

FIRST JUDICIAL CIRCUIT
CLAY COUNTY, SOUTH DAKOTA

MYANNA DELLINGER,
Plaintiff

v.

JAMES D. MORAN III,
Defendant

MOTION FOR DECLARATORY JUDGMENT

1. Plaintiff Myanna Dellinger, by and through the undersigned counsel, states and alleges as follows:

SUMMARY

2. A dispute has recently arisen at the University of South Dakota between USD law school faculty member Dellinger, the Law School Dean and five tenured, full Professors at the Law School on the one hand, and the USD Provost on the other. The Dean, and the five other law professors who comprise the Law School's Retention, Promotion and Tenure Committee, have determined that Plaintiff, a tenure-track Associate Professor at the Law School, is eligible for consideration for tenure this year under the Law School's Tenure Rules, and have recommended that she be awarded tenure. The Defendant, who serves as Provost and Vice President of Academic Affairs at the University, believes that Plaintiff is ineligible for tenure consideration, and has refused to further process her tenure application. Because this dispute has significant implications for Plaintiff's current and future employment status, she is seeking this declaratory judgment to resolve the dispute and determine whose interpretation of the Law School's tenure rules and her rights as an employee is correct. Pursuant to SDCL 21-24-1, Plaintiff seeks a declaration that she is eligible to be considered for tenure this academic year at the University of South Dakota ("USD") School of Law and an order directing Defendant to continue processing her application so that it may be considered by the South Dakota Board of Regents on the merits later this spring.

PERSONAL JURISDICTION

3. Plaintiff Myanna Dellinger is an Associate Professor of Law at the University of South Dakota in Vermillion and a resident of Clay County, South Dakota. Plaintiff's place of business is University of South Dakota School of Law, 414 E. Clark St., Vermillion, SD 57069. She is a resident of Clay County.

4. Defendant James (Jim) M. Moran III, Ph.D., is the Provost and Vice President of Academic Affairs for the University of South Dakota in Vermillion, South Dakota. Defendant's place of

business is Office of the Provost, University of South Dakota, Slagle Hall, Room 102, 414 E. Clark St. Vermillion, SD 57069.

SUBJECT MATTER JURISDICTION

5. Subject matter jurisdiction exists under SDCL 21-24-1, *et seq.*, the Uniform Declaratory Judgment Act, which authorizes this court to issue a declaratory judgment. The dispute concerns an interpretation of the Retention, Promotion and Tenure rules of the University of South Dakota School of Law and the tenure policies of the University of South Dakota and South Dakota Board of Regents as applied to Plaintiff under her employment contract with the University of South Dakota. These tenure rules and policies are incorporated by reference as terms of Plaintiff's employment contract as a faculty member of the University of South Dakota School of Law. SDCL 21-24-3 provides jurisdiction in any circuit court as follows: "Construction and determination of validity of written instruments, legislative acts, and franchises. Any person interested under a deed, will, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." See also, *Kneip v. Herseth*, 87 S.D. 642 (SD 1974).

FACTS

6. Plaintiff was offered a contract as a tenure-track Associate Professor of Law at the USD School of Law on May 29, 2015, by Law School Dean Thomas Geu effective for the 2015-16 academic year. (Exhibit A). This contract was renewed for academic year 2016-17 and 2017-18.

7. At the time she was offered employment by USD School of Law, Plaintiff was a tenure-track Associate Professor of Law at Western State University College of Law ("Western State") in Fullerton, California, a law school accredited by the American Bar Association ("ABA"). Plaintiff was in her fourth year of full-time teaching at Western State, where she had joined the faculty for the 2011-12 academic year. She had been promoted from Assistant Professor to Associate Professor in spring 2014, effective for the 2014-15 academic year. Prior to being hired at Western State, Plaintiff had taught for one year as a Visiting Assistant Professor at another ABA-Accredited law school in academic year 2010-11 (Exhibit B).

8. Plaintiff was recruited to teach at USD School of Law by the Dean of the Law School and the Chair of the Faculty Appointments Committee. She was ultimately offered a position on the faculty because of her outstanding academic credentials, her impressive record of scholarly productivity and rapidly growing national reputation as a scholar, her excellent evaluations as a teacher, her strong record of service to her prior law schools and to the legal profession as a whole, and her unique combination of expertise in both domestic commercial law and public international law. Professor Dellinger was also sought after for the diversity she brought to the law school as the ABA had recently found the law school out of compliance with ABA Standards on faculty and staff diversity, and had expressed particular concern with the lack of gender diversity during their 2013 sabbatical accreditation site visit.

