

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

IN THE MATTER OF THE RECOMMENDED DISMISSAL OF ASSOCIATE PROFESSOR  
CHRISTOPHERC. HENIGE, A TENURED FACULTY MEMBER AT UW-WHITewater

DECISION AND ORDER

PARTIES

Associate Professor Christopher C. Henige, 8651 Hahn Road, Fredonia, NY 14063.

Chancellor Beverly Kopper, University of Wisconsin-Whitewater, represented by Senior  
System Legal Counsel Anne Bilder, Office of General Counsel, 1220 Linden Drive, Madison,  
WI 53706.

STATEMENT OF THE CASE

This matter is before the Board of Regents of the University of Wisconsin System (Board  
of Regents) upon the recommendations of Chancellor Beverly Kopper and the UW -Whitewater  
Faculty Hearing Panel that Dr. Christopher C. Henige, tenured associate professor in the  
Department of Art and Design, be dismissed from his position. **[Note the explicit admission that  
Henige is a tenured professor in the Department of Art and Design. That Department is NOT a**

“committee” to which Henige might be “duly appointed” as a service assignment, as will be argued below.]

Any person having a tenured appointment may be dismissed only for just cause and only after due notice and hearing. *See* Regent Policy Document 20-23; *see also* Wis. Admin. Code § UWS 4.01. The decision of the Board of Regents with respect to such matters is final, subject only to judicial review under Wis. Stat. ch. 227.

This matter has a long disciplinary history, which is set forth in the findings of fact.

The genesis of this case was the February 21, 2017, UWS 4 complaint submitted by Interim Dean of the College of Arts and Communication, Robert Mertens. Dean Mertens sought Henige's dismissal for harassing and bullying behaviors. [The current complaints, and all previous complaints were based exclusively on Henige's email communications.] Following an investigation, Chancellor Kopper issued a statement of charges proposing dismissal.

In accordance with the provisions of UWS Chapter 4 [False, as demonstrated below] and the implementing policies of UW-Whitewater, [False, as demonstrated below] a full evidentiary hearing on the charges was held before a faculty hearing panel on September 8, 2017. [False. The only reason the testimony was limited to September 8, 2017 was because the Hearing Panel explicitly established time limits for the presentation of evidence and for the cross-examination of adverse witnesses long BEFORE they had any idea of the extent of that evidence or the number of witnesses to be presented. This does not constitute “a full evidentiary hearing”, and will be one of the subjects of judicial review.] The Faculty Panel issued its decision on the matter on October 27, 2017, recommending Henige's dismissal for just cause.

On November 28, 2017, Chancellor Kopper sent a letter to President Raymond Cross recommending the dismissal of Dr. Henige. President Cross referred the matter to the Board of

Regents. Regent President John Behling assigned the Personnel Matters Review Committee (PMRC) to conduct the hearing provided for under UWS 4.08. The PMRC reviewed the record, received briefs from Dr. Henige and Chancellor Kopper, and offered Henige the opportunity for oral argument, which he declined. On January 30, 2018, the PMRC voted to recommend Henige's termination for just cause.

On February 8, 2018, at a closed session of the Board, the chair of the PMRC reported its findings and decision to the Board. The Board voted to adopt the findings and decision of the PMRC and to dismiss Dr. Henige.

Based upon the record, the written submissions of the parties, and the recommendation of the PMRC, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

#### FINDINGS OF FACT

1. Dr. Christopher C. Henige is an associate tenured professor in the UW-Whitewater Department of Art and Design. He began his employment in 2001 and was tenured in 2007. [Again, note that Henige is a tenured professor IN the UW-Whitewater Department of Art and Design.]
2. On May 8, 2013, Dean Mark McPhail sent a letter and complaint to Chancellor Richard Telfer stating that Henige was causing serious tension in the Department of Art and Design through his angry and aggressive communications. He stated that his attempts to mediate and intervene with Henige had been unproductive. [This complaint was filed “pursuant to Wis. Admin Code UWS 6.01” and therefore the protections afforded Henige in UWW Chapter VI of the Faculty Personnel Rules should have been in place. These included informing Henige of the existence of the complaint, which Telfer never did, and

informing Henige that the complaint had been dismissed because it was untimely, which Telfer never did. This complaint also included the first of two false allegations of “sexual harassment” against Henige, despite the fact that no one at any time has ever alleged any conduct of a sexual nature on Henige’s part. ]

