

**IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA**

**Wayne Van Ellis**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.:** 22-C-75  
**(Judge: )**

**West Virginia University Board of Governors  
A Public Agency**

**Brice Knotts, Individual**

**Defendants.**

**COMPLAINT AND DEMAND FOR A JURY TRIAL**

Plaintiff, Wayne Van Ellis, (hereinafter, "Plaintiff") complains of Defendants West Virginia University Board of Governors ("WVUBOG") and Brice Knotts ("Knotts") his former immediate supervisor as follows:

**NATURE OF THE CASE**

1. This is an employment discrimination case, brought pursuant to the provisions of the West Virginia Human Rights Act ("WVHRA") as to race and disability-based discrimination, hostile work environment and retaliation.
2. Plaintiff alleges that the Defendants' have, collectively, engaged in a pattern and practice of employment discrimination, harassment, and retaliation both intentional and systemic, on the basis of race and disability against himself as alleged more fully in this Complaint.
3. Defendants' discriminatory practices include, but are not limited to, discrimination in job discipline and termination as alleged in this Complaint.

**FILED**

**APR -5 2022**

**JEAN FRIEND, CLERK**

4. Further, a failure to correct the racist behavior of supervisors and co-workers, promoting an environment of racial intimidation, and failing to act to protect him from persistent racial intimidation based upon his race.
5. Further, Defendants' discriminatory practices include, but are not limited to, discrimination in discipline and termination as alleged in this Complaint due to his disabilities: depression, anxiety, and panic disorder.
6. Further, failure to correct discriminatory, harassment and retaliatory behavior of a supervisor and co-workers based upon his disability.
7. Plaintiff seeks injunctive and equitable monetary relief from these practices, compensatory and punitive damages, and an award of costs, expenses, and attorneys' fees.

#### **JURISDICTION AND VENUE**

8. This Court has jurisdiction of Plaintiff's WVHRA claims under West Virginia law.
9. Venue is proper in this court as Defendants are subject to personal jurisdiction in this county since it maintains facilities and business operations in this county, employed Plaintiff in this county and committed the discriminatory acts alleged herein in this county.

#### **PARTIES**

10. Plaintiff is an adult citizen of West Virginia.
11. Plaintiff is an African American male and is a member of a class of individuals protected against discrimination, harassment and/or retaliation on account of his race.
12. Further, Plaintiff is a disabled male who is a member of a class of workers protected from discrimination, harassment and/or retaliation on account of his disabilities.

13. Plaintiff began working for WVU from on or about January 1, 2018, to April 30, 2021 as a consultant and then as the Assistant Director of Academic Enterprise Applications – Banner (Student Information Systems) Operations.
14. Defendant West Virginia University Board of Governors (“WVUBOG” or “WVU”) is a Public Agency (“University”) with a principal place of business in Morgantown, West Virginia at 103 Stewart Hall, Post Office Box 6201, Morgantown, West Virginia 26506.
15. Individual Defendant is Brice Knotts (“Knotts”), Plaintiff’s supervisor who, upon information and belief, is a resident of Monongalia County, West Virginia. Knotts works in the chain of supervisory succession having the authority to discipline, hire and fire the Plaintiff.

#### **FACTUAL ALLEGATIONS**

16. Plaintiff advised WVUBOG and Knotts regarding his anxiety, depression, and panic disorder and regarding the fact that the stress of the job was causing and exacerbating his disabilities.
17. Plaintiff avers that once he began full time employment at WVU, it was very hard to work with certain people in his department at WVU.
18. Further, Plaintiff avers it got to the point where he was constantly challenged and that he always had to explain the decisions that he made, and that his capabilities were constantly questioned and undermined.
19. Plaintiff avers that other Caucasian and non-disabled employees in his department were not “challenged” like he was and that he expressed the same to another supervisor, Brian Kraus and inquired why he had to thoroughly explain his decisions. Mr. Krauss agreed that nobody else received the same treatment as the Plaintiff.