9. Before Plaintiff was made an offer of employment, she engaged in several discussions with the Dean regarding the terms of her employment. Plaintiff was particularly concerned about her continued career progression and repeatedly sought clarity on when she would be eligible for tenure. Plaintiff would have been eligible for tenure at her then current employer (Western State) the following year if she remained on the faculty there. She wanted to ensure that making a lateral move to USD would not set her back in her career for an unduly long period. Plaintiff was repeatedly assured by the Dean that the expected timeframe for an Associate Professor at the law school to be considered for tenure would be in the third year of teaching as an associate professor. Plaintiff was also repeatedly promised orally by the Dean that, with an appointment to the rank of Associate Professor, assuming she continued to meet expectations for teaching, scholarship and service, that she would be eligible for tenure consideration not later than her third year in residence at the law school and that he did not foresee any obstacles to her receiving tenure. While the Dean made it clear that he could not guarantee that she would be **awarded** tenure, he did provide assurances that she would be **considered** for tenure within that specific timeframe. Plaintiff and the Dean also specifically discussed the law school's tenure rules which say that an Associate Professor "normally" is considered for tenure in their sixth year of service, and he explained that this provision was for faculty members who started their career at USD School of Law as Assistant Professors. If she could come in as a laterally-appointed Associate Professor,¹ she would only have to serve three years as an Associate Professor before applying for tenure on par with the other Associate Professors on the faculty.²

10. Prior to the start of the Academic Year 2017-18, which was to be Plaintiff's third year in residence at the law school, Plaintiff was invited to apply for tenure by the Law School's Retention, Promotion and Tenure Committee ("RPT Committee") and the Dean of the Law School. Plaintiff confirmed to the Dean and the RPT Committee her plans to apply for tenure. The Dean directed the Associate Dean of Academic Affairs to seek external reviews of her scholarship as required to be included with her tenure application. In conjunction with her application for tenure, and in accordance with the Board of Regents Policy, Plaintiff also filed a Petition for Prior Service Credit with the South Dakota Board of Regents, requesting that she be granted three years of credit for the five years of law school teaching experience that she had prior to being appointed to the USD School of Law faculty. (Exhibit C). It was understood by all parties that if this petition were granted in full, Plaintiff would be formally considered to be in her sixth year of service at the school (three years in residence, plus three years of prior service credit) and thus eligible for tenure consideration this academic year as if she had actually served six years in residence at USD.

¹ Entry-level law professors at USD School of Law are appointed as Assistant Professors and are expected to apply for promotion to Associate Professor in their third year of employment. If promoted, they are appointed as Associate Professors effective for their fourth academic year.

² It should be noted that at the beginning of Academic Year 2016-17, Provost Moran sought, without lawful authority, to unilaterally breach Plaintiff's employment contract and strip her of her title as Associate Professor of Law and demote her to Assistant Professor. Ultimately, this effort failed and Plaintiff retained the title which she had bargained for. Much like Provost Moran's effort to block Plaintiff's tenure application, this effort had nothing to do with Plaintiff's merits as a teacher or scholar, and, on information and belief, was primarily motivated by the Provost's desire to prevent Plaintiff from being considered for tenure within the expected timeframe for an Associate Professor.

However, because Plaintiff anticipated that the Provost and President might recommend denial of her Petition, she also sought tenure under an exception to the sixth year requirement which permitted “early” tenure, as discussed further below.

11. The Dean, Provost and President are required to review and sign the Petition for Prior Service Credit. The Dean of the School of Law supported Plaintiff’s petition for three years of prior service credit, but the Provost and the President of USD opposed it. (Exhibits D, E, and F). They recommended that she receive only one year of prior service credit towards tenure. This recommendation was not based in any way on the merits of Plaintiff’s petition, or an evaluation of her teaching, scholarship and other relevant experience prior to joining the faculty. Rather, the Provost and President based their recommendations on their “personal philosophy” that a laterally-appointed faculty member should serve a “sufficiently long time” in residence before being offered a “lifetime appointment.” (Exhibit G) The Provost and President have repeatedly stated that they are personally opposed to Professor Dellinger receiving tenure this year, not because of any consideration of the merits of her teaching, scholarship or service, but simply because she has not been at the University long enough, in their opinion, to warrant tenure. The Provost and President’s personal idiosyncratic beliefs in this regard are in direct contravention of the stated policies of the American Association of Colleges and Universities of which USD is a member. (Exhibit H).