3. In an email to Telfer on May 13, 2013, Henige acknowledged the accuracy of the Dean's letter, [Henige was never informed of the existence of the complaint, which he only learned about years later, and as such could not possibly have “acknowledged the accuracy of the Dean’s letter”] apologized, [Henige did apologize separately for language that was considered “snide” and “sarcastic”, but neither of these terms has ever been subsequently applied to any of Henige’s later communications, and therefore...] and promised to avoid such behaviors in the future. Chancellor Telfer issued a letter of counseling to Henige on June 20, 2013 and warned him that subsequent similar behaviors could lead to discipline. [Telfer explicitly stated that his letter of counseling was “in response” to the Dean’s “letter” (complaint), and NOT Henige’s letter of May 13, so it clearly issued from a complaint which Telfer freely admitted at the Hearing that he did not “treat” as a complaint. Telfer bypassed the due process protections afforded Henige in the Faculty Personnel Rules in order to pursue his own agenda, thereby violating Henige’s due process rights.]
4. On December 13, 2013, Dean McPhail filed a formal complaint against Prof. Henige for refusing to fulfil professional obligations, insubordination, and creating a hostile work environment for his colleagues.
5. Provost Beverly Kopper assigned Associate Professor James Bronson to investigate those portions of the McPhail Complaint involving refusal to perform and insubordination. She

assigned Affirmative Action Officer Elizabeth Ogunsola and Human Resources Director Judi Trampf to investigate the hostile work environment allegations. [In fact, McPhail made his second explicit allegation of “sexual harassment” in this complaint, basing that allegation on the fact that the only people who had decision-making authority relative to Henige’s program, and those with whom Henige disagreed, happened to be women. No evidence of any gender bias of any kind in any of Henige’s interactions with students inside or outside the classroom, or any of Henige’s colleagues inside or outside the University has ever been presented. Complainants continued to cite Title VII and Title IX violations, among others, solely to compel the university to investigate the complaints. In every instance these allegations were dismissed. ]

6. Dr. Bronson found that Henige had failed to fulfill his professional obligations [Actually, he did not. Henige demonstrated to Bronson that he fully participated in all of his assigned duties, and Bronson reported this. Bronson did report that Henige did not participate in interviews of potential candidates for an academic staff position. There is no policy anywhere on campus that requires anyone other than the search committee members to participate in interviews, and Department Chair Messer after the fact identified the email from the search committee chair announcing the interviews as an “invitation to participate”. This is in no way a mandate or a directive, and Messer did not have any contact with Henige relative to the search or the interviews at the time they were occurring.] and had been insubordinate. [This term was left undefined in the report. There were no directives which Henige did not follow.] He concluded that Henige had sent emails to his department members declining to participate in department business using an unprofessional and insulting tone. [None of the “business” in question was

assigned to Henige, and none fell within the ordinary duties of a tenured faculty member.] Additionally, Bronson found that Henige would often admit to and apologize for bad behavior but then repeat the same behaviors, thereby making himself appear unstable.

7. Ms. Trampf and Dr. Ogunsola found that Henige's behaviors did not reach the level of creation of a hostile environment based on sex, but they did conclude that Henige had created a "very antagonistic, aggressive and intimidating environment" with his email communications. [By the UWW's own definitions, as expressed in their own mandated sexual harassment training, a "hostile work environment" is defined as one in which harassment based on gender or other protected class is a component, and Trampf and Ogunsola explicitly reported that it was not. As will be seen throughout this document, allegations are presented as fact, and the fact of the dismissal of those allegations is left out.]
8. Chancellor Telfer issued disciplinary charges and penalties pursuant to Wis. Admin. Code UWS Chapter 6 and related UW -Whitewater rules on May 12, 2014 with regard to the McPhail Complaint. [Telfer cited Henige's alleged failure to participate in interviews in which Henige had no obligation to participate as "evidence" of failure to perform job obligations.] Chancellor Telfer proposed suspending Henige without pay for three days, giving him a letter of reprimand, and requiring him to seek help to better control his behaviors with colleagues. [Telfer declined to define or specify what those behaviors were.] Dr. Henige did not appeal the charges and served the three-day suspension. [Henige actually exercised his right to deny the allegations and still accept the penalties, which were not significant enough to warrant appeal.]

