Dalecki referred to the inequity adjustment as a "raise" as part of his effort to convince Burton to drop her charges. Throop and Dalecki's also attempted to bribe Burton to drop the lawsuit by giving her all outstanding performance evaluation marks in January 2014 but record of those marks mysteriously disappeared from her DRB file the following year. Dalecki's pressure to drop the suit and simmering resentment toward Burton intensified into hostility and anger after Burton filed her lawsuit on April 14, 2014. After that date Dalecki denied Burton's every request even after HR Director Lohmann suggested to him that he offer Burton "half a loaf." (put this in FOFs) The carrot Dean Throop and Dalecki had offered Burton became the stick after the lawsuit was filed. Defendants ignored, delayed and derailed Burton's requests for grievance hearings and investigations. On October 29, 2014 Dean Throop issued Dr. Burton a disciplinary letter of direction, (Dkt. No. 35-15 at 4-6) then, on December 16, 2014 falsely accused her of skipping classes and promised discipline. (APFF ~245, Dkt. No. 56) On January 5, 2015 Dean Throop filed a complaint pursuant to Wis. Admin. Code Sec. UWS 6.01 ("Chapter 6 complaint") against Dr. Burton, which can result is serious discipline, and, depending on the results of the investigation following it, may result in UWS Chapter 4 chargesfor dismissal. (APFF ,I260, Dkt. No. 56) Shortly after Burton was hospitalized with two severe ulcers the DRB gave her poor marks on her annual evaluation, refused to remove Caywood, a defendant in this lawsuit, from the DRB, ignored her written appeal of the DRB's evaluations and removed her prior year's

outstanding marks from her DRB file. (show Dalecki's statement from Deposition that "this eval looks is messed up.") The context establishes that these were materially adverse actions supporting a claim for retaliation."

14. On Dkt. No. 57 at page 22: Replace subsection B.1. with the following:

**"1. Dr. Dalecki's actions were materially adverse to Dr. Burton and causally related to her protected activity**

A significant part of this context is the relationship between Dean Throop and interim CJ chair Dr. Dalecki. On July 10, 2013 Dr. Caywood informed the department that he had been "removed" by the Provost. That same day Dean Throop notified members of the CJ department that Dr. Caywood had "stepped away" from being department chair. That same day the grievance committee, which had heard Burton's grievance against Caywood three months earlier, delivered their second findings. (exhibit ?) Dean Throop appointed Dr. Dalecki to succeed Dr. Caywood as CJ Department Chair. (APFF ,I268, Dkt. No. 56) This was highly controversial and many members of the Department opposed this decision. (APFF ,r,r191-196, 202, Dkt. No. 56; RPFOF ,I144, Dkt. No. 55) On July 11, 2013 Burton, the only member of the department qualified and eligible to succeed Caywood as chair, formally opposed the appointment of Dalecki. ([exhibit 519](#)). A grievance committee later found that Throop had appointed Dalecki in violation of policy and law and recommended that Throop follow policy for selection of the permanent chair. ([UW-P 007398 – 7399](#)) But Throop violated policy again two years later when she attempted, unsuccessfully, to push Dalecki on the department as permanent chair. Dean Throop persisted

in her support of Dalecki, despite departmental opposition, through his second year of service as Chair. Dalecki announced his interest in filling the position permanently. (APFF ,r,r204-205, Dkt. No. 56) The department drafted the position description including minimum qualifications that Dalecki did not possess. The job announcement as written disqualified Dalecki from consideration because he had no background in Criminal Justice. Throop rewrote the job announcement to allow Dalecki to apply. (APFF 1269, Dkt. No. 56) Throop's persistent support of Dalecki established his blind loyalty to the Dean. Significantly, Dalecki's promotion to interim Chair immediately preceded the same period that he was coercing Dr. Burton to drop her lawsuit.

