

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Julea Ward,

Plaintiff,

vs.

The Members of the Board of Control of Eastern Michigan University—**Roy Wilbanks, Floyd Clack, Gary D. Hawks, Philip A. Incarnati, Mohamed Okdie, Francine Parker, Thomas W. Sidlik, and James F. Stapleton**—all in their individual and official capacities; **Dr. Susan Martin**, in her individual and official capacities as President of Eastern Michigan University; **Dr. Vernon Polite**, in his individual and official capacities as Dean of the College of Education at Eastern Michigan University; **Dr. Irene Ametrano**, in her individual and official capacities as Professor of Counseling at Eastern Michigan University; **Dr. Perry Francis**, in his individual and official capacities as Associate Professor of Counseling at Eastern Michigan University; **Dr. Gary Marx**, in his individual and official capacities as Assistant Professor of Educational Leadership at Eastern Michigan University; **Paula Stanifer**, in her individual and official capacities as Student Member of the Formal Review Committee; **Dr. Yvonne Callaway**, in her individual and official capacities as Professor of Counseling at Eastern Michigan University; **Dr. Suzanne Dugger**, in her individual and official capacities as Professor of Counseling at Eastern Michigan University,

Defendants.

Case #09-11237

Judge: Hon. George Caram Steeh
Magistrate Judge Paul J. Komives

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF
THE AMERICAN ASSOCIATION OF CHRISTIAN COUNSELORS IN
SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

The American Association of Christian Counselors (AACC) moves this Court for leave to file a Brief *Amicus Curiae*. AACC both has an interest in this case and has a perspective it believes will be helpful to this Court in its resolution of this case.

AACC is a membership organization whose members include lay counselors, but also—importantly for this case—licensed counselors and graduate counseling students. Membership currently stands at nearly 50,000 members. AACC sponsors student chapters at universities across the country.

Furthermore, AACC fields complaints from its members, both licensed counselors and counseling students. A large percentage of those complaints deal with the issue at the heart of this case—the conflict between the values held by many Christian counselors and the values held by many clients dealing with homosexuality.

In dealing with these complaints and in other aspects of its work, AACC recognizes that a dispute has arisen over how counselors ought to deal with homosexual clients when the counselor's and client's values do conflict. As a key professional organization, AACC knows that the professional standards that the Defendants (hereinafter "the University") rely upon do not require counseling students like Ms. Ward to be dismissed from counseling programs. The proffered Brief will demonstrate why this is true and will show that, in fact, the University needed to be aware of AACC's *Code of Ethics* and educate Ms. Ward in that *Code* and accommodate her compliance with that *Code*.

This perspective is very important to the proper resolution of this case. The AACC therefore respectfully requests this Court to grant this Motion for Leave to File a Brief *Amicus Curiae*.

Pursuant to Local Rule 7.1 (a) Movant sought the concurrence of counsel for all parties. The parties do not oppose the Motion.

PRAYER FOR RELIEF

Therefore, your *Amicus* respectfully requests this Court grant leave to file the attached Brief *Amicus Curiae*.

Respectfully submitted
this 26th day of March, 2010

/s/Joel J. Kirkpatrick (P62851)
Joel J. Kirkpatrick (P62851)
Kirkpatrick Law Offices, P.C.
31800 Northwestern Highway, Suite 350
Farmington Hills, MI 48334
(248) 855-6010
(866) 241-4152 (fax)
joel@joelkirkpatrick.com

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CONCISE STATEMENT OF ISSUE PRESENTED

Amicus Curiae adopts Plaintiff's statement of the issue presented.

MOST APPROPRIATE AUTHORITIES

American Association of Christian Counselors, *Code of Ethics*.

American School Counselor Association, *Ethical Standards for School Counselors*.

Council for Accreditation of Counseling and Related Educational Programs, *2009 Standards*.

George Ohlschlager, *Advanced Consent Practice with Change-Seeking Ego-dystonic Homosexuals*.

George Ohlschlager, *American Association of Christian Counselors Legal-Ethical Complaint Data, 1993-2009*.

INTEREST OF AMICUS CURIAE

As noted in the accompanying Motion, AACC is a membership organization whose members include lay counselors, but also—importantly for this case—licensed counselors and graduate counseling students. Membership currently stands at nearly 50,000 members. AACC sponsors student chapters at universities across the country.

Furthermore, AACC fields complaints from its members, both licensed counselors and counseling students. A large percentage of those complaints deal with the issue at the heart of this case—the conflict between the values held by many Christian counselors and the values held by many clients dealing with homosexuality.

