

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

Case No. 2000 CV 658, Division 4

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**RULING AND ORDER**

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CARLOS MARTINEZ,

Plaintiff,

vs.

THE REGENTS OF THE UNIVERSITY OF COLORADO,

Defendant,

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This matter comes before the Court on the Plaintiff's Motion for Preliminary Injunction/Stay pursuant to C.R.C.P. 65. After reviewing the motions, record, and file, the Court issues the following Ruling and Order.

I. INTRODUCTORY FACTS

The Plaintiff, Carlos Martinez, a senior at the University of Colorado, Boulder, expected to graduate after the Spring 2000 semester. Mr. Martinez did not graduate as planned, however, because he was expelled from the University on April 20, 2000 for violations of the University's Student Code of Conduct.

The University's Code of Conduct, entitled the Student's Rights and Responsibilities Regarding Standards of Conduct, outlines standards for student behavior and requisite procedures following alleged violations of those standards. During the Fall 1999 semester, University staff including several members of the Bursar's office, a writing instructor, and University Parking Enforcement officers reported several incidents of abusive and disruptive

behavior by Mr. Martinez. After an investigation, Mr. Martinez was charged with violating three Code standards, Standard 1a, Interfering With, Obstructing Or Disrupting A University Activity, Standard 5, Violating A Federal, State Or Local Law, and Standard 12, Harassing Another Person. After failing to appear for an appointment with a Judicial Officer as required by the Code, Mr. Martinez was found in violation of these provisions and suspended from the University.

This suspension was put on hold pending a formal hearing before the Judicial Affairs Hearing Board (JAHB) per Mr. Martinez' request. Based on the testimony and evidence presented at that hearing, the JAHB found Mr. Martinez in violation of Standards 1a and 12 and on February 21, 2000, placed the student on probation for one year with the following conditions: 1) participation in an anger management class through the University Counseling Services for the rest of the semester with proof of enrollment provided to the Office of Judicial Affairs by March 31, 2000, and 2) a letter

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of apology to affected staff members of the Bursar's office submitted for approval by the Director of the Office of Judicial Affairs, Andrea Goldblum, by March 3, 2000. Mr. Martinez was also notified that, as provided by the Code, failure to comply with these conditions would result in further disciplinary action, including the possibility of suspension or expulsion. Although Mr. Martinez appealed this decision as allowed by the Code, it was upheld on review.

On April 14, 2000, Ms. Goldblum notified Mr. Martinez that, since the decision of the JABB had been upheld, he was still responsible for completing the sanctions previously imposed. Given the delay caused by the appellate process, however, Ms. Goldblum extended the deadlines to April 18, 2000 for the letter of apology and May 12, 2000 for proof of completion of the anger management class. Once again, Ms. Goldblum advised Mr. Martinez that failure to comply could result in suspension or expulsion.

On April 17, 2000, Mr. Martinez sent Ms. Goldblum a letter in which he stated that he did not intend to comply with the sanctions in a timely fashion and that he was instituting judicial proceedings against the University. Mr. Martinez did not in fact comply with the April 18, 2000 deadline and, in an April 20, 2000 letter, Ms. Goldblum notified Mr. Martinez that he was permanently expelled and excluded from the University but that he could appeal this decision. During the appeal, Mr. Martinez was prohibited from being present on campus but was allowed to maintain his residence in Family Housing pending the appeal. The decision to expel Mr. Martinez was upheld and Mr. Martinez was ordered to vacate Family Housing within 48 hours.