9. On September 5, 2014, Dean McPhail filed a new complaint alleging that Henige had continued to engage in the same sort of behaviors that had prompted his first complaint. Department Chair Susan Messer also filed a complaint alleging that Henige was creating a hostile work environment for her. Both complaints centered around a May 19, 2014 Department of Art & Design meeting at which Henige proposed to eliminate the art history major and presented his proposal in an aggressive way that denigrated female colleagues. [Absolutely false. The document Henige read verbatim at that meeting as his rationale for eliminating the major can be seen at <http://cchenige.org/UWW/pdf/20140519-Evaluating-Art-History-Major.pdf> There is nothing whatsoever that “denigrated female colleagues” in that document. It is telling that McPhail had this document in his possession when he filed his complaint, but did not include it as evidence, despite the fact that both he and the investigator agreed that the core of the complaint “centered around the May 19, 2014 meeting.”]
10. Chancellor Telfer appointed Associate Dean Frank Goza to investigate the McPhail/Messer Complaints on October 17, 2014.
11. Dean Goza submitted his report on the McPhail/Messer Complaints on October 17, 2014. Dr. Goza found that Henige had used his presentation at the May 19, 2014 department meeting to deliver strong personal attacks against two colleagues [where are these attacks in the document cited just above?] and followed up with aggressive email, public comments, and other negative behavior all supporting the conclusion that Henige had engaged in a sustained pattern of harassment, repeated actions of intimidation, and the creation of a hostile work environment. Dr. Goza noted that Henige's harassment was usually directed at women in his department and often began once they assumed

positions of power in the department. [It has eluded everyone involved that the women in question had no decision-making authority over Henige's program as typical faculty, but when they became department chair, that changed, and when they made decisions that were detrimental to the students, Henige had every right to challenge them. Henige also challenged decisions made by his predecessor as chair, Bob Mertens, and by Dean McPhail when those decisions also adversely affected the students. These have been left out of the record because they don't fit the prosecution's theory.] He further found that Henige had engaged in physically threatening behavior towards Professor Renee Melton by putting his face close to hers and yelling at her in a menacing way. [Melton never reported any such thing, and in fact, in her first report of the "incident" she reported that Henige "stated" to her that the minutes had not been approved. Melton also reported that she got up from her seat first, and started to leave, and then Henige put his hands on the table (which, because of hip issues he must do in order to push himself out of a chair with wheels) and "stated" his claim to her. This allegation is patently false, has not been substantiated by the alleged "victim's" original statements, nor by anyone else.]

12. On December 29, 2014, Chancellor Telfer issued charges on the McPhail/Messer Complaints that Henige had engaged in repeated acts of intimidation and contributed to the development of a hostile environment in the Department of Art and Design. [Without specifying any specific communications that they construed as such] He imposed a written reprimand and a one-month suspension. Henige sought review of the charges and discipline from the UW -Whitewater Faculty Senate.

13. On January 26, 2015 (amended March 23, 2015), [False. This was not an amendment, it was a separate complaint that was dismissed by Telfer.] Dr. Renee Melton, then Chair of



the Department of Art and Design, filed a complaint against Prof. Henige claiming that he had repeatedly called into question her leadership, integrity, and competence. [False again. The administration has never cited any language in any of Henige's communications that does so. Questioning decisions that are demonstrably contrary to the interests of the students is none of these things.]

14. Chancellor Telfer appointed Richard Thal, Program and Planning Analyst at the UW System Administration to investigate on February 20, 2015.

15. Investigator Thal submitted his report on the Melton Complaint on May 14, 2015 concluding that Henige did not violate state law prohibiting harassment. [Indeed. This is because a circuit court ruled against Melton in a nearly identical action, taken by Melton in the form of a petition for temporary restraining order, nowhere mentioned here. That petition contained no conduct on Henige's part that was not business-related, and it was dismissed by the court. At the Hearing UW System Legal sought to distance the administration from this action on the part of an administrator against an employee based entirely on business activity, calling it a "private action" on the part of Melton.]