In dealing with these complaints and in other aspects of its work, AACC recognizes that a dispute has arisen over how counselors ought to deal with homosexual clients when the counselor's and client's values do conflict. As a key professional organization, AACC knows that the professional standards that the Defendants (hereinafter "the University") rely upon do not require counseling students like Ms. Ward to be dismissed from counseling programs. The proffered Brief will demonstrate why this is true and will show that, in fact, the University needed to be aware of AACC's

Code of Ethics and educate Ms. Ward in that *Code* and accommodate her compliance with that *Code*.

ARGUMENT

As the University notes, one of the three goals of the University's Counseling Program is to "serve as gatekeepers for the counseling profession." (Brief in Support of Defendants' Motion to Dismiss 3.) The University explains the relevant aspects of the gatekeeper function as follows: "As part of its gatekeeper function, the Program is responsible for ensuring that graduates of the Program have the requisite skills, knowledge base, and professional disposition, and that they are familiar with, and will adhere in their professional conduct to, the profession's standards of conduct and codes of ethics." (*Id.*)

The University goes on to note that this responsibility, in turn, requires the Program to be "governed and bound by a variety of ethical codes of conduct, curricular requirements, accreditation requirements, and government regulations. The Program therefore is required to comply with and teach in accordance with" certain professional standards, including that of the Council for Accreditation of Counseling and Related Educational Programs ("CACREP"). (*Id.*)

The University next notes that "CACREP requires that the Program provide students with curricular experiences and demonstrated knowledge as to the ethical standards of the American Counseling Association ('ACA') and other such professional associations, and of applications of ethical considerations in professional counseling." (*Id.*) Finally, the University explains that the state of Michigan has promulgated regulations that incorporate the CACREP and ACA standards. (*Id.* at 4)

The problem with all of this is that the University, as just noted, says that CACREP requires knowledge of the standards of the ACA “*and other such professional associations.*” (*Id.* at 3) Your *Amicus* is not sure what the University may mean by “other such” associations. Fortunately, the determination of the meaning of that phrase is not necessary, since that phrase occurs nowhere in the CACREP standards. The actual language is as follows:

Consistent with established institutional due process policy and the American Counseling Association’s (ACA) code of ethics *and other relevant codes of ethics and standards of practice*, if evaluations indicate that a student is not appropriate for the program, faculty members help facilitate the student’s transition out of the program and, if possible, into a more appropriate area of study.

Council for Accreditation of Counseling and Related Educational Programs, *2009 Standards 5*, available at <http://www.cacrep.org/doc/2009%20Standards%20with%20cover.pdf> (last visited Mar. 25, 2010) (emphasis added).

Your *Amicus* notes parenthetically that Ms. Ward has already alerted this Court to one problem with her dismissal from the Program: both the Program’s textbook, *Becoming a Helper*, and guidance from the American Psychology Association show that the counseling profession consider it ethical to refer patients to other counselors when a student’s values conflict with the patient’s, including when those values involve the issue of sexual orientation. (Plaintiff’s Memorandum in Support of the Motion for Judgment on the Pleadings 14-15.) Thus, the University’s *ipse dixit* that Ms. Ward is not an appropriate student for the Program does not make that assertion true.

However, your *Amicus* wishes to bring to this Court’s attention another problem with Ms. Ward’s dismissal from the program: the University has ignored the italicized language from the CACREP standards (in the block quotation two paragraphs above).

The University is required to take into account “other relevant codes of ethics and standards of practice,” (2009 Standards, *supra*, at 5), since, as the University has pointed out, this is a requirement of CACREP and, by incorporation, the state of Michigan.

The CACREP *Standards* nowhere define “other relevant codes of ethics and standards of practice.” However, the CACREP standards require individualized planning for Program students: “Students have an assigned faculty advisor at all times during enrollment in the program. Students, with their faculty advisor, develop a planned program of study within the first 12 months of graduate study.” (*Id.*) Within that “planned program of study,” programs for school counseling students, such as the University’s Program at issue here, “must provide evidence that student learning has occurred in [various] domains.” (*Id.* at 40.) The domains include certain “foundations,” which in turn includes certain basic “knowledge.” (*Id.*) Under the rubric of “knowledge,” the Program must ensure that its students “[k]now[] professional organizations, preparation standards, and credentials that are relevant to the practice of school counseling.”

For purposes of an individually planned program in which the University knows that the student is a Christian, your *Amicus* is a “professional organization[] that [is] relevant to the practice of school counseling” (*id.*), by the Program’s Christian students. As noted above in the “Interest of *Amicus Curiae*,” your *Amicus* has nearly 50,000 members, including licensed counselors and counseling students. Furthermore, your *Amicus* has its own *Code of Ethics* (hereinafter *AACC Code of Ethics*), developed by its Law and Ethics Committee.

