

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
CIVIL ACTION NO. 09 CI 6404
3rd

JAMES A. PAXTON,

PLAINTIFF
FILED AND ENTERED
ATTEST, WILMA F. LYNCH, CLERK
DEC 02 2009
FAYETTE CIRCUIT CLERK
BY *[Signature]* DEPUTY
DEFENDANT.

v.

COMPLAINT AND PETITION FOR
DECLARATION OF RIGHTS AND OTHER RELIEF

UNIVERSITY OF KENTUCKY,

Comes the Plaintiff, by counsel, and for his Complaint and Petition for Declaratory Relief against the Defendant, the University of Kentucky (“the University”), states as follows:

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff resides in Lexington, Kentucky, and is enrolled as a full-time student with the University, majoring in Accounting with a 3.3 grade point average, and is on track to graduate in the spring semester of 2010.
2. The University is a governmental entity, and an agency of the Commonwealth of Kentucky, and has its principal place of business within Fayette County, Kentucky.
3. Jurisdiction and venue are proper in this Court because of the residence of the Plaintiff and the principal place of business of the University, and because the events giving rise to the subject matter of this action occurred in Fayette County, Kentucky.

FACTUAL ALLEGATIONS

4. As a University student, the Plaintiff has been, and continues to be, a pitcher on the University’s baseball team.
5. The Plaintiff is a nationally-recognized college baseball pitcher, and anticipates that

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he will be drafted in the first round of the Major League Baseball (“MLB”) draft. Being drafted early in the first round would likely result in a multi-million dollar signing bonus.

6. In October 2009, the Plaintiff was notified by Sandy Bell (“Bell”), a University employee, that he was required to submit to, and participate in, an interview by Chance Miller, Assistant Director of Agent, Gambling, and Amateurism Activities for the National Collegiate Athletic Association (“NCAA”).

7. Bell instructed the Plaintiff not to tell anyone, including his parents or his counsel, about either the interview or the directive that he submit to the interview.

8. Bell told the Plaintiff that, when a University basketball player had cooperated with the NCAA, he had received a six-game suspension rather than a suspension for the entire season.

9. The Plaintiff understood from Bell’s remarks about the basketball player that he would be suspended for some period of time even if he participated in the interview.

10. The University’s Athletic Director, Mitch Barnhart (“Barnhart”), informed to the Plaintiff’s counsel that the Plaintiff would not be permitted to participate on the University’s baseball team until and unless he submitted to the interview. (See Affidavit of Peter L. Ostermiller, attached hereto as Exhibit A).

11. The University and its representatives, including Barnhart, have refused to inform the Plaintiff about the existence or nature of any allegations of misconduct or wrongdoing against him.

12. The Plaintiff is the recipient of a “Grant in Aid” package which pays for his tuition and books at the University, and which is contingent upon his continued participation on the University’s baseball team.

13. Suspension of a student from a University extracurricular activity constitutes a

disciplinary sanction pursuant to the Article I, Paragraph 11 (d) and (e), of the University's Code of Student Conduct. (A copy of the Code is attached hereto as Exhibit B).

14. To the extent the interview is a part of, or may lead to, the disciplinary sanction of suspension, Article I, Sections 7(c) and 25(a), of the Code entitle the Plaintiff to be informed in writing of the specific charges against him.

15. Article I, Section 7(b), of the Code also provides that the Plaintiff is guaranteed the right "not [to] be compelled to give testimony" and that his "refusal to do so shall not be considered evidence of responsibility for an alleged violation."

16. The Plaintiff has played baseball throughout his life and enjoys it, and will suffer irreparable harm if he is excluded from the 2010 baseball season.

COUNT I - PETITION FOR DECLARATORY RELIEF

17. Each of the foregoing allegations is incorporated, as if fully set forth herein.

18. An actual controversy exists between the parties as to whether the Plaintiff may be required to submit to an interview with a NCAA representative as a precondition to his participation in the University's baseball team when the University has refused to inform the Plaintiff of any allegations of wrongdoing or misconduct against him, and as to whether the University may suspend the Plaintiff from the baseball team (or otherwise discipline him) based upon his refusal to submit to the interview.

19. Pursuant to KRS 418.040, the Plaintiff asks the Court to declare that the Plaintiff cannot be compelled to submit to an interview with a NCAA representative as a precondition to his participation in the University's baseball team when the University has refused to inform the Plaintiff of any allegations of wrongdoing or misconduct against him, and to declare that the University

cannot suspend the Plaintiff from the baseball team (or otherwise discipline him) based upon his refusal to submit to the interview.

COUNT II - VIOLATION OF KENTUCKY CONSTITUTION

20. Each of the foregoing allegations is incorporated, as if fully set forth herein.

21. The University's mandate that the Plaintiff submit to an interview with a NCAA representative as a precondition to his participation in the University's baseball team (and, consequently, as a precondition to his continued receipt of a Grant in Aid package), when the University has refused to inform the Plaintiff of any allegations of wrongdoing or misconduct against him, is an arbitrary and capricious action which violates Section 2 of the Kentucky Constitution.