12. The BOR met and considered Plaintiff’s petition at their meeting on October 3-5, 2017, but approved the “University’s” recommendation to grant only one year of prior service credit. (Exhibit I). Subsequently, Plaintiff learned that the University had failed to provide the Board of Regents with her actual petition or any of the supporting materials she had provided to justify her request. On information and belief, the BOR simply voted to approve the President’s recommendation without any meaningful consideration of the merits of Plaintiff’s petition or any substantive discussion regarding her prior service.

13. Plaintiff then filed a grievance with the President complaining that proper procedures had not been followed in that her petition and supporting materials had not been provided for the BOR’s consideration and therefore she had been denied fair consideration. The President subsequently agreed to settle this grievance by recommending Plaintiff receive an additional year of prior service credit and by agreeing to forward any supporting materials Plaintiff wished to provide to the BOR for consideration at their next meeting. Plaintiff then resubmitted her original petition and supporting materials and some additional supporting materials. (Exhibit J) On information and belief, the BOR virtually always follows the recommendation of the University President on petitions for prior service credit and gives little, if any, consideration to the contents of the petition and supporting materials provided by the applicant. In keeping with this practice, the BOR once again gave little or no consideration to the merits of Plaintiff’s petition and, at their next meeting on December 5-7, 2017, simply approved the President’s revised recommendation with little or no substantive discussion or meaningful consideration of Plaintiff’s petition. (Exhibit K) It is not known what standards, if any, the BOR applies to prior service credit applications. Neither the University of South Dakota nor the Board of Regents have any published criteria for the submission or evaluation of prior service credit applications. Plaintiff asserts that it is *per se* “arbitrary, capricious and an abuse of discretion” for a state government entity to grant or deny applications based on the personal whims of the deciding officials without reference to any objective standards or criteria.

14. During the time that the BOR was considering Plaintiff's prior service credit application, the Law School's Retention, Promotion and Tenure Committee ("RPT Committee") met to evaluate Plaintiff's tenure application. (Exhibit L). By the time they voted on her application, the RPT committee members were aware that Plaintiff's initial application for prior service credit had been partially disapproved (only one year had been granted) and that an appeal/grievance was pending. Thus, the RPT knew that Plaintiff did not have six years of service in residency at the law school but rather only had four years, and that there was no guarantee that she would be awarded the additional two years. Plaintiff specifically indicated on her application for tenure that she was applying as an exception by checking the "YES" box next to the question "ARE YOU APPLYING AS AN EXCEPTION" and specifically indicated that she had only three years of service and had not yet been granted prior service credit, although she had applied for it (Exhibit M, p. 1).³ Accordingly, the RPT committee considered whether Plaintiff should be recommended for tenure despite not having met the "normal" requirement of six years of service. The RPT committee determined that, consistent with the law school and University tenure rules, under exceptional circumstances, clearly worthy candidates could be considered and recommended for promotion with fewer than six years of service. After evaluating Plaintiff's scholarship, teaching and service (the three substantive categories upon which a tenure recommendation is based) they determined that she met and exceeded the standards for tenure in all areas. On November 14, 2017, they unanimously recommended that she be awarded tenure, despite having, at the time their recommendation was made, only four years of credited service at the USD School of Law. (Exhibit N).

15. The RPT's recommendation was then forwarded to the Dean of the law school for his consideration. At the time he received it, Plaintiff's appeal to the BOR for additional prior service credit was pending. He waited to make his recommendation until after the BOR denied (or more accurately, partially granted) her request for reconsideration. Knowing that she had been awarded only two years of prior service credit, and was thus in her fifth year of credited service at USD, the Dean nevertheless determined that Plaintiff was eligible for and should be recommended for early tenure, under "exceptional circumstances" as a "clearly worthy" candidate. He prepared a lengthy recommendation for the Provost and President, as required under Law School and University tenure policies, setting forth the basis for his recommendation, and forwarded it along with the complete tenure package to the Office of the Provost on January 30, 2018. (Exhibit O).