Mr. Martinez immediately filed suit against the University on several grounds. First, he

claimed relief under C.R.C.P 106(a)(4) on the grounds that the University's Code of Conduct is facially unconstitutional; that he was denied due process prior to the expulsion decision in that he was given no notice or an opportunity to be heard; that the University failed to follow the procedures set out in the Code of Conduct; that the sanction was unduly severe under the circumstances; that the decision exceeded the authority of the University; and that the final decision was arbitrary and capricious and an abuse of discretion. Mr. Martinez also requested a Declaratory Judgement under C.R.C.P. 57 that the Code's procedures for Sanction Review are facially unconstitutional.<sup>1</sup> Subsequently, Mr. Martinez filed a motion for a preliminary injunction to stay the expulsion pending the outcome of the case.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Preliminary Injunction under 106(a)(4)

Rule I 06(a)(4)(V) provides that the decision of a body or officer may be stayed pending proceedings pursuant to Rule 65. Rule 65 gives a trial court the discretion to

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<sup>1</sup> Although Mr. Martinez' complaint claims that the entire Student Handbook is unconstitutional, the issue as framed by the parties at the hearing was limited to the constitutionality of the Sanction Review Process. Therefore, the Court, in conforming the pleadings to the evidence under Rule 15, limits its review to whether the procedures for a Sanction Review comport with the requirements of due process.

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grant a preliminary injunction where such relief is necessary to prevent immediate, irreparable injury pending a final hearing. *Rathke v. MacFarlane*, 648 P.2d 648, 651 (Colo. 1982). Although the grant of such relief lies within the sound discretion of the trial court, that discretion should be exercised cautiously and with a full conviction of urgent necessity. *Id.* at 653. Consequently, as a prerequisite to the granting of a preliminary injunction, the trial court must find that the moving party has established each of the following six factors: 1) a reasonable probability of success on the merits; 2) that the granting of injunctive relief will not deserve the public interest; 3) that the balance of equities favors the injunction, 4) real, immediate and irreparable injury which may be prevented by injunctive relief, 5) that there is no plain, speedy, and adequate remedy at law, and 6) that the injunction will preserve the status quo pending a trial on the merits, *Id.* at 653-4; *Combined Communications Corp. v. Denver*, 186 Colo. 443, 528 P.2d 249 (Colo. 1974); *Macleod v. Miller*, 612 P.2d 1158 (1980); *American Investors Life Insurance Co. v. Green ShieldPlan, Inc.*, 358 P.2d 473 (1960); *American Television and Communications Corp. vs. Manning*, 651 P.2d 440, 443-44 (Colo. Apps. 1982). The first question then is whether Mr. Martinez has satisfied all these elements as to his claim under 106(a)(4).

### Reasonable Success on the Merits under 106(a)(4)

The scope of review under 106(a)(4) is limited to the inquiry as to whether the inferior tribunal's decision was arbitrary or capricious, an abuse of discretion, or exceeded its jurisdiction.. *City of Colorado Springs v. District Court*, 519 P.2d 325 (Colo, 1974). Although a party may challenge the constitutionality of an action or regulation as applied, facial constitutional challenges are beyond the scope of review under Rule 106. *Two Gs, Inc. v. Kalbin*, 666 P.2d 129, 133 (Colo. 1983); *Mariani v. Colorado Department of Corrections*, 956 P.2d 625, 629 (Colo. App. 1998); *Price Hasket, Inc. v. The Denver Dept. of Excise and Licenses*, 694 P.2d 364, 366 (Colo. App. 1984). Thus, review of Mr. Martinez' claim under Rule 106 is limited to the application of the procedures in his case and not the constitutionality of those procedures.

Under this rule, an inferior tribunal's quasi-judicial decision may be reversed only if there is no competent evidence to support the decision. *McCann v. Lettig*, 928 P.2d 816 (Colo. App. 1996). "No competent evidence" means that the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority. *Cruzen v. Career Serv. Bd of City & County of Denver*, 899 P.2d 373 (Colo. App. 1995). Review is limited to the record and the petitioner has the burden of establishing facts that support the application for relief. *Civil Serv. Commn v. Doyle*, 483 P.2d 380 (Colo. 197 1). Under no circumstances does review under 106(a)(4) encompass the merits of the case involved. Rather, the review is limited solely to questions of power. *State Bd. of Medical Examiners v. Brown*, 198 P. 274 (Colo. 192 1).

Therefore, in order to succeed on the merits under Rule 106(a)(4), Mr. Martinez must show that the University's final decision to expel him exceeded its authority, was

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arbitrary and capricious or was an abuse of discretion as shown by the record available to the reviewing officer.