The *AACC Code of Ethics* calls upon “Christian counselors [to] express a loving care to any client, service-inquiring person, or anyone encountered in the course of practice or ministry, without regard to . . . sexual behavior or orientation” *Id.* §1-101. However, the *AACC Code of Ethics* also declares that “Christian counselors refuse to condone or advocate for the pursuit of or active involvement in homosexual . . . behavior” *Id.* §1-126. The *AACC Code of Ethics* also contains a section, §1-551 Action if Value Differences Interfere with Counseling, which instructs—as does the American Psychological Association’s guidance and the Program’s textbook, as previously noted—that referrals in cases of values conflicts are ethical:

Christian counselor[s] work to resolve problems—always in the client’s best interest—when differences between counselor and client values becomes too great, adversely affecting counseling. This may include discussion of the issue as a therapeutic matter, renegotiation of the counseling agreement, consultation with a supervisor or trusted colleague or, as a last resort, referral to another counselor if the differences cannot be reduced or bridged.

In short, rather than dismissing Ms. Ward from its Program, the University arguably had a duty under Michigan regulations, and the CACREP and ACA standards to make sure Ms. Ward had knowledge of your *Amicus* as a “professional organization[] that [is] relevant to [her] practice of school counseling” and knowledge of the “relevant” *AACC Code of Ethics*. Certainly the University need not endorse or support your *Amicus* or our *Code of Ethics*; but under its own rules, it should have informed Ms. Ward of the *AACC Code of Ethics*.

Ensuring that Ms. Ward had knowledge of your *Amicus* and the *AACC Code of Ethics* is especially important in light of the sharp divide over reparative therapy. As the University notes, the ACA opposes the promotion of reparative therapy as a “cure” for

homosexuality, yet permits its use if the counselor first warns the client of its unproven nature. (Brief in Support of Defendants' Motion to Dismiss 4.) On the other hand, your *Amicus's AACC Code of Ethics* states that "Christian counselors differ, on biblical, ethical, and legal grounds, with groups who abhor and condemn reparative therapy, willingly offering it to those who come into counseling with a genuine desire to be set free of homosexual attractions and leave homosexual behavior and lifestyles behind." §1-126. Thus, if the University is to fulfill its gatekeeping goal of covering the "domains" of "fundamentals" and "knowledge" on an individualized basis, it ought surely educate Ms. Ward on this divide. Similarly, the University ought to anticipate that Ms. Ward would agree with the *AACC Code of Ethics'* approach.

Instead, the University has taken a stance that is tantamount to declaring that Christian students who believe that homosexuality is sinful must either repudiate that belief or accept dismissal from the University's program. For all the reasons stated in Ms. Ward's Memorandum in Support of the Motion for Judgment on the Pleadings and her Memorandum of Law in Support of Motion for Summary Judgment, such a policy is unconstitutional.

Furthermore, the University's policy is contributing to a significant problem that nonetheless can be easily overcome. As your *Amicus* has documented elsewhere, from 1993-2009, your Amicus received 216 complaints from its members (1.12 complaints per month). Of those complaints, 85 came from students in graduate training programs and dealt with the conflict between Christian and homosexual values. George Ohlschlager, *American Association of Christian Counselors Legal-Ethical Complaint Data, 1993-2009* at [1], available at <http://nlf.net/Resources/issues/Legal-Ethical%20Complaint>

%20Data.pdf (last visited Mar. 25, 2010). Another 29 of the complaints concerned professionals in the work place and dealt with the same conflict between Christian and homosexual values. *Id.* Thus, 114 or 52.7% of the complaints dealt with this values conflict.

Yet this conflict need not be this prevalent, at least not in the graduate training context. Your *Amicus* has developed a model informed consent counseling agreement. George Ohlschlager, *Advanced Consent Practice with Change-Seeking Ego-dystonic Homosexuals*, available at <http://nlf.net/Resources/issues/Informed%20Consent%20Counseling%20Agreement.pdf> (last visited Mar. 2010) (hereinafter “Agreement”). Had the University ensured that, through Ms. Ward’s individualized program, “student learning ha[d] occurred in the . . . domains” of “foundations” and “knowledge,” *2009 Standards, supra*, at 40, the University would have been aware of this informed consent Agreement and would have made sure that Ms. Ward was aware of it. Had this occurred, the University would have realized that it could have and should have accommodated Ms. Ward’s values conflict in a manner that is consistent with the CACREP and ACA standards and thus with Michigan’s regulations.