16. On February 20, 2018, the Provost sent a very brief memorandum to Plaintiff stating that she was not eligible for tenure consideration and returning her tenure file. (Exhibit P). On information and belief, Provost Moran did not consult with the Dean of the Law School before preparing this memorandum. The memorandum does not respond to or acknowledge the Dean's detailed explanation for determining Plaintiff's eligibility.

³ The fact that the USD required Promotion and Tenure Cover Sheet specifically indicates that one can apply "as an exception" is further strong evidence of the existence of exceptions to the general rules.

17. The academic year 2017-8 deadline for USD to make promotion and tenure recommendations to the Board is April 15. Faculty members are supposed to be notified of the President's Recommendation not later than April 1.

18. The BOR is scheduled to consider faculty tenure candidates at their meeting at the University of South Dakota on May 8-10, 2018.

LAW AND ARGUMENT

19. Tenure-track faculty members at the University of South Dakota, including at the School of Law may submit an application for tenure as soon as they meet all of the published criteria for tenure (such as the number of publications). It is up to the Law School's RPT Committee and the Dean of the Law School to determine if a faculty member at the law school is eligible for tenure consideration and whether she has met the standards for tenure.

20. The University of South Dakota permits faculty members to be considered for tenure early (prior to their sixth year of credited service) under exceptional circumstances. Although the law school has its own tenure rules (Exhibit Q), the University's general tenure policies and guidelines (Exhibit R) also apply to the law school unless they conflict with a specific law school rule. The Law School Dean, in conjunction with the RPT Committee, has the authority to interpret the law school's tenure rules. The Dean and the RPT Committee have determined that the law school tenure rules permit worthy candidates to be considered for tenure with fewer than six years of credited service under an "exceptional circumstances" standard. Under this standard, "faculty members who have established records clearly worthy of tenure and promotion with outstanding potential. . .[should] .. apply early."

21. The Dean and the RPT have determined that Plaintiff is such a worthy candidate and that exceptional circumstances exist in her case. Those circumstances include that Plaintiff is actually in her eighth year of law school teaching at an ABA accredited law school (seventh year on the tenure-track), and in her fourth year as an Associate Professor (having served one year as an Associate Professor at Western State), and that she was in her third year of service as an associate professor at USD, which is the normal time in service as an associate professor for tenure eligibility. Those circumstances also include that she has substantially exceeded the publication requirements for tenure both in terms of quantity and quality. Based on his comprehensive review of her teaching, research/scholarship and service, Dean Geu determined that there was "overwhelming evidence that she exceeds the standards for tenure based on her accomplishments at USD Law."

22. The Provost apparently did not review the tenure application. His memorandum of February 20, 2018 states that his decision to return her file "is not a judgment one way or the other on the merits of your candidacy." Rather, he stated that his decision was based on his interpretation of the Law School Retention, Promotion and Tenure Document. The Provost has clearly exceeded his authority in refusing to forward Associate Professor Dellinger's application. The Provost has no formal role in the evaluation of a law school faculty member for tenure. Indeed, neither the Office of the Provost or the Office of the Vice President for Academic Affairs is even mentioned in the Law School RPT Document. The South Dakota BOR Policy Manual 4:10 - "Tenure and

Continuing Appointments” (Exhibit S) recognizes that “[s]pecial conditions and accreditation requirements of the Medical and Law schools necessitate special guidelines for promotion [and], tenure. . .” In other words, the Law School sets its own policies and has the authority to determine which law faculty members are eligible for tenure. Thus, the Provost has no authority to return a tenure file submitted by the Dean of the Law School, and that should be the end of this Court’s inquiry. Indeed, even under the more general USD tenure rules and BOR policies, the Provost/Academic Vice President has a very limited role, namely, making recommendations to the President. Thus, even if this Court were to find that the Provost has some inherent authority to review a law school tenure application, that authority would be limited to making recommendations to the President on the merits of the application, and would not extend to unilaterally rejecting a tenure file received from the Dean of the School of Law. Indeed, the Provost’s opinion regarding Plaintiff’s eligibility is legally irrelevant, in addition to being incorrect.

