

IN UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA

Martin Wishnatsky,

Plaintiff,

v.

Laura Rovner, Director;  
Clinical Education Program,  
University of North Dakota,  
School of Law, in her  
official capacity,

Defendant.

**Civil Case No. A2-04-1**

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**STIPULATION OF DISMISSAL**

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Pursuant to Rule 41(a)(1), the parties hereby dismiss the present action.

Respectfully submitted this 27th day of December, 2006.

By: /s/ Walter M. Weber  
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Attorney for Plaintiff.

State of North Dakota  
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By: /s/ Douglas A. Bahr  
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## **AGREEMENT TO DISMISS SECOND AMENDED COMPLAINT**

Wishnatsky v. Director, Civil No. A2-04-1 (D.N.D.)

Plaintiff Martin Wishnatsky and defendant Director, Clinical Education Program (CEP), University of North Dakota School of Law, agree the Second Amended Complaint in Civil Case No. A2-04-1 (D.N.D.) should be dismissed pursuant to Rule 41(a)(1), Fed. R. Civ. P. The parties specifically agree as follows:

1. The following facts form the basis of this lawsuit:
  - a. Wishnatsky publicly criticized the CEP and its faculty for their decision to represent clients in *Twombly v. City of Fargo*, 388 F. Supp. 2d 983 (D.N.D. 2005), a case challenging the constitutionality of a Ten Commandments monument situated on city-owned land. Wishnatsky also publicly criticized the CEP's clients in the *Twombly* case.
  - b. Wishnatsky requested the CEP assist him "in bringing suit against Grand Forks County and other relevant parties for having a statue of the goddess Themis on top of the Grand Forks County Courthouse."
  - c. By letter dated November 12, 2003, the CEP, through its then-director Laura Rovner, declined to represent Wishnatsky, stating that, due to the CEP's current caseload and limited resources, the CEP was unable to accept any new cases at the time of Wishnatsky's request for assistance. The letter further stated that, due to Wishnatsky's persistent and antagonistic actions against the CEP and its faculty, the CEP believed its "ethical obligations" required the CEP to decline Wishnatsky's request for representation.
  - d. The Second Amended Complaint asserts Wishnatsky's request for representation was denied on constitutionally impermissible grounds (*i.e.*, based upon constitutionally protected speech).

2. Former CEP Director Rovner left her employment at University of North Dakota School of Law in June 2004, and thus is no longer Director of the CEP.

3. The case of *Twombly v. City of Fargo*, 388 F. Supp. 2d 983 (D.N.D. 2005), decided on September 29, 2005, rejected a challenge to a display of the Ten

Commandments in which the CEP represented the plaintiffs/challengers. There was no appeal from that judgment, and that case is therefore final.

4. The Eighth Circuit, in *Wishnatsky v. Rovner*, 433 F.3d 608 (8<sup>th</sup> Cir. 2006), articulated the legal standard that would govern this dispute. The court held that a state law school clinic may not deny representation on the basis of the viewpoint of the applicant. The court did not decide whether the CEP actually denied Wishnatsky representation because of the viewpoint expressed in his public statements and, if it did, whether such denial was justified. Those issues remain for litigation.

5. In light of the departure of Professor Rovner from the UND School of Law (including the CEP), the termination of the *Twombly* litigation, and the articulation by the Eighth Circuit Court of Appeals of the legal standard that would govern this dispute, the parties agree that the expense of further litigation outweighs any possible gain of further litigation.

6. The parties agree that the dispute underlying the lawsuit has become moot.

7. The parties acknowledge that by entering into this Agreement the CEP does not admit to any legal liability or that the CEP's reasons for declining to represent Wishnatsky were in any way improper or constitutionally impermissible. Likewise, the parties acknowledge that by entering into this Agreement Wishnatsky does not concede any lack of merit to his lawsuit or that the CEP's reasons for declining to represent Wishnatsky were proper or constitutionally permissible.

8. Wishnatsky hereby withdraws his request for assistance, as set forth in his October 29, 2003, letter, without prejudice to any future request for representation.

9. The CEP hereby withdraws its November 12, 2003, letter declining to represent Wishnatsky without prejudice to the right of the CEP to evaluate any future

requests from Wishnatsky on the same terms as any other requests to CEP for representation.

10. Given the respective withdrawals of the request for assistance and the letter denying that request, the parties agree that there is no longer any dispute to litigate concerning that original request.

11. Both parties waive any claims to costs (aside from the award of costs by the Eighth Circuit Court of Appeals in relation to the appeal decided in January 2006) or attorneys' fees against each other and agree to the voluntary dismissal of the present lawsuit by stipulation of dismissal pursuant to Rule 41(a)(1), Fed. R. Civ. P.

12. The parties acknowledge that Wishnatsky is not receiving any funds in return for dismissing this lawsuit.

For Plaintiff:

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Date: \_\_\_\_\_

For Defendant:

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