20. Plaintiff avers that people started to make comments about his behavior and make comments like, "Wayne is angry and aggressive, and people are afraid of him, people don't like working with him, he's intimidating."
21. Plaintiff avers these are stereotypical buzz words that people use against black men.
22. Plaintiff avers that he frequently went to Mr. Krauss and stated, "so if I was a white guy would people be saying this? I feel like if I were a white guy people would be saying hey, what a strong personality! He takes no prisoners! He has an awesome, strong personality, but the black guy is an angry black man."
23. Plaintiff avers that thereafter Knotts discriminated against him by putting him on the spot in meetings acting as if Plaintiff did not know what Banner was and would question his knowledge of Banner in meetings with colleagues and subordinates.
24. Plaintiff avers that Knotts encouraged his colleagues and subordinates to come to him to complain about the Plaintiff and then he would have to sit and explain himself to Knotts and Mr. Kraus about how he knew what he was doing.
25. More specifically, Plaintiff avers that on one Sunday evening, one of his colleagues had written a scathing email about how the Plaintiff did not know what was going on and the Plaintiff was then forced to have a meeting and share print screens with Knotts and Mr. Kraus and to explain to them what and why he knew what he knew.
26. Plaintiff made a written complaint to Mr. Krause in April 2020, and while WVUBOG agents discussed a formal complaint, no action was undertaken to engage the Plaintiff in a discussion about whether he wanted to file a formal complaint, nor was there a good faith investigation at that time into his allegations of racism and disability harassment.



27. Plaintiff avers that he reported that the situation was extremely frustrating and stressful for a person who is an expert in his field and has over thirty years' experience to have to entertain complaints from people who don't know their job, so they're questioning his.
28. Plaintiff avers that Knotts entertained the gossip and ratified and encouraged it from the team.
29. Plaintiff avers that gossip and harassment got out of hand with three coworkers: Susan Walker, Beth Taylor and Walt Chmiel who along with Knotts began creating a hostile work environment by constant belittling and racist comments as well as constant attempts to undermine Plaintiff's job.
30. Plaintiff avers that the harassment went on for at least a year and a half and everything he attempted to do on the job was met with resistance and hostilities.
31. Plaintiff avers that he was constantly fighting an uphill battle just to do his job and was extremely stressed at having to validate his work.
32. Plaintiff avers that he and Ms. Walker, Ms. Taylor, and Mr. Chmiel were all given a "Letter of Expectation" to improve the work relationship between them all, although he had communicated to Mr. Krause and Knotts on several occasions that he felt the harassment was racially motivated and should be dealt with through diversity and inclusion training. Further, another employee, Sucharitha Bachanna, also felt that Diversity Training was needed.
33. In fact, Plaintiff filed several written complaints and requested that action be undertaken by his supervisors and although Mr. Krause agreed that he believed that discrimination was occurring, he was powerless to make changes without Knotts who refused to acknowledge that there was harassment, or that it was racially motivated.
34. Plaintiff avers that all the parties signed a letter agreeing to treat each other with respect among other things but the letter did nothing to stop the harassment.

35. Plaintiff avers that diversity training was conducted in February of 2021, but nothing changed and in fact the harassment increased.
36. Furthermore, Plaintiff avers that he was constantly going back to Mr. Kraus and explaining that the others were violating the prior letter of agreement and the harassment was getting worse. Once more, Plaintiff would go to Mr. Kraus and explain that if he acted like that to others, he would have a ton of complaints and Mr. Kraus agreed with Plaintiff. Once more, Mr. Kraus would always reply "I am working on this" but nothing changed.
37. Furthermore, even though some employees were non-renewed the animosity increased once these individuals were non-renewed and other employees who knew or were friends with Caucasian workers that were non-renewed, would engage in harassment of the Plaintiff and file false complaints against the Plaintiff which he avers were again, racially motivated.
38. Plaintiff was subsequently non-renewed and no longer has a position despite having moved his family from California to accept the position for which he was informed in writing that if his performance was sufficient, he would be renewed. Plaintiff's performance was never in question and in fact, exceeded expectations. Nonetheless, because he is African American, WVU chose to non-renew his contract rather than stand up to racism in his department.
39. Moreover, Mr. Krauss stated to Plaintiff that he knew the Plaintiff should not have been fired and that the other Caucasian employees that had done things that were deserving of termination were not fired.
40. Defendants' employment practices discriminate against African American employees because of their race in the Morgantown WVU location.

