

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

WARTHELL BROWN ILES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 86-0546-R
	)	
DR. MARY OLGAS and	)	
M.C.V. SCHOOL OF NURSING	)	
	)	
Defendants.	)	

ORDER

This matter is before the Court on the defendants' motion to dismiss. For the reasons stated in the accompanying memorandum opinion, the Court GRANTS the defendants' motion in part and DENIES it in part. The Court AMENDS its order of 21 August 1986 to the extent that the plaintiff's complaint is filed nunc pro tunc 30 July 1986, and accordingly denies the defendants relief on the asserted statute of limitations grounds. The Court grants the defendants' motion to the extent that the plaintiff's claims against Dr. Mary Olgas, in her official capacity, and against M.C.V. School of Nursing are DISMISSED. The Court denies the defendants' motion to the extent that the plaintiff's claim against Dr. Mary Olgas individually remains. The plaintiff is DIRECTED to submit a more particular statement of her claim against Dr. Olgas individually and of the relief she seeks from this Court.

Judgment shall enter on behalf of Dr. Mary Olgas, in her official capacity, and on behalf of M.C.V. School of Nursing.

Let the Clerk send a copy of this order and the accompanying memorandum opinion to the pro se plaintiff and to all counsel of record.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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Defendants. )

MEMORANDUM OPINION

Warthell Brown Iles ("Iles"), a former member of the faculty of the Department of Medical-Surgical Nursing of the Medical College of Virginia/Virginia Commonwealth University School of Nursing, filed suit pro se under 42 U.S.C. sections 1981 and 1983 against the Medical College of Virginia School of Nursing ("MCV") and Dr. Mary Olgas, professor and chairperson of Medical-Surgical Nursing at MCV, ("Olgas"). Iles alleges that on 31 July 1984 Olgas dismissed her as an MCV faculty member without just cause and with "discrimination and prejudice." Iles further alleges that her dismissal has caused her extreme hardship, severe difficulty in obtaining other employment, and the loss of her home. The defendants have submitted a motion to dismiss. The motion, having been briefed and being uncontested by the plaintiff, is now ripe for disposition.

The Court GRANTS the defendants' motion to the extent that the plaintiff's claims against MCV and Olgas, in her official capacity, are dismissed.

"[I]n the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." Pennhurst State School & Hospital v. Helderman, 465 U.S. 89, 100-01 (1984). This is true whether the relief sought is legal or equitable. Id. at 102; Simpson v. Longwood College, CA No. 86-0171-R, order at 3 (E.D. Va. August 15, 1986). Neither the Commonwealth nor its agencies and departments has waived its Eleventh Amendment immunity by consenting to section 1981 or 1983 suits. Id.; Croatan Books, Inc. v. Virginia, 574 F. Supp. 880 (E.D. Va. 1983). Virginia Commonwealth University, Medical College of Virginia, and their operating divisions, units and schools, are agencies of the state. See Wilbern v. Virginia Commonwealth University, Medical College of Virginia, CA No. 85-0279-R, opinion and order at 3 (E.D. Va. August 25, 1985); Va. Code Ann. sections 23-50.4 through 23-50.15. Accordingly, MCV has Eleventh Amendment immunity from suit under 42 U.S.C. sections 1981 and 1983, and the plaintiff's claims against it must be dismissed.

In addition, the Eleventh Amendment prohibits suits against state officials sued in their official capacities when "the state is the real, substantial party in interest." Pennhurst, 465 U.S. at 101. Thus, the "general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." Id. A judgment against Olgas for action undertaken in her official capacity as an MCV agent would constitute a judgment against the funds of the state. See Jacobs v. College of William and Mary, 495 F. Supp. 183 (E.D. Va. 1980), cert. denied, 454 U.S. 1033 (1981). The plaintiff's

claims against Olgas in her official capacity, therefore, must also be dismissed.

Individual defendants do not share the state's immunity personally, however. Wilbern, at 5. Although the complaint fails to specify whether Olgas is being sued in her official capacity, in her individual capacity, or both, "allegations against state officials should be liberally construed in favor of the plaintiff." Jacobs, 495 F. Supp. at 188, n.6. Therefore, the complaint is deemed to include a claim against Olgas individually. See Ahmed v. Burke, 436 F. Supp. 1307, 1311-12 (E.D. Pa. 1977). Consequently, if her actions violated 42 U.S.C. sections 1981 and/or 1983 and she acted on her own initiative, with the intent or purpose to discriminate, while wearing the cloak of her official capacity, Olgas is individually liable and cannot hide behind MCV's Eleventh Amendment immunity. Wilbern, at 5; Faraca v. Clements, 506 F.2d 956 (5th Cir. 1975). For these reasons, the Court DENIES the defendants' motion inasmuch as the plaintiff's claim against Olgas individually remains.

The Court notes that the plaintiff's complaint merely alleges that she was dismissed from her faculty position without just cause and with prejudice and discrimination. Olgas should not be expected to speculate on the nature of the plaintiff's claims and the relief the plaintiff seeks from this Court. Accordingly, the Court DIRECTS the plaintiff to submit a more particular statement of her claims and the relief she seeks.

An order will enter in accordance with this opinion.

DATE \_\_\_\_\_

  
UNITED STATES DISTRICT JUDGE