However, Thal found that Henige had violated UW -Whitewater's zero tolerance policy against intimidating behavior [which he did not define or identify] because his conduct towards Melton and other women in the department was uncivil, [which he did not define] impeded Melton's ability to function as chair, [citing no examples] and that Henige had knowingly attempted to intimidate her. [again citing no examples]

16. On May 21, 2015, Chancellor Telfer issued charges on the Melton complaint finding that Henige's actions prevented Melton from fulfilling her obligations [which obligations these were was never specified] and that he was engaged in a continuing pattern of

harassment and intimidation. [again, unspecified and undefined. The administration has persisted in avoiding any kind of specificity in their complaints and allegations.] Telfer imposed a written reprimand and a one-semester suspension. He also prohibited Henige from engaging in "unmediated correspondence" with any members of the department for the academic year 2015-2016. [Telfer defined an "academic year" at the Hearing as "nine or ten months", and clearly understood it to mean from August to May.]

17. Henige received a hearing on the McPhail/Messer Complaints from a faculty hearing panel in April 2015. The panel found sufficient evidence to show that Henige "failed or refused to engage in certain professional obligations [Which are these? They are not specified anywhere.]... [and] fail[ed] to maintain a professional level of respect and collegiality with other faculty members ... ". [There is no obligation to be "collegial" to anyone. This is well understood by the academic community (AAUP's statement on Collegiality) and by the administration (Cook's own statement in a department meeting that there is no rule requiring anyone to be "collegial".)] After considering the prior discipline and the seriousness of the charges, the panel unanimously voted to uphold the penalties and remedies assessed by the Chancellor. [One of the remarkable aspects of the penalties imposed is that they conform to the convenience of the administration. A suspension of a few days can never be served consecutively if there are teaching duties on one of those days. A month-long penalty can only be served during Winterim, and one will never be penalized with a two-month suspension because that would necessarily interfere with teaching. So, a few days, a month or a semester are the options, regardless of the severity of the offense or the history. This is not punishment that fits the offense, it's punishment that fits the administration.]

18. Chancellor Telfer retired on June 30, 2015 and Beverly Kopper became Chancellor.
19. Henige served his one-month suspension on the McPhail/Messer Complaints in the fall semester of 2015. [Telfer's explicit language was that this penalty would be served "at the start of the spring 2016 semester", which can only be construed as January 19, the first day of the semester, to February 18, a month later. Accordingly, Henige scheduled hip replacement surgery for late December with the understanding that he would be able to rehab in time to reassume his duties. Kopper then changed the penalty to suit the administration, moving it to Winterim, which would require Henige to return to work January 19, long before his rehab would be completed. Henige was forced to cancel the surgery.]
20. Another faculty hearing panel heard the Melton complaint on November 13, 2015. The panel found that Henige had communicated in a tone and manner that could reasonably be perceived as harassing, intimidating, and aggressive toward Prof. Melton and, with one exception related to state harassment law, upheld the charges, and the Chancellor's proposed penalty of a one-semester suspension. [Neither this hearing panel nor the previous one complied in any meaningful way with the established internal policies for conducting such hearings, and in each case, time limits were set before any review of the body of evidence or the witness lists was made. Those limits were completely arbitrary.]
21. Chancellor Kopper imposed a directive prohibiting Henige from engaging in unmediated communication with members of his department for academic year 2016-2017 [False. She stated in a letter dated January 4, 2016, that this penalty would be "beginning immediately and continuing through the academic year, 2016-2017", effectively expanding the penalty initially imposed by Telfer by nine months, in direct opposition to

the Faculty Personnel Rule stating that the penalties cannot be increased from what was set out in the initial charge. This is also a violation of Henige's constitutional right to due process.] and warned him that additional misbehavior could result in further discipline including dismissal.

22. On June 27, 2016, Henige asked the Board of Regents to review the entire record of the disciplinary proceedings against him. The Board declined to take review in a decision dated November 16, 2016. [They did not review the decision and affirm it. They declined to review it at all. So this means nothing.]