41. The discriminatory practices engaged in by Defendants are intentional and systemic in nature, and adversely affected the Plaintiff with respect to opportunities for job assignment, compensation, and other terms and conditions of employment.
42. Upon information and belief, Defendant's upper-level management is comprised almost exclusively of white men. Therefore, the homogenous racial composition is, upon information and belief, predominately white men.
43. Upon information and belief, white male managers have communicated Defendant's discriminatory policies and practices in explicit terms to subordinates and they make personnel decisions and refuse to hire and/or promote African American workers, discipline, or retaliate against African American workers or give them jobs that and allow Caucasians to harass and undermine their position to the point of non-renewal.
44. Defendants' complexes refuse to implement policies that prevent and remedy systemic racism or discrimination and harassment.
45. Further, although Plaintiff complained of, and objected to, the unlawful treatment, no action was taken to correct or remedy the harassment.
46. These hostilities and consequent failure of the Defendants to remedy the racist and discriminatory culture due to disability caused the Plaintiff to seek medical treatment including but not limited to treatment for mental health issues caused by the treatment and exacerbation of mental health disabilities, therapy and mental health medications for depression, anxiety, and panic disorder.
47. Plaintiff alleges Defendants, by the actions of its supervisors and employees, have violated the WVHRA arising from unlawful discriminatory and harassing conduct and retaliatory practices of the Defendants on account of Plaintiff's race and disability as more fully described within.

48. The actions of Plaintiff's supervisor make the Defendants liable under a theory of strict liability.
49. The Plaintiff's supervisor, Knotts, is liable under a theory of supervisor liability.
50. Plaintiff was discharged by the Defendants.
51. Defendants are also liable for the actions of its agents under the doctrine of *Respondeat Superior*.

**COUNT 1**  
**WEST VIRGINIA HUMAN RIGHTS ACT (RACE DISCRIMINATION)**

52. Plaintiff incorporates herein the previous averments as if fully set forth.
53. By the conduct described above, Defendants intentionally deprived the Plaintiff of the same rights as are enjoyed by white citizens to the creation, performance, enjoyment, and all benefits and privileges of his employment relationship with WVU, in violation of the WVHRA.
54. As a result of Defendants' discrimination in violation of the WVHRA, African American's including the Plaintiff has been denied employment opportunities providing substantial compensation and benefits, thereby entitling him to injunctive and equitable monetary relief; and have suffered anguish, humiliation, distress, inconvenience, and loss of enjoyment of life because of Defendants' actions or inaction, thereby entitling him to compensatory damages.
55. In its discriminatory actions as alleged above, Defendants acted with malice or reckless indifference to the rights of the above-named African American Plaintiff, thereby entitling him to an award of compensatory damages.
56. Further, the Defendants intentionally discriminated against Plaintiff as more fully described above due to his race: African American and because of his disability.
57. To remedy the violations of the rights of the Plaintiff secured by law, Plaintiff requests that the Court award him the relief prayed for below.

**COUNT 2**  
**WEST VIRGINIA HUMAN RIGHTS ACT (HOSTILE WORK ENVIRONMENT)**

58. Plaintiff incorporates herein the previous averments as if fully set forth.
59. Plaintiff was subjected to harassment by his immediate supervisor and Defendants' agents and employees as more fully described above.
60. Defendants' agents and employees' conduct including that of his supervisor was not welcomed by Plaintiff.
61. Defendants' agents' and employees' conduct including that of his supervisor was undertaken because of Plaintiffs' protected class, African American.
62. The conduct was so severe and/or pervasive that reasonable persons in Plaintiffs' position would find their work environment to be hostile and abusive.
63. Plaintiff believed his work environment to be hostile and abusive as a result of Defendants' agents' and employees' conduct including that of his immediate supervisor, Knotts.
64. Management and executive level employees knew, or reasonably should have known, of the hostile and abusive conduct.
65. Further, Plaintiff provided management level personnel, including, *inter alia*, Knotts and Mr. Krause, with information sufficient to raise a probability of African American harassment in the mind of a reasonable employer.
66. Moreover, the harassment was so severe, pervasive, and open that a reasonable employer would have had to have been aware of it. Indeed, management level employees, including Knotts were themselves complicit in the abusive conduct.
67. Defendants did not exercise reasonable care to prevent harassment in the workplace on the basis of race, African American, and did not exercise reasonable care to promptly correct and/or remedy any harassing behavior that did occur.