23. The Provost’s position (it is not known if the Provost consulted with the President, outside counsel, the BOR, or any other person) is apparently that a law professor may only be considered for tenure in one of two circumstances:

1. The law professor is in her sixth year of service in residence at the law school.
2. The law professor has received sufficient prior service credit from the BOR so that the prior service credit, combined with the number of years of service in residence at the law school, equals six.

24. Under the Provost’s interpretation, because Professor Dellinger has only three years of service in residence and has been granted only two years of prior service credit by the BOR, she is in her fifth year of service and is thus ineligible. The Provost apparently does not believe that the law school may consider **any** candidate for tenure early, even under exceptional circumstances. The Provost’s interpretation is simply not correct. As we explain below, there are two other sounder interpretations of the law school rules that would permit Professor Dellinger to be considered for tenure this year.

25. As the Provost has noted, section I.G.1 of the law school Retention, Promotion and Tenure Document specifies “a Decision to recommend tenure normally will be made during the faculty member’s sixth year of service at the Law School.” The word “normally” clearly and unequivocally means “not always.” And indeed, the Provost notes that the rules state: “Exceptions made be made, consistent with applicable rules of the Board of Regents.” But according to the Provost’s interpretation, there actually would be no exceptions. If one only is eligible in their actual sixth year of residence at the law school or when granted sufficient prior service credit by the BOR to make the candidate in their sixth year of service, then the rule would be that only candidates in their sixth year of service could be considered, without exceptions.

26. It should be noted what the Law School tenure rules do **not** state: “*a candidate for tenure must always have either six years of actual service in residence at the law school, or sufficient additional prior service credit to equal six years.*” What the rules do state is that a tenure-track faculty member may be considered earlier than his or her sixth year of employment “if prior service credit has been requested and granted under applicable rules of the Board of Regents.” (Law School RPT rules at H. 1.) There is nothing in this rule that states “*if prior service credit has been requested*

and granted to bring the faculty member of up to six years total service time.” Plaintiff has requested and been granted two years of prior service credit under the applicable rules of the Board of Regents. Therefore, under the Law School RPT rules, she is eligible for consideration for tenure earlier than her sixth year of service.

27. Another possible interpretation, which is the interpretation of the Dean of the Law School and the Law School’s RPT Committee, is that a candidate may be considered earlier than her sixth year of service under “exceptional circumstances”. This particular phrase is admittedly not found in the law school’s RPT rules. Rather, it is found in the USD Promotion and Tenure Guidelines. These Guidelines state at p. 4 under the heading “Tenure”:

Under exceptional circumstances and at the Board’s discretion, a faculty member may apply for tenure and promotion with less than six years of service. The University anticipates that only faculty members who have established records clearly worthy of tenure and promotion with outstanding potential would apply early.

28. The question is whether this procedure applies to law professors. Clearly, Dean Geu believes that it does since he specifically cites this provision in his Recommendation. There is sound textually-based support for his position. According to the USD Promotion and Tenure Guidelines:

Please note that special conditions and accreditation requirements for the Sanford School of Medicine and for the School of Law necessitate special guidelines for promotion, tenure, minimum rank qualifications, and minimum promotion eligibility criteria. Specific guidelines for both the School of Medicine and the School of Law are published and available to the faculty in these Schools. ***The guidelines in this document apply to these faculty in general unless the guidelines are inconsistent with the specific School guidelines.***

(emphasis added)

29. The law school has the discretion to determine if a University guideline is consistent with the specific School guidelines. The law school’s decision that the “exceptional circumstances” provision is not inconsistent with the law school’s rules is appropriately within the discretion of the law school Dean and RPT Committee and may not be overridden by the Provost.

30. In determining whether to respect the Law School’s interpretation of its own rules or to substitute the Provost’s interpretation, it should be noted that the Dean of the Law School, all of the members of the law school RPT committee, and Professor Dellinger are attorneys and members of the South Dakota bar, with special expertise in the interpretation of contracts, laws, rules and regulations. Furthermore, with one exception, all of the members of the RPT and the Dean were on the faculty at the time the law school’s current RPT rules were drafted and approved by the law faculty on October 20, 2005.⁴ Since the Dean and four of five of the members of the RPT

⁴ Dean Geu joined the law faculty in 1989. Professor Christine Hutton, the sole tenured female faculty member, joined the law faculty in 1984. Professor Jonathan Van Patten joined the law faculty in 1981. Professor Charles Thatcher joined the faculty in 1977. Professor Frank

committee were actually responsible for the drafting and approval of the law school RPT rules, they are uniquely situated to understand the intent of the drafters. Their interpretation should be given great deference.