22. The University has informed the Plaintiff that it will suspend him from participation in the University's baseball team, but has not informed the Plaintiff in writing of the specific charges against him, as required by Article I, Sections 7(c) and 25(a), of the Code.

23. By requiring the Plaintiff submit to the interview or face suspension from the baseball team, the University will consider the Plaintiff's refusal to give testimony as evidence that he has violated a rule, which will result in a disciplinary sanction, all in violation of Article I, Section 7(b), of the Code.

24. The University's refusal to adhere to the Code is an arbitrary and capricious action which violates Section 2 of the Kentucky Constitution.

25. The University's instruction that the Plaintiff not tell anyone, including his parents or his counsel, about the interview or the directive that he submit to the interview is an arbitrary and capricious action.

COUNT III - BREACH OF CONTRACT

26. Each of the foregoing allegations is incorporated, as if fully set forth herein.

27. The Code constitutes a contract, whether express or implied, between the University and the Plaintiff.

28. The University's stated intent to suspend the Plaintiff from participation in the University's baseball team without informing the Plaintiff in writing of the specific charges against him constitutes a breach of contract.

29. The University's stated intent to suspend the Plaintiff for not providing testimony to the NCAA constitutes a breach of contract.

30. The Plaintiff will be irreparably harmed as a result of the University's breach of contract.

COUNT IV - BREACH OF COVENANT OF GOOD FAITH

31. Each of the foregoing allegations is incorporated, as if fully set forth herein.

32. An implied covenant of good faith and fair dealing is implied in the contract existing between the Plaintiff and the University.

33. The University's mandate that the Plaintiff submit to an interview with a NCAA representative as a precondition to his participation in the University's baseball team (and, consequently, as a precondition to his continued receipt of a Grant in Aid package), when the University has refused to inform the Plaintiff of any allegations of wrongdoing or misconduct against him, violates the implied covenant of good faith and fair dealing.

34. The University's intent to suspend the Plaintiff from participation in the University's baseball team without informing the Plaintiff in writing of the specific charges, as required by the Code, and for exercising his right to refuse to testify, violates the implied covenant of good faith and

fair dealing.

35. The University's instruction that the Plaintiff not tell anyone, including his parents or his counsel, about the interview or the directive that he submit to the interview violates the implied covenant of good faith and fair dealing.

COUNT V - TEMPORARY INJUNCTIVE RELIEF

36. Each of the foregoing allegations is incorporated, as if fully set forth herein.

37. A substantial question on the merits exists as to the University's right to compel the Plaintiff to submit to an interview with a NCAA representative as a precondition to his participation in the University's baseball team when the University has refused to inform the Plaintiff of any allegations of wrongdoing or misconduct against him.

38. A substantial question on the merits exists as to the University's right to refuse to inform the Plaintiff in writing of the charges against him prior to suspending him from participation in the baseball team.

39. A substantial question on the merits exists as to the University's right to rely upon the Plaintiff's refusal to provide testimony to a representative of the NCAA as a basis for suspending him from participation in the baseball team.

40. The University's requirement that the Plaintiff submit to an interview with a NCAA representative, without informing the Plaintiff of any allegations of wrongdoing or misconduct against him, as a precondition to his participation in the University's baseball team will subject the Plaintiff to irreparable harm. The University indicated to the Plaintiff that, even if he participates in the interview, he will likely be suspended for some indefinite period of time. The University has also stated to the Plaintiff's counsel that, if he does not participate in the interview, he will be

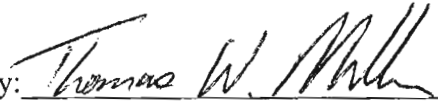
suspended. The Plaintiff's inability to fully participate in the 2010 baseball season will irreparably harm his national ranking and his prospects to be drafted in the first round by the MLB.

41. Pursuant to CR 65.04, the University should be enjoined from requiring the Plaintiff to submit to an interview with a NCAA representative, without informing the Plaintiff of any allegations of wrongdoing or misconduct against him, as a precondition to his participation in the University's baseball team, and should further be enjoined from suspending the Plaintiff from the baseball team (or otherwise disciplining him) based upon his refusal to appear at an interview.

WHEREFORE, the Plaintiff respectfully requests:

- a. A declaration that the University cannot compel the Plaintiff to submit to an interview with a NCAA representative as a precondition to his participation in the University's baseball team, when the University has refused to inform the Plaintiff of any allegations of wrongdoing or misconduct against him, and cannot suspend the Plaintiff from the baseball team (or otherwise discipline him) based upon his refusal to appear at an interview;
- b. A temporary and permanent injunction enjoining the University from compelling the Plaintiff to submit to an interview with a NCAA representative as a precondition to his participation in the University's baseball team, when the University has refused to inform the Plaintiff of any allegations of wrongdoing or misconduct against him, and enjoining the University from suspending the Plaintiff from the baseball team (or otherwise disciplining him) based upon his refusal to appear at an interview;
- c. A trial by jury on all counts so triable;
- d. Attorney's fees and costs herein expended.

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