68. As a direct, legal and proximate result of the discrimination, Plaintiff has sustained, and will continue to sustain, economic and emotional injuries, resulting in damages in an amount to be proven at trial.
69. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiffs' right to be free from discrimination based on his protected status, African American entitling Plaintiff to compensatory relief.
70. Plaintiff is entitled to his reasonable attorneys' fees and costs of suit.

**COUNT 3**  
**WEST VIRGINIA HUMAN RIGHTS ACT (RACE BASED RETALIATION)**

71. Plaintiff incorporates herein the previous averments as if fully set forth.
72. Plaintiff objected to the unfair treatment and discrimination to his supervisor, Knotts, as more fully described above.
73. However, the discriminatory treatment only became more severe and/or pervasive including termination.
74. For this reason, Plaintiff avers that there is a causal connection between the Defendants' treatment, statements, and actions and the fact that Plaintiff is African American. Thus, the actions and statements were motivated by his race.
75. Plaintiff was fired from his job. This, including the harassment constitutes an adverse action.
76. The actions of the Defendants, as more fully described above, including being forced to endure persistent and constant harassment and later fired from his job were causally connected to his race.
77. As a direct, legal and proximate result of the retaliation, Plaintiff has sustained, and will continue to sustain, economic and emotional injuries, resulting in damages in an amount to be proven at trial.

78. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiffs' right to be free from retaliation based on his protected status, African American entitling Plaintiff to compensatory pain and suffering relief.
79. Plaintiff is entitled to his reasonable attorneys' fees and costs of suit.

**COUNT 4**  
**WEST VIRGINIA HUMAN RIGHTS ACT (DISABILITY DISCRIMINATION)**

80. Plaintiff incorporates herein the previous averments as if fully set forth.
81. The Plaintiff avers that he is a qualified individual with a disability under the WVHRA due to his disabilities: anxiety, depression and panic disorder and Plaintiff's notice of the same to the Defendants.
82. The WVHRA prohibits discrimination in the workplace against employees who have, *inter alia*, sought assistance for a disability in the workplace.
83. Plaintiff requested that hostilities in the workplace cease and be prevented as they were causing him stress and exacerbating his health conditions. This constitutes "protected activity" pursuant to state law, i.e., to prevent disability-based harassment.
84. Defendants discriminated against the Plaintiff on account of his protected activity.
85. The Plaintiff avers that Defendants' purported basis to force him from his job, non-renewal, termination (e.g., that he was complicit in the hostilities) were based upon discriminatory animus.
86. As a direct, legal, and proximate result of the discrimination, Plaintiff has sustained, and will continue to sustain, economic and emotional injuries, resulting in damages in an amount to be proven at trial.



87. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiffs' right to be free from retaliation based on his protected status, disability, entitling Plaintiff to compensatory pain and suffering relief.
88. Plaintiff is entitled to his reasonable attorneys' fees and costs of suit.

**COUNT 5**  
**WEST VIRGINIA HUMAN RIGHTS ACT**  
**HOSTILE WORK ENVIRONMENT (DISABILITY)**

89. Plaintiff incorporates herein the previous averments as if fully set forth.
90. The Plaintiff avers that he is a qualified individual with a disability under the WVHRA due to his disabilities and defendants' notice of the same.
91. Additionally, the Plaintiff has been under a physician's care for his disabilities since he was diagnosed.
92. The Plaintiff was subjected to unwelcomed harassment after his notification of his disabilities, and after he voiced his objections to Mr. Krauss and Knotts of his mistreatment and the discriminatory behavior toward him.
93. Further, Plaintiff was subjected to further humiliation and harassment when Defendants failed to correct or remedy the ongoing harassment.
94. The harassment was sufficiently severe and/or pervasive as to alter the conditions of the Plaintiff's employment, to create an abusive and hostile working environment, ultimately resulting in the termination of Plaintiff's contract.
95. Defendants knew, or reasonably should have known of the harassment, and failed to take prompt, effective remedial action, instead taking adverse action against the Plaintiff, further disciplining, and berating him and ultimately terminating him due to his disabled condition.