31. The Law School's decision to permit faculty members to be considered eligible for tenure early in exceptional circumstances is "consistent with applicable rules of the Board of Regents". The Board of Regents Policy Manual 4:1 sets forth the purposes of tenure, as established by the BOR:

1.1. The major objectives of tenure and continuing appointments are to provide a faculty committed to excellence and to provide a substantial degree of security to those persons who have exhibited superior performance. The test is whether performance has been sufficiently superior to convince the Board that expected services and performances in the future justify the privileges afforded by tenure or continuing appointment.

32. Clearly, these objectives of tenure can still be met by permitting clearly worthy candidates to be considered early. Indeed, the Board of Regents policy states that "**not later than** during the sixth year of tenure-track contract or probationary service. . . a faculty member shall be considered for. . . tenure." Thus, on their face, the BOR rules permit early consideration. In contrast, the Provost's interpretation of the law school rule would mean that a faculty member could be considered "**not earlier than** during the sixth year".

33. It should also be noted that the BOR policy specifically authorizes the Board to award academic tenure to a newly hired faculty member. (Section 4:10, para 8.1). "Circumstances that may warrant such an appointment include documentation of current performance commensurate with the award of tenure. . . development of a new program, need for special expertise. . ." As paragraphs 8.2-8.4 make clear, a newly hired faculty candidate can be appointed with tenure based solely on their prior service at other institutions. So, it is not inconsistent with BOR Rules or Policy to recommend someone for tenure in part based on their prior service at other institutions, whether or not the faculty member has formally been granted "prior service credit" by the BOR. The bottom line is that the BOR is concerned more with quality of service than quantity of service. Thus, according to BOR Policy:

Pommersheim joined the law faculty in 1984. Professor Tom Horton was the last member of the RPT to join the law faculty in 2009. Incidentally, Defendant Provost Moran assumed his position at USD in 2014.

3.2. *To be granted the privileges of tenure, faculty members:*

3.2.1. *shall demonstrate that they currently meet institutional performance expectations in teaching, scholarship and service for associate professors and*

3.2.2. *shall demonstrate promise that they shall, in due course, meet institutional performance standards in teaching, scholarship and service for persons who hold the rank of professor.*

35. As the RPT Committee Report and the Dean's Review make clear, Associate Professor Dellinger already exceeds these requirements. There is nothing in BOR Policies that would require that the law school delay her consideration for tenure eligibility when they have already determined that she meets the standards for tenure right now. The intent of the BOR's policy is to give faculty members sufficient amount of time to learn the craft of teaching, build a portfolio of research or scholarly publications, and prove their value as a colleague through demonstrated willingness and ability to provide service to the school, the community and their professional discipline. The intent is not to force those faculty members who already have done so, like Associate Professor Dellinger, to wait for any specific fixed period before their accomplishments can be appropriately recognized.

36. All Professor Dellinger is asking for is to be given the opportunity to be evaluated by the University President and the BOR on whether she meets these criteria. The law school RPT and the Law School Dean have already determined that she does. There is no basis in law for the Provost to unilaterally determine that she is not even eligible to be considered. While this Court cannot direct the outcome of the tenure process, it is well within the Court's power to order that Professor Dellinger's tenure application be accepted by the Provost and considered on the merits this academic year. And that is what we are asking this Court to do.

37. Resolving this kind of dispute at an early stage in order to clearly delineate Plaintiff's employment rights is precisely the kind of dispute for which the Uniform Declaratory Judgment Act was enacted.⁵ As the South Dakota Supreme Court has noted:

The philosophy of the Declaratory Judgment Act establishes that through it the courts seek to enable parties to authoritatively settle their rights in advance of any invasion thereof. *Danforth v. City of Yankton*, 1946, 71 S.D. 406, 25 N.W.2d 50; *Security State Bank v. Breen*, 1938, 65 S.D. 640, 277 N.W. 497. The objective of the act is to prevent actual invasions of rights and to establish guidelines for parties' actions so they may keep within lawful bounds, avoid expense, bitterness of feeling, the disturbance of orderly pursuits and to foster judicial economy. *Merkel v. Long*, 1962, 368 Mich. 1, 117 N.W.2d 130; *Greene v.*

⁵ It should be noted that Plaintiff did attempt to resolve this matter without resorting to litigation. On March 3, 2018, counsel for Plaintiff sent an e-mail to the Defendant, with a courtesy copy to USD President Jim Abbott, informing him that his interpretation of the rules was in error and requesting that he reconsider his position and continue to process her file. (Exhibit T) As of the date of filing, no response or acknowledgment has been received.