### Did the University Exceed it Authority in Expelling Mr. Martinez?

There is no question that the University has the authority to promulgate and enforce rules regulating student conduct including the power to expel a student who violates established standards. *See Colorado Revised Statute § 23-20-112 West 1999*), *See also Buttny v. Smiley*, 281 F.Supp. 280 (D. Colo. 1968). Thus the University did not exceed its authority in deciding to expel Mr. Martinez unless it failed to apply due process in making that decision. The question under 106(a)(4), however, is not whether the Code procedures themselves provided requisite due process, but whether the procedures as applied to Mr. Martinez comported with due process.

The record shows that the University followed the procedures as set forth in the Code for Sanction reviews. It notified Mr. Martinez that expulsion could follow noncompliance, that such expulsion could be levied by the hearing officer without a hearing, that the review would be limited to a paper review on the record and was not an opportunity to rehear the case, and that Mr. Martinez could submit materials on his behalf to challenge the severity of the sanction. Therefore, the Court finds that the University followed the requisite procedures as outlined by the Code and provided Mr. Martinez with notice and an opportunity to be heard before the expulsion became effective.

Did the University abuse its discretion in expelling Mr. Martinez?

In order for this Court to determine whether the reviewing officer's decision was reasonable, the Court must have access to the record before that officer- In the letter affirming the expulsion, the reviewing officer stated that he based his decision on the provisions of the Student's Rights and Responsibilities Regarding Standards of Conduct that govern Sanction Reviews, the information provided by the Office of Judicial Affairs, the information submitted by Mr. Martinez, the authority and traditions of the Judicial Affairs Office in disciplinary proceedings such as this, the behaviors and statements regarding the case, and Mr. Martinez; responses to the earlier sanctions imposed.

The Court has before it Mr. Martinez' brief submitted in his behalf. According to testimony at the hearing, Mr. Martinez could have submitted any information he chose to attack the severity of the decision including character evidence or any other mitigating evidence. As written, his brief largely challenges the University's authority to impose particular sanctions of probation and the constitutionality of the procedures both facially and as applied to him. Thus, he gave the officer little to consider under the requirements of the Code. The Court also has Exhibit Y which, according to defense counsel, contains all the documents relating to the harassment complaints from the Fall Semester which formed the basis for the original sanction of probation and which was tendered to the reviewing officer by Judicial Affairs.

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The Court is unsure what other materials were included in the record. There is no indication what "statements and behaviors regarding the case" or responses by Mr. Martinez were considered and in what form. It is unclear whether the officer was aware of any aggravating factors occurring during the probationary period or whether he saw the correspondence between Ms. Goldblum and Mr. Martinez or any reports summarizing their interactions. It is unclear whether and how Ms. Goldblum communicated her concerns as to Mr. Martinez' behavior during the Spring Semester beyond his refusal to write the letter of apology and his failure to attend anger management classes.

Certainly, the evidence presented at the hearing adequately supports Ms. Goldblum's decision to expel Mr. Martinez. Although the underlying facts supporting the initial decision to place Mr. Martinez on probation are not in dispute here, they provide context to her decision. The record shows that Mr. Martinez' interactions with Bursar office staff members were extremely unsettling and created palpable apprehension amongst these staff members. Mr. Martinez was barred from having any contact with these staff members and the Bursar's Office and his actions were reported to the police who supplied the staff with panic buttons to alert the police should Mr. Martinez reappear. Mr. Martinez' actions continued to concern Ms. Goldblum well after the imposition of probation. She reported that Mr. Martinez never accepted responsibility for his actions and claimed the University conspired against him. She testified that she herself felt fear and apprehension towards Mr. Martinez as a result of her interactions with him. Evidently Ms. Goldblum also had information of other alleged incidents of harassment of University Staff.<sup>2</sup> Finally, Ms. Goldblum testified that Mr. Martinez continued to deny the University's authority to impose the probationary conditions, and, rather than comply, planned to challenge these through the legal system. In conclusion, Ms. Goldblum stated that this was the worst case of student misconduct that she had ever experienced and that expulsion was warranted largely due to the number of persons adversely affected and the degree of harm. Thus, although expulsion may seem an extreme sanction for failure to comply with probationary conditions, the evidence as a whole supports Ms. Goldblum's decision.