Dr. Dalecki's efforts to coerce Dr. Burton to drop her lawsuit began on October 17, 2013 when Dr. Dalecki spoke to Dr. Burton and said to her, "How dare you contact the Chancellor?" He told her he was the better choice of chair because he knew where skeletons were buried and that, "You can't expect to file a law suit without consequences." On several occasions Dr. Dalecki told Dr. Burton that she should let go of the lawsuit. Dr. Fuller, director of the CJ Master of Science program, said to Dr. Burton that Burton would be "Dean material, but not if [she] continued with the lawsuit." Dalecki made notes of that meeting ([Dkt 34-2 Exh C- Meeting Notes](#)) in which he wrote "I asked Sabina if she had experiences of serving on a real DRB-not what has passed for one in the department for these years-and suggested that her experiences here were not particularly good preparation." Dalecki indicated that he knew that the DRB was a puppet of whomever is in power and his words explain how Burton's DRB evaluation scores were altered to reflect the wishes of the Dean and Chair. Fuller was chair of the DRB in 2014 and 2015.

Shortly after March 26, 2014, when Burton was bribed with a base salary adjustment for inequity, Dr. Dalecki asked Dr. Burton about her intention regarding the lawsuit. He asked if it

was "still on." He became upset when Dr. Burton told him it was. Dr. Burton explained to him that her damages had not been fairly addressed and that she hadn't done anything wrong when she handled the student complaint. He became annoyed again and stated that she "should get over it," that Dr. Burton was getting a "pay raise," which was actually an insufficient and unrequested "inequity adjustment," and nothing good would come from a legal action. Shortly thereafter, Dr. Fuller brought up Dr. Burton's legal intentions. She said Dr. Burton was "sue happy" and that she "shouldn't mess it up with the administration." Dr. Fuller reminded her that she handled her own sexual discrimination complaint against Dr. Caywood without filing a grievance and that it worked out well for her. Dr. Fuller told her that you "don't want to come across as crazy." (APFF para 197-201, 207, 209, 213, Dkt. No. 56)

Dr. Dalecki's statements are reasonably construed to be threats, given the power imbalance between Dr. Burton and him and his support from Dean Throop in the face of departmental controversy. Multiple, consecutive threats, stated to an employee directly, and referring specifically to the employee's protected activity can be a basis for a reasonable juror to infer that a reasonable employee would be dissuaded from making or supporting a charge of discrimination or retaliation. *Planadeball v. Wyndham Vacation Resorts, Inc.*, 793 F.3d 169, 178 (1st Cir. 2015).

Dr. Dalecki also retaliated against Dr. Burton by fostering her social isolation within the department. The "constellation of surrounding circumstances, expectations, and relationships" which have real impact on workplace behavior is certainly as complex, if not more so, in an academic department, as in other workplaces. Social isolation in this environment can rise to the level of injury. Take the case Mr. Jacobus. Upon commencing his graduate assistantship in August 2014, Dr. Fuller advised him that he didn't want to work with Dr. Burton. This, after he

had worked closely as her undergraduate assistant and had been hired specifically to work with Burton. Dr. Dalecki reassigned him to help out in the undergraduate program and cautioned him not to work with Dr. Burton. Ms. Rice, a senior academic staff member, told him that Dr. Burton would not be at UW-Platteville much longer. Then on November 13, 2014 while attending a social event organized by the Department that Dr. Burton didn't attend, Ms. Rice said in his presence and in the presence of Interim Chair Dalecki words to the effect that Dr. Burton had a mental disease. Dr. Dalecki did not correct or reprimand Ms. Rice. Later at that social event, in the student's presence, Provost Den Herder said to Dr. Dalecki that Dr. Burton was on a sinking ship by herself. Mr. Jacobus shared this information with Dr. Burton. (APFF ¶¶ 217-218, 235-238, Dkt. No. 56)