Wiese, 1955, 75 S.D. 515, 69 N.W.2d 325. Within the bounds of the remedial act's command of a liberal construction and liberal administration is found its ultimate goal of allowing "the courts (to be) more serviceable to the people." *Nims v. Grand Trunk Western Ry. Co.*, 1949, 326 Mich. 371, 40 N.W.2d 188; *Larkin v. Bontatibus*, 1958, 145 Conn. 570, 145 A.2d 133. The achievement of peace through the avoidance of predictable conflict permeates as the Act's main function, *Trossman v. Trossman*, 1960, 24 Ill.App.2d 521, 165 N.W.2d 368.

Kneip v. Herseth, 87 S.D. 642, 647-8 (S.D. 1974). The Declaratory Judgment Act has previously been determined to be an appropriate statutory basis to establish the rights of public employees. *Id.* See also, *Sioux Falls Municipal Emp. Ass'n, Inc. v. City of Sioux Falls*, 233 N.W.2d 306, 89 S.D. 298 (S.D. 1975).

CONCLUSION

Wherefore, for the reasons set forth above, Plaintiff requests this court to issue a declaratory judgment that, in accordance with the Dean of the Law School's determination, Plaintiff is eligible for tenure consideration this academic year and that the Provost must immediately continue to process her application so that the President and Board of Regents may review her application on the merits in accordance with established procedures.

REQUEST FOR HEARING

Because of the compressed timeline for the USD President to act on Plaintiff's application, Plaintiff requests that the Defendant be ordered to submit a responsive pleading on an expedited basis, so the Court can determine whether an evidentiary hearing shall be necessary to resolve any disputed issues of fact. If the Court determines that a hearing is needed, Plaintiff requests that the hearing be held on an expedited basis.⁶ Pursuant to SDCL 15-6-57, "The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar."

Respectfully submitted,

//signed md//

Myanna Dellinger, Esq.
Attorney at Law
Acting Pro Se

//signeddjrf//

David J. R. Frakt, Esq.
Counsel for Plaintiff⁷

⁶ Plaintiff suggests and requests that the Defendant's Response be ordered to be submitted by Friday, March 23, and an evidentiary hearing be scheduled for the week of March 26-30 in order that the Court may have sufficient time to render a decision before the USD Presidents' deadline of April 15, 2018 to forward his recommendation to the BOR.

⁷ Mr. Frakt is seeking admission to this Court, *pro hac vice*, by separate motion.

List of Attached Exhibits:

- A. Offer letter
- B. Myanna Dellinger's Curriculum Vitae
- C. Petition for Prior Service Credit
- D. Dean Geu's Memorandum regarding Prior Service Credit Petition dated September 15, 2017
- E. Provost's Memo regarding Prior Service Credit Petition dated September 14, 2017
- F. President's Memo regarding Prior Service Credit Petition dated September 14, 2017
- G. President's Memo to BOR dated November 17, 2018
- H. Statement of AACU on Prior Service Credit
- I. Decision of BOR granting one year of credit
- J. Memorandum to the BOR from Counsel David Frakt Seeking Reconsideration (with attachments)
- K. Memo reflecting BOR's action approving one additional year (two total)
- L. Myanna Dellinger's tenure application
- M. Promotion and tenure cover documents
- N. Recommendation of the RPT on Dellinger Tenure Application
- O. Dean Geu's Review and Professional Opinion on Dellinger Tenure Application
- P. Provost Memo Returning Dellinger Tenure File
- Q. Law School Tenure Rules Document
- R. USD Tenure Rules
- S. South Dakota BOR Policy Manual 4:10 - "Tenure and Continuing Appointments"
- T. March 3 letter to Provost from Frakt