23. Following Henige's 6-month suspension, Chancellor Kopper placed restrictions on Henige's return to work. He was to teach online and he was to have only mediated contact with the members of his department-meaning that he was not to communicate with them directly but was to send his communications to (interim) Dean Robert Mertens. [They left out the part about mandating that Henige not attend department meetings, a mandate that is illegal on its face under Wis. Stat. 19.89. As noted at the beginning, Henige was a tenured faculty member in the Department of Art and Design, and was therefore at all times a member of the government body that was meeting. Henige was never "unappointed" from the Department of Art and Design, so the argument that follows below is moot. Also conspicuously absent from this "finding of fact" is that Henige's request came in the form of a Disability Accommodations Request Form, and not some "agreement" reached between the parties.]

24. Dr. Henige rejected the restrictions asserting that (1) the Chancellor had no authority to impose discipline on him beyond the 6-month suspension; [Henige did not say this either. But as noted in number 21 above, Henige's assertion that expanding the period of

mediation is absolutely true] (2) the mediated correspondence requirement violated his rights of academic freedom and free speech; [Henige did not make this assertion, as true as it is] (3) the restrictions on his attending department meetings violated the open meetings law, [As noted in number 23 above, it absolutely does] and ( 4) the prior disciplines were not fairly imposed. [None of the preceding hearings were conducted in accordance with the rules set in place for doing so, and in one case the hearing on the penalties was held while Henige was not under contract to the University.]

25. Beginning in August of 2016, Dr. Henige re-established his pattern of harassing and intimidating conduct against the members of his department and the administration for which he had been disciplined before. Among the behaviors he engaged in were:

- Sent an email to Associate Vice Chancellor and acting Department Chair Greg Cook accusing Messer and Melton of having lied repeatedly [demonstrably true, as set out in two grievances against those individuals which were forwarded to a campus-level grievance officer and then languished for over 19 months, never being investigated.] and threatened to file lawsuits against "three dozen individuals on campus." [Notice of Claim forthcoming]
- Repeatedly claimed to department members and the administration that anyone attending a department meeting would [could, not would, and also specified that the statute stated it could range from \$25 to \$300] suffer a \$300 fine and be reported to the district attorney. [Henige filed this complaint with the District Attorney of Walworth County on September 28, 2017, and it is currently under investigation.] Therein he stated, "I will inform you when the proscription has been lifted and when meetings can resume legally. Do not take the

administration's word for it." [The administration told them the meetings were legal. One imagines the DA would not be investigating it if that were true.]

- Sent an email to a student on or about January 19, 2017, stating "the administration is failing miserably in providing you with the options you deserve ... " [Fact. By now the reader will have recognized a very clear theme – if an administrator makes decisions that harm the students, and you report that to them, you are subject to disciplinary action, for being “harassing” or “intimidating” or just plain “uncollegial”.]

- Sent an email on February 9, 2017 to three members of the department stating, "You are being lied to." [True] Followed that up with a 13-page email message to all faculty and the administration accusing colleagues of lying and committing defamation and characterizing Melton's actions as "irresponsible and incompetent." [True, as were Henige’s assertions in that communication. If a statement is true, and demonstrated in the written or oral record (via recordings), it is not incumbent on anyone to be silent simply because it will make the offenders squirm. There is also a subtle shift in the UW position here. Up until now, they repeated alleged that Henige asserted that Melton was “irresponsible and incompetent”. At the Hearing, Henige made it clear that he never said that. He said that he believed the actions of providing students with one set of information about how a do-or-die review would be conducted and then conducting it in an entirely different manner was “irresponsible and incompetent”. Henige also admitted at the hearing that he had also done things while he was

chair that he himself considered to be “incompetent and Irresponsible”, but that did not mean he was such, and he never stated that Melton was such.]

- Sent a lengthy [there is no policy anywhere that limits the length of emails conducting university business, nor when they can be sent.] email on or about February 11, 2017 identifying his "concerns" with Dr. Wilk's behavior and saying it was "symptomatic of a disturbing pattern." [That email was sent to Wilk's supervisor, sent by the senior faculty member about a junior faculty member in his area. The pattern is distinct, real, and proven by Wilk's actions as described in Henige's communication, each of which was either witnessed by others besides Henige, or can be verified through other university sources.]