This Court's duty, however, is not to determine whether Ms. Goldblum's decision was reasonable based on the evidence presented at the hearing, but whether the record before the reviewing officer supports his decision to affirm the expulsion. Although Ms. Goldblum's interactions with Mr. Martinez during the period of probation led her to believe expulsion was appropriate, there is no indication that this evidence was before the reviewing officer

As a result, the Court can not adequately review the record. The Court notes, however, that the materials in Exhibit Y coupled with the fact of non-compliance do not support the leap from probation to expulsion. Expulsion is an extreme sanction which exposes a student to grave harm. A notation of expulsion remains on a student's transcript and in the Office of Judicial Affairs files permanently. It renders post-graduate education extremely difficult and has the potential to negatively impact a student's future

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<sup>2</sup> Although provided to the Court, these allegations were not resolved nor revealed to the reviewing officer and hence are not a part of the record here.

employment prospects. Significantly, the JAHB found, after a full evidentiary hearing, that

the Fall infractions supported probation with two conditions and nothing more. The mere fact of failure to comply with probation them, with no allegations of further Code violations, does not support such an extreme sanction. At the hearing before the Court, evidence was presented that there were aggravating circumstances in this case. If these facts were made available to the reviewing officer, the record might then support the decision to expel. The Court has been denied this information. Therefore review is impossible under 106(a)(4) as to whether the reviewing officer's decision was an abuse of discretion and thus the Court is unable to gauge the probability of Mr. Martinez' success on the merits of this claim.

### Preliminary Injunction under Mr. Martinez' Second Claim for Relief – Declaratory Judgement

Regardless of the Court's inability to determine whether Mr. Martinez has a reasonable probability of success on his claim under 106(a)(4), an injunction may be applicable under his complaint for Declaratory Judgement pursuant to C.R.C.P, 57. An action for declaratory judgement is an appropriate method for challenging government action that is not subject to Rule 106(a)(4) review or where 106(a)(4) review is inadequate. *Grant v. District Court*, 635 P.2d 201 (Colo. 1985). See also *Denver Center for the Performing Arts*, 696 P.2d 201 (Colo. 1995)(dismissal of claim for declaratory relief appropriate where review under 106(a)(4) considered all issues of that claim). The granting of declaratory relief under Rule 57 is within the sound discretion of the court and is appropriate where a court's finding would settle uncertainty as to a claimant's legal relations or rights and would terminate a controversy. *Troelstrup v. District Court*, 712 P.2d 1010 (Colo. 1986); *Heron v. City and County of Denver*, 411 P.2d 314 (Colo. 1966); *People ex rel. Inter-Church Temperance movement v. Baker*, 297 P.2d 273 (Colo. 1956).

In this case, Mr. Martinez claims that the procedures as outlined in the Code of Conduct for Sanction Review fail to provide due process as required by the federal constitution. A finding of unconstitutionality would settle the uncertainty regarding Mr. Martinez' right to a more meaningful review of his expulsion and, as Rule 57 grants a court the power to order further relief as necessary or proper, could result in a Court order to the University to provide Mr. Martinez with a review process which comports with due process. Consequently, the Court finds that a claim for Declaratory Judgement is appropriate in this case.

Furthermore, the Court finds that, if Mr. Martinez can establish the *Rathke* factors as to this claim, a preliminary injunction would be necessary to protect his constitutional rights pending the outcome of a trial on the merits, *Rathke, supra* at 653 (before a preliminary injunction issues, plaintiff must show that injunctive relief is necessary to protect existing legitimate property rights or fundamental constitutional rights) .<sup>3</sup>

<sup>3</sup> This assumes that the right to remain in good standing at the University is a legitimate right protected by the Constitution and which may not be denied without due process. *See infra* at 7.