Dr. Burton brought it to the attention of then HR Director Lohmann, who informed Dr. Dalecki about Rice's indiscretion, without telling him who the student was. Dr. Dalecki, assuming the student to be Jacobus, then hailed Mr. Jacobus into his office and berated him but he never reprimanded Rice. Dalecki told Jacobus in graphic terms that he might suffer very severe consequences for having shared information with Dr. Burton. Dalecki told Jacobus that he owed Ms. Rice an apology; that further communication with Burton would not go unpunished; and that he should cast his lot with the side that was paying him. Obviously, Dr. Dalecki as the Interim Chair is on the side that is paying Mr. Jacobus. (APFF ¶¶ 239-244, Dkt. No. 56)

So, taking Mr. Jacobus' declaration as true, a department colleague of Dr. Burton forecast her imminent departure from the university in a student's presence (even though she has no intentions to leave). The same colleague had declared her to be mentally unstable and the department chair sat silent while these things were said in the presence of a student. The chair

proceeds to threaten him for sharing the information with Burton. Dalecki and Throop cancelled the grad assistant position so Jacobus lost his job. Throop and Dalecki gave the reason to be insufficient funds but the administrator of the graduate program, who was in a position to know funding levels, said that funds were available.

A jury could reasonably conclude that the preceding "constellation of surrounding circumstances, expectations, and relationships" would deter a reasonable employee from filing a charge of retaliation or a complaint of same in federal court.

A jury could also conclude that the mosaic of circumstantial evidence is sufficient to establish that Dalecki failed to act to quash Rice's defamatory remarks and instead threatened Jacobus because Dr. Burton had not agreed to withdraw her lawsuit based on his statements to Dr. Burton coercing her to drop her charge and not file a lawsuit and his threats against Dr. Burton's former undergraduate assistant, who had looked forward to working with her in 2014-15 and 2015-16."

15. On Dkt. No. 57, at page 26, replace subsection B.2.a) with the following:

**“a) The October 29, 2014 Letter of Direction, December 4, 2014 false accusations, and January 5, 2015 Chapter 6 Complaint**

The October 29th Letter of Direction Dean Throop sent Dr. Burton enumerates seven specific findings that on their face would amount to employment misconduct. These false accusations continued when, on December 16, 2014, Dean Throop accused Dr. Burton of skipping her class and promised discipline.

Such accusations constitute adverse action as they are damaging to Dr. Burton's reputation and standing in the Department, threatened her physical well-being by increased stress while she suffered from two severe ulcers and were certain to adversely affect Dr. Burton's

annual evaluation and review by the DRB reducing her income and likely delaying the date of a future promotion as well as reducing her ability to be elected to the department chair position. In fact, Dr. Burton's annual evaluation conducted in January, 2015, about two months after the Letter of Direction was issued, was lower than previous years and her prior year's evaluation, which was all outstanding, disappeared from her record book. Dr. Caywood was a voting member of the DRB that evaluated Burton even though he was a defendant in her federal case. Burton wrote an appeal requesting that Caywood be removed from the DRB and her scores be reconsidered but her appeal was ignored. (APFF ,1276, Dkt. No. 56) On this basis alone a jury could find that the receipt of a Letter of Direction and December 16th accusations would deter a reasonable employee from filing a charge or complaint of discrimination.

Similarly, the Complaint filed by Dean Throop against Dr. Burton on January 5, 2015 pursuant to Wis. Admin. Code Sec. UWS 6.01, immediately prior to the DRB review of Dr. Burton's performance, would certainly have the adverse effect as such a Complaint could and did impact on Dr. Burton's performance evaluation and reputation. It, too, would be a deterrent to the filing of a charge or lawsuit alleging discrimination or retaliation.”