96. As a direct, legal and proximate result of the discrimination, Plaintiff has sustained, and will continue to sustain, economic and emotional injuries, resulting in damages in an amount to be proven at trial.
97. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiffs' right to be free from retaliation based on his protected status, disability, entitling Plaintiff to compensatory pain and suffering relief.
98. Plaintiff is entitled to his reasonable attorneys' fees and costs of suit.

**COUNT 6**  
**WEST VIRGINIA HUMAN RIGHTS ACT**  
**DISABILITY (RETALIATION)**

99. Plaintiff incorporates herein the previous averments as if fully set forth.
100. The WVHRA prohibits retaliation in the workplace against employees who have, *inter alia*, sought assistance in the workplace or to have otherwise opposed practices made unlawful under the law.
101. The Plaintiff's request for hostilities to cease in the workplace constitute "protected activity" pursuant to state law.
102. Defendants retaliated against the Plaintiff on account of his protected activity and objections to the discriminatory conduct.
103. The Plaintiff avers that Defendants' purported basis to fire him from his job (e.g., that he was complicit in the hostilities) were based upon discriminatory animus.
104. As a direct, legal, and proximate result of the discrimination, Plaintiff has sustained, and will continue to sustain, economic and emotional injuries, resulting in damages in an amount to be proven at trial.

105. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to Plaintiffs' right to be free from retaliation based on his protected status, disability, entitling Plaintiff to compensatory pain and suffering relief.
106. Plaintiff is entitled to his reasonable attorneys' fees and costs of suit.
107. As a direct and proximate result of the Defendants' wrongful conduct as aforesaid, the Plaintiff has suffered, and will continue to suffer, the following injuries and damages:
108. Loss of employment.
109. Lost wages and benefits.
110. Mental anguish and humiliation.
111. Loss of ability to enjoy life; and,
112. Damages to reputation.
113. The discharge of the Plaintiff's employment was done in a willful, wanton, and malicious manner such as to entitle him to an award of compensatory pain and suffering damages.
114. The Defendants are liable for the actions or inactions of its employees who participated in the discharge of Plaintiff pursuant to principles of agency and the doctrine of *Respondeat Superior*.
115. The discharge of the Plaintiff, which has been validated by WVUBOG, constitutes willful, wanton, and malicious behavior which warrants an award of compensatory pain and suffering damages.
116. The Plaintiff seeks no relief under any federal laws or regulations, asserts no federal claims, and withdraws any asserted state law claims that are preempted, or otherwise directly controlled, by federal law.

117. Furthermore, no claims asserted herein should be understood to require interpretation of any collective bargaining agreement, and to the extent interpretation of a collective bargaining agreement is required said claims are withdrawn.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court grant relief on his Causes of Action as specified below.

118. The Plaintiff prays that the Court award monetary relief as follows:

119. On his Causes of Action, order Defendant to pay equitable monetary relief and compensatory damages to the Plaintiff as are asserted under the WVHRA, as applicable, and in an amount to be proven at trial.

120. The Plaintiff prays that the Court award him his costs, expenses, and attorneys' fees, payable by the Defendants, as follows:

121. Further, by determining that the Plaintiff is a prevailing party on his Causes of Action under the WVHRA, thereupon awarding the Plaintiff his reasonable costs, expenses, and attorneys' fees incurred in bringing this action, pursuant to the WVHRA or any other applicable statutory language.

122. The Plaintiff prays that the Court award monetary relief as follows:

123. The Plaintiff prays that the Court order Defendants to pay pre- and post-judgment interest in all monetary amounts awarded in this action, as provided by law.

124. The Plaintiff prays that the Court retain jurisdiction of this case for a sufficient period to assure that Defendants fully comply with the remedies requested herein and has remedied to the greatest extent practicable the discriminatory policies and practices complained of herein, and that Defendants operate in full compliance with the requirements of the law with regard to its employment policies and practices.

125. The Plaintiff prays that the Court award such other and further relief as this Court deems equitable and just.

Dated: April 4, 2022

Respectfully submitted,

DONHAM LAW

By: 

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