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Therefore, the question is first whether Mr. Martinez has a reasonable probability of success on this claim.

#### Reasonable probability of success on the merits

To show a due process violation, Mr. Martinez must first show that his interest in continuing in good standing at the University is a protected interest under the Fourteenth Amendment. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). When protected interests are implicated, due process requires at the minimum notice and an opportunity to be heard. Not all interests, however, are so protected.

To determine whether process requirements apply, courts look to the nature of the interest at stake. *Roth, supra* at 571; *Morrissey v. Brewer*, 408 U.S. 471 (1972 ). Although it is impossible to define with exactness what "liberty" and "property" interests are protected, many courts have determined that expulsion from state schools implicates both. According to the U.S. Supreme Court, liberty interests include the right to acquire knowledge as well as the right to a person's good name, reputation, honor and integrity. *Roth supra* at 572-3 citing *Meyer v. Nebraska*, 262 U.S. 390 (1923 ) and *Wisconsin V. Constantineau*, 400 U.S. 433,437 (1971). Certainly, then, the opportunity to attain a college education and the right to be free from an unwarranted loss of reputation which follows expulsion fall within this definition of a liberty interest .<sup>4</sup>

Likewise, protected property interests defy exact definitions. They are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law. *Roth, supra* at 577. Here, Colorado has determined that higher education should be made available to its citizens and to that end the state provides funding for the University of Colorado and, through the delegation of power to University Regents, determines the standards of eligibility for that benefit. See C.R.S. §§ 23-1-101-1 23-1-103.5; 23-1-113; 23-20-112. The State then, by creating and defining the terms of that interest, may not withdraw that interest from a student who has shown himself or herself eligible to receive the benefit of that interest without due process.

Consequently, attending an institute of higher learning implicates both a liberty and

property interest and before those interests may be removed due process attaches. As there is no exact formula for determining what process is due in all circumstances, the question is what process is due here. In answering this question, courts apply a balancing test as developed by the U.S. Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under this test, courts consider 1) the nature of the interest at stake for the individual; 2) the risk of erroneous deprivation of that interest through existing procedures and the benefits of additional safeguards; and 3) the government's interest in using the current procedures. *Id.*

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<sup>4</sup> For a comprehensive list of courts which have found that expulsion from state schools implicates protected liberty and property interests, see *Goss v. Lopez*, 419 U.S. 565, 574-577 (1975).

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A student's interest in continuing in good standing and obtaining a degree is paramount. In these times, a college education as well as post-graduate work is a key factor to economic success. Once expelled, a student's future is forever clouded and impeded by the expulsion.

Under the existing procedures, University students are on notice that a hearing officer may impose expulsion as an additional sanction, but no notice need be provided that the officer intends to impose expulsion nor on what the officer intends to rely. The student's only recourse is the Sanction Review. Where the expulsion occurs many months after the hearing resulting in the initial sanctions, the record presumably includes more information than was available at the initial hearing. Given the nature of the decision, these materials are most certainly aggravating. Although the student has the right to submit any materials in his favor, nothing in the Code indicates that the student has the right to notice of or an opportunity to review the materials relied upon either by the hearing officer or the reviewing officer prior to this submission. Without access to these materials or the opportunity to meet either with the hearing officer or the reviewing officer before the decision is made, the student has no effective way to rebut any new evidence in the file. This becomes extremely important when the grounds for expulsion are not mere technical violations but allegations of further sanction violations. The student's only recourse is to guess at the complete grounds for expulsion and then to submit what he or she hopes is relevant and mitigating in a plea of leniency to the reviewing officer. Where the student is unsure of the complete foundation for the decision and has no opportunity to rebut this evidence, the risk of erroneous deprivation is great.

It would appear to require minimal effort by the University to decrease this risk. The student should at the least be given access to all materials relied upon by the hearing officer and an opportunity to meet with the officer regarding these materials. This hearing could be informal and need not be an evidentiary hearing unless the circumstances so require, for

example when there are allegations of new sanction violations. Similarly, prior to a Sanction Review, the student should have an opportunity to review all materials tendered to the reviewing officer in order to maximize the opportunity to rebut that evidence. As the review officer is limited to a paper review, the record should contain only those materials of which the student had prior notice and on which the hearing officer relied in deciding to expel.