Specifically, the Agreement states that

No client in this [agency/practice/clinic] is ever refused professional counseling and mental health services based on race, religion, gender, color, disability, national origin, socio-economic status, or sexual orientation. This policy reflects [my/our] deep respect for the cardinal ethic of client self-determination. [We/I] believe that both homosexuality and homophobia, and the coercive imposition of therapist values on a client are wrong, *including imposing one’s belief about homosexuality—whether one is for or against it.*

Agreement, *supra*, at [2] (brackets and emphasis original).

Furthermore, the Agreement contains a section (C.) that outlines the risks of reparative therapy, including the risks of “failing to achieve change goals” *Id.* at [3-4]. *After* reading about these risks, the client chooses to select one of three courses of action: 1) counseling only for assessment and decision-making; 2) reparative therapy; or 3) a referral if the client seeks “gay affirming therapy” in conflict with the counselor’s values. *Id.* at [5].

Thus, the model Agreement comports with the CACREP and ACA standards: reparative therapy is offered only with informed consent, the counselor does not present reparative therapy as a “cure,” and referrals are permitted when counselor/client values conflict. Had the University facilitated Ms. Ward’s acquisition of relevant knowledge, there would have been no need for her dismissal.

Similarly, the model Agreement comports with the Ethical Standards of the American School Counselor Association (hereinafter “ASCA”). As the University notes, those standards provide that a “professional school counselor . . . respects the student’s values and beliefs and does not impose the counselor’s personal values’ and ‘adheres to ethical standards of the profession [and] other official policy statements, such as the ASCA’s position statements.’” (Brief in Support of Defendants’ Motion to Dismiss 4 (*quoting* ASCA standards).) On its face, as the quotations in the several prior paragraphs demonstrate, the model Agreement provides counselors and counseling students a vehicle to accomplish exactly these goals.

Nonetheless, the University may claim that that is true with regard to not imposing the counselor’s views, but that it is not true with regard to adhering to certain of ASCA’s position statements. However, a bit of context demonstrates that such a claim

by the University would be incorrect. First, it is important to note that the quotation at issue (“adheres to ethical standards of the profession [and] other official policy statements, such as the ASCA’s position statements.”) comes from the section of the Standards dealing with a counselor’s “Responsibilities to the Profession,” not from the section dealing with a counselor’s “Responsibilities to Students.” Second, it is important to note that the quotation addresses “standards,” plural. ASCA’s own Standards are just an example. Your *Amicus’s Ethical Code* is another example. Third, it is important to realize that the quotation is incomplete. The quotation goes on to state that when professional standards, other professional statements, and/or statutes “are in conflict [the counselor] works responsibly for change.” American School Counselor Association, *Ethical Standards for School Counselors*, §F.1 (d), available at <http://www.schoolcounselor.org/files/ethical%20standards.pdf> (last visited Mar. 25, 2010). Thus, the ASCA, unlike the University, recognizes the ever-present potential for conflict and does not advocate the removal of the counselor as the only solution. Rather the counselor—and counseling student—should work for change. Your *Amicus’s* model Agreement allows Ms. Ward, other counseling students, and current counselors to responsibly work for the change they seek. It simultaneously ensures that all clients will receive the type of counseling they have consented to, protects the counselors’ conscience, protects the clients’ values, and passes constitutional muster.

CONCLUSION

For the foregoing reasons and for other reasons stated in Ms. Ward's Brief in Support of the Motion for Summary Judgment, Ms. Ward's Motion should be granted.

Respectfully submitted,
this 26th day of March, 2010

/s/Joel J. Kirkpatrick (P62851)
Joel J. Kirkpatrick (P62851)
Kirkpatrick Law Offices, P.C.
31800 Northwestern Highway, Suite 350
Farmington Hills, MI 48334
(248) 855-6010
(866) 241-4152 (fax)
joel@joelkirkpatrick.com

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2010, I electronically filed the attached Motion for Leave to File a Brief *Amicus Curiae* and the tendered Brief *Amicus Curiae* with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record. I further certify that on this day, a copy of a Proposed Order has been emailed to all attorneys of record.

/s/Joel J. Kirkpatrick (P62851)
Joel J. Kirkpatrick (P62851)
Kirkpatrick Law Offices, P.C.
31800 Northwestern Highway, Suite 350
Farmington Hills, MI 48334
(248) 855-6010
(866) 241-4152 (fax)
joel@joelkirkpatrick.com