16. On Dkt. No. 57, at page 27 replace subsection B.2.b) with the following:

**“b) Dean Throop's Actions were caused by Dr. Burton's protected activity**

A jury could also reasonably conclude that Dean Throop's adverse actions were caused by Dr. Burton's filing of the EEOC charge, federal lawsuit and other protected activities such as filing grievances and requesting investigations. Throop is, after all, a named defendant in this action and two of Burton's grievances. While Defendants' assert that these actions were

legitimate personnel measures, there are facts which could lead a jury to conclude such a claim lacks credibility and is pretextual. The Letter of Direction is filled with pretextual, false accusations and false assumptions of fact and Throop's December 16th allegation that Burton skipped class was proven to be false by an investigation initiated by the Chancellor. The Chapter 6 Complaint is grounded, in part, on false statements, gross exaggerations and demonstrates disparate treatment between Burton and her colleagues. Burton was disciplined for asking a colleague, who never complained about Burton, if she wanted to house sit while Dutelle was accused of soliciting and/or accepting bribes by a DC contractor but was not disciplined. (show Throop's notes here)

With regard to Throop's false assumptions of fact, Dr. Burton identifies them in Dkt No. 37-15 at 030-038. For example, in paragraph #1 of the October 28th letter, Dean Throop writes that she received "dozens" of emails written by Burton in the five month period each of which contained serious accusations against Dr. Dalecki and, presumably, each of which claim abuse and each of which Dr. Burton failed to substantiate. In fact Dr. Burton had either substantiated her allegations or had commenced the process to prove up her allegations to the appropriate faculty governance body -- a grievance filed on August 27, 2014, that would have permitted a adjudication of them. Dean Throop was well aware of the content of the grievance and that the hearing at which these allegations should have been heard was delayed. Dean Throop's allegations in the letter of direction are shown by Dr. Burton to be either false, misleading or exaggerations. (APFF ¶¶219-224, 228, 225, 230, 245-250, 270-272, Dkt. No. 56; RPFOF 233-224, Dkt. 55; Burton Deel. ,r28, Dkt. No. 54-11; Dkt. No. 37-15).

One in particular is inflammatory given the context and a more complete understanding of all the circumstances. In Item #3 of the October 28th letter Dean Throop accuses Dr. Burton

of organizing a visit of colleagues from Germany in June, 2014 then "abruptly" informing the chair that she "had no intention of being part of that visit." (Dkt No. 37-15 at 004) The facts show a very different picture. Dr. Burton's mother had a serious health condition requiring lengthy telephone conversations and considerable worry, and may have required Dr. Burton to fly to Germany on short notice during the delegation's visit with no advance warning. (APFF para 215, Dkt. No. 56) It would have been irresponsible for Dr. Burton not to have alerted Dr. Dalecki of this potentiality. Others on the faculty and staff were involved in the visit as well. (Dkt 37-15 at 032-33) Ironically, the excess funds earned by Dr. Burton in a prior visit of UW-Platteville students to Germany, and donated by Burton to the exchange program, were used to compensate those who were engaged to cover the visit in Burton's absence while Burton was expected to perform the task on an unpaid, volunteer basis and was disciplined for a legitimate absence. Thus, Dean Throop's statement that Dr. Burton had informed Dr. Dalecki that she "had no intention of being part of the visit" is contrary to what actually occurred and a false accusation against Dr. Burton, who had offered to help to the extent she could. Dr. Burton's response to each of the accusations in the Letter of Direction, when coupled with the fact that Dean Throop is a named defendant in this action, provides a reasonable basis to find that Dr. Throop's actions were not a legitimate personnel action but retaliatory discipline caused by Dr. Burton's filing of the charges with the EEOC and the complaint in this action.

For reasons argued above, the Defendants have waived their claim for summary judgment with regard to Dean Throop's Ch. 6 Complaint. But even if they hadn't the record of evidence on this point contains her written reply to the Complaint which provides facts sufficient for a jury to find that it is a retaliatory action without a legitimate basis. (APFF ¶¶219-224, 228,

225, 230, 245- 250, 270-272, Dkt. No. 56; RPFOF 233-224, Dkt. 55; Burton Decl. ,para 28, Dkt. No. 54-11; Dkt. No. 37-15)”

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2016

s/Sabina Burton  
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