Finally, the government's interest in maintaining the current procedures lies in "judicial" economy. Because a student who has been sanctioned has already received prior hearings and no doubt engaged in numerous exchanges with the Office of Judicial Affairs, the University may feel that the student would be fully aware of the hearing officer's reasoning and have copies of all materials in the record making another hearing superfluous. However, where the expulsion occurs months after the original sanctions,

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no such guarantee exists.<sup>5</sup> Without a requirement that the student have an opportunity to confront and rebut all evidence, there can be no such guarantee of superfluity.

Consequently, the Court finds that the University's interest in denying the sanctioned student further hearings is outweighed by the risks of erroneous expulsion and the grave consequences which may follow. Because the process afforded a sanctioned student fails to comport with constitutional requirements, the Court finds that Mr. Martinez has a reasonable probability of success on the merits of his Declaratory Judgement claim. Thus, the question is whether Mr. Martinez can establish the other five factors as well.

### Public Interest

For an injunction to ensue, the plaintiff must also show that the granting of injunctive relief will not disserve the public interest. In enacting Title 23, Article I of the Colorado Revised Statutes, the Colorado Legislature declared its intent to maximize the opportunities for post-secondary education in Colorado and to accommodate the needs of individual students through the implementation of a statewide enrollment plan. See C.R.S. § 23-1-101. Certainly, it is in the public interest to ensure that students who have otherwise shown themselves eligible for these opportunities are not summarily denied them. The University argues, however, that Mr. Martinez poses a threat to the safety and well-being of university staff and that his expulsion is necessary to protect the working and living environment at the University. The Court believes that the public interest would best be served by protecting the interest of the public in securing educational opportunities for those that are eligible while at the same time preserving the atmosphere most conducive to productive work. Because the Court has the discretion under Rule 65 to fashion injunctive relief in the interests of all the parties, the Court finds that an injunction which stays the expulsion but upholds the student's exclusion from campus would best serve the public interest.

## Balance of Equities

Here the Court finds that the harm of expulsion to Mr. Martinez far outweighs the benefit to the University of having the expulsion take effect immediately given the ability of the Court to order that Mr. Martinez be excluded from campus pending the outcome of the case. As noted above, expulsion has grave and far reaching consequences. The University, on the other hand, will largely be inconvenienced by having to expend more time and effort on this case. Nevertheless, given the import and the constitutional rights at issue, the equities favor the due process concerns.

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<sup>5</sup> Indeed in this case it would appear that the reviewing officer may have relied on oral communications with Ms. Goldblum which were thus un rebuttable by Mr. Martinez where review was restricted to a paper review.

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## Real, Immediate, and Irreparable Injury

As stated earlier, expulsion poses grave consequences for Mr. Martinez. His aspirations and goals will be severely limited and his future success negatively impacted. If the injunction does not ensue, the expulsion becomes effective, is placed on his transcript, and begins to impact Mr. Martinez' ability to pursue his future goals. Mr. Martinez has applied to the University of Colorado's Law School. Although the fact that Mr. Martinez is subject to a disciplinary action makes his acceptance more difficult, his expulsion would prohibit his attendance at the University's Law School. The harm of wrongful expulsion is immediate, real and irreparable.

## Plain, adequate and speedy remedy at Law

A preliminary injunction is not appropriate where the plaintiff has an adequate remedy in law. "Such is the case where everything that a plaintiff asserts is measurable and compensable in money and evidence shows that defendant is amply able to respond to a money judgement and is subject to the jurisdiction of Colorado courts." *American Investors Life Ins. Co. v. Green Shield Plan, Inc.*, 3 58 P.2d 473 (Colo. 1960). Thus, where there are not adequate money damages, the plaintiff has no adequate remedy at law. Here, no amount of money can restore Mr. Martinez' good name or unstained future prospects if an unwarranted expulsion goes forward. There are no remedies at law and the only remedy for Mr. Martinez is a meaningful opportunity to challenge the decision to expel. <sup>6</sup>

