IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN SOLOSKI, Plaintiff, v. MICHAEL F. ADAMS, in his official capacity as President of University of Georgia, and THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA d/b/a University of Georgia, Defendants.	:	CIVIL ACTION NO. 1:06-CV-3043-MHS-CCH

O R D E R

The above-captioned employment discrimination action is before the Court on Defendants' Motion to Dismiss [4] and Supplemental Motion to Dismiss [9]. Plaintiff filed this action in the Superior Court of Fulton County on June 27, 2006. He later amended his Complaint to add employment discrimination claims. First Amended Complaint [5]. Because the employment discrimination claims added a basis for federal question jurisdiction in the action, Defendants removed the case to federal court. Notice of Removal [1].

As reflected in his most recent Amended Complaint, Plaintiff Soloski asserts twelve counts: (1) petition for a writ of mandamus, (2) breach of contract for failure to follow contractually-guaranteed procedures, (3) anticipatory breach of contract for refusal to pay Plaintiff his contractual salary, (4) equitable injunction, (5) promissory estoppel, (6) race discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, *et seq.*, (7) race discrimination in violation of 42 U.S.C. § 1981 ("Section 1981"), (8) retaliation in violation of Title VII, (9) an individual claim against Defendant Adams individually under 42 U.S.C. § 1983, (10) intentional infliction of emotional distress, (11) fraud, and (12) invasion of privacy. Third Amended Complaint [20].

In their Motions to Dismiss, Defendants contend that Count One (mandamus) should be dismissed because Plaintiff cannot demonstrate that he has a right to mandamus for the relief he seeks; that Count Two (breach of contract for failing to follow contractually-guaranteed procedures) should be dismissed because Plaintiff cannot show Defendants breached their employment contract with him by violating University procedures, and that Count Five (promissory estoppel) should be dismissed because the elements of a promissory estoppel claim do not exist. Motion to Dismiss [4] at 4.

For the reasons discussed below, the undersigned **ORDERS** the parties to submit supplemental briefs as described *infra* at pages 6-7.

I. DISCUSSION

During the summer of 2005, Defendants found Plaintiff, Dean of the University of Georgia's ["the University"] Grady College of Journalism, to have made statements violating the University's policy against sexual harassment. Third Complaint ¶45. Plaintiff admits making the alleged comments, but contends that the comments did not violate University policy.

In Count One, Plaintiff asks for a Writ of Mandamus pursuant to O.C.G.A. § 9-6-20, compelling Defendants to provide him with a name-clearing hearing in response to the charges. Third Complaint ¶76. Defendants now move for dismissal of that claim, arguing that Plaintiff cannot prove the elements necessary to demonstrate a right to a name-clearing hearing. Before the Court can recommend an outcome on the merits of Defendants' Motions to Dismiss, however, a preliminary jurisdictional issue must be addressed.

In his Complaint, Plaintiff explicitly requests a state writ of mandamus; however, this action is no longer in state court. Upon initial review, it appears that

this Court may lack the authority to issue a state writ of mandamus. *See Rosales v. Hunt*, 2006 WL 3469528, *2 (N.D.Ga. Nov. 30, 2006)(Batten, J.)("Federal courts have no 'general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties...'")(citing *Moye v. Clerk, Dekalb County Superior Court*, 474 F.2d 1275, 1276 (5th Cir. 1973)); *see also Webster v. Matthis*, 2007 WL 879587, *1 (N.D.Ga. Mar. 20, 2007)(Carnes, J.); Ga. Const. art. VI, § 1, ¶ IV ("[O]nly the superior and appellate courts shall have the power to issue process in the nature of mandamus.").

Moreover, even if Count One were construed as a request for a *federal* writ of mandamus, "[f]ederal mandamus is available only to 'compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.'" *Bailey v. Silberman*, 2007 WL 966578 *2 (11th Cir. Apr. 2, 2007) (unpublished) (citing 28 U.S.C. § 1361). As Plaintiff is requesting a writ of mandamus directed toward officers of the University of Georgia, a state institution, it appears that even if Plaintiff could show he is entitled to such relief, this Court would be unable to grant that relief.

If the Court in fact lacks jurisdiction to grant a writ of mandamus, a subsequent question arises: What would be the practical result for Plaintiff's mandamus claim?

It cannot be true that Plaintiff loses his mandamus claim entirely, simply by virtue of the removal of this case to federal court. *See, e.g., Lapides v. Bd. of Regents of the Univ. System of Ga.*, 535 U.S. 613 (2002). On the other hand, maybe it can only be preserved by remanding it to a state court with the unquestionable jurisdiction to issue state writs of mandamus.

In turn, if Plaintiff's mandamus claim is remanded to state court, it is also possible that the remaining state law claims should likewise be remanded as a matter of comity. *See* 28 U.S.C. § 1441(c)(providing that, when a state claim is joined with a federal question claim, either the entire case may be removed, or the district court may, in its discretion, "remand all matters in which state law predominates"); *see also RMS Consulting Group, Inc. v. Bank of Oklahoma*, 189 F.3d 478, *4 (10th Cir. 1999) (unpublished) (stating that "it is clear" that Congress intended to provide courts with the discretion for partial remands in § 1441(c)). This case was removed to this Court under 28 U.S.C. § 1331 on the basis of its four federal question jurisdiction claims; its eight state law claims are in this Court only on the basis of supplemental jurisdiction under 28 U.S.C. § 1367. The Supreme Court has explained that federal district courts should not entertain supplemental jurisdiction over state law claims as a matter of course:

> Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.

United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966). In the instant action, the resolution of Plaintiff's eight state law claims would require an examination of factual allegations that are not material to the Plaintiff's federal claims, and might be better served in a state court that has a "surer-footed reading of applicable law." *Id.*

Regardless of the proper outcome of these issues, the jurisdictional questions raised by Plaintiff's mandamus claim should be resolved before Defendants' Motions to Dismiss are decided.

II. CONCLUSION

Because additional briefing is necessary in order to resolve the preliminary issue of whether this Court has jurisdiction to grant the relief Plaintiff requests, the parties are **ORDERED** to submit supplemental briefs on the following issues: (1) whether the district court has jurisdiction to grant Plaintiff's petition for a writ of mandamus; (2) whether Plaintiff's mandamus claim should be remanded to state court, and (3) if Plaintiff's mandamus claim should be remanded to state court, whether his remaining

state law claims should likewise be remanded. The briefs, to be submitted simultaneously, should be filed by **Friday, May 11, 2007.**

IT IS SO ORDERED this 17th day of April, 2007.

C. CHRISTOPHER HAGY
UNITED STATES MAGISTRATE JUDGE