## Maintaining the Status Quo

The purpose of a preliminary injunction is to preserve the "status quo" and protect rights pending the final outcome. The Court finds that the only way to protect Mr. Martinez' rights is to prevent the expulsion from becoming effective pending the outcome of the case. Nevertheless, the Court does not find that this mandates a restoration of Mr. Martinez to pre-expulsion status. A trial court has great discretion to formulate the terms of injunctive relief and may prescribe certain requirements as a condition to the granting of injunctive relief when equity so requires. *Colorado Springs Bd of Realtors v. State*, 780 P. 2d 494 (Colo. 1989); *Brennan v. Motivon*, 50 P.2d 534 (1935). Here, equity requires that the University be protected from any possible disruptions by Mr. Martinez and that Mr. Martinez be protected from the immediate consequences of an expulsion without due process. Therefore, in the event the Court finds that an injunction should ensue, the Court will enter appropriate orders to this end.

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<sup>6</sup> Martinez earlier filed suit in case 2000 CV 618 against the University challenging the initial sanction decision which resulted in his being placed on probation. This suit included a breach of contract claim which if successful, would have provided a remedy at law. The suit was dismissed on May 4, 2000 as untimely under Rule 106. The court's judgement as to those claims is now res judicata and Mr. Martinez has not pled breach of contract here.

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### III. CONCLUSION

For the aforementioned reasons, the Court finds that Mr. Martinez has established all six *Rathke* factors. Thus, the Court grants Mr. Martinez' motion for a preliminary injunction. In order to protect all parties pending the outcome of the suit and to preserve the status quo, the Court enters the following orders:

1. Mr. Martinez may remain in Family Housing pending the outcome of this case. If the decision to expel is upheld, Mr. Martinez must vacate Family Housing within 48 hours.
2. Mr. Martinez is excluded from campus except for Family Housing. In the event the University conducts further proceedings in this case, Mr. Martinez may be present at any such proceedings upon proper and reasonable notice. This preliminary injunction does not prevent the Defendant from conducting a hearing as to a sanction for the alleged violation of Plaintiff's probationary status.
3. Mr. Martinez is to have no contact with the complaining witnesses in this case including the following: Natalie Gutierrez, Missy Carney, Marissa Contreras, Suzy Campbell, Ricki Martinez, Andrea Goldblum, Deborah Viles, Susan

Johnson, and Debra Johnson.

4. The University may keep his records on hold but the expulsion will not be effective pending the outcome of this case.

### Security

Additionally, Rule 65 requires that no preliminary injunction shall issue except upon the giving of security by the applicant. Although no such condition appears in Rule 106, this injunction enters pursuant to Declaratory Relief and thus is subject to Rule 65's constraints. *See PII of Colo. Inc. v. District Court*, 591 P.2d 1316 (Colo. 1979). The amount of security is discretionary with the court but must bear some relationship between the potential costs and losses in the event the injunction is later determined to have been improperly granted. *Apache Village, Inc., v. Coleman Co.*, 776 P.2d 1154 (Colo. App. 1989).

Mr. Martinez argues that the Court in its discretion should waive the security requirement given his financial condition. The Court, however, is under an obligation to follow the rules. *See Apache Village, supra* (injunction inappropriate where trial court made no mention of potential costs and determined that no security should be posted). Here, the Court finds that the University made no objection to Mr. Martinez' claim of financial difficulties and failed to establish what monetary losses if any would ensue if the injunction were granted. As the damage to the University consists largely in the requirement of holding another hearing with minimal costs, the Court orders Mr. Martinez to post a security bond of \$1.00.

Finally, the Court desires to timely resolve Plaintiffs Rule 106 claim. Therefore, Defendant is ordered to file a certified record of the proceedings at issue on or before July 5,2000.

Done this 6th day of JUNE, 2000.

BY THE COURT

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Daniel C. Hale  
District Court Judge