- Sent email communications on March 25 and 27, 2017 [Again, misleading. Only one of these emails dealt with Flanagan's actions] to department faculty members attacking Mark Flanagan, an instructor in the Department, stating that Flanagan lied to the administration twice [True, as demonstrated in the documents attached to that email] and threw him, Henige, "under the bus for Flanagan's own 'misconduct.'" [Flanagan admitted to this at the Hearing.] Also stated, "As for you, Mr. Flanagan, your duplicity is laid bare for all to see. If your colleagues wish to continue to work with such a person, they can suffer the consequences, but at this point, perhaps retirement is the better part of valor."

- Questioned acting chair Greg Cook's integrity [Here the Regents are conflating two separate allegations they have previously made. In this case, they claimed that Henige questioned Cook's integrity in an email in which Henige actually stated that he believed Cook had too much integrity to conduct illegal meetings.] and

contacted a search committee at UW -La Crosse where Cook was a finalist for the Provost position to claim that he was in violation of Wisconsin law and an unsuitable candidate. [True, and until the DA's investigation into the matter is complete, Henige will continue to hold that it is true.] He also made a similar contact as regards the application of School of Education Dean Katy Heyning. [False. The only mention made regarding Heyning in Henige's communication with the search committee was that he had no dealings at all with Heyning and could not speak to her character.]

- Asserted that members of his department and the administration (Mertens, Messer, Melton, Dale, Flanagan, Cook, McPhail, Wilk, and Provost Elrod) were deceiving department members about the privacy of information. [True. Each has asserted, on the record (and recording) in Department meetings that past personnel actions were not subject to public scrutiny. The DOJ's Open Record Compliance Guide disagrees. Henige has made open records requests through which he has obtained exactly those kinds of records. Henige conveyed this to the faculty.]

- Reasserted threats claiming that "(acting chair) Dr. Cook is not going to do anything to bring order back to the department," [First, how is this a "threat", and second, how is it a "true threat" that would render it unprotected under the First Amendment?] and "the solution to get rid of the five people is spot on. [The administration continues to ascribe this statement to Henige despite their knowledge that Henige was simply quoting another senior faculty member in the Department. He provided them with a recording of her doing so.] You know



exactly who they are. The elimination of actual bad actors is up to you ... These bad actors have lied repeatedly to you about the circumstances of what has been going on ... " [The audio record of defamatory statements made by those individuals in department meetings speaks for itself. Each of those statements was made in Henige's absence.]

- Described the revision of art history surveys as ill-conceived and ill-advised [and provided all of the documentation that demonstrated exactly why that was the case.] while personally attacking Wilk, including accusing her of doing little work. [This is the second time this allegation has surfaced, but everyone is at a loss to point out exactly where Henige said this. It is false.]

- Asked of the department, "Is there an honest belief that we can meet accreditation standards?" [The degrees offered by the department were re-accredited]. [Despite explaining this clearly at the Hearing, it seems necessary to do so again. The accrediting body (NASAD in this case), has published standards for accreditation in their handbook. The UWW art history major has not and still does not meet these standards. As such, Henige's statements are entirely true. Henige NEVER stated anywhere that NASAD would not accredit the department, although it was his belief that an accrediting agency should not accredit a program that does not meet its own standards. Clearly, in this case, NASAD did. As a potential student, seeing a program as "accredited" surely suggests that the standards have been met, so advertising it as such seems disingenuous and misleading at best, fraudulent at worst. The fact remains that there are no courses

at the “advanced seminar level” as required in the standards, and as such the program does not meet accreditation standards.]

26. Throughout this time, Dr. Henige was instructed that he was to have only mediated communications with the department faculty. At no time did Henige acknowledge the directives, [there was no requirement to “acknowledge” the directives. In fact, Henige requested clarification on three separate occasions as to how the administration’s mandate not to attend meetings conformed to Wis. Stat. 19.89 and Henige received no response on any of those occasions.] accept any responsibility, [Responsibility for what? Reporting concerns about decisions that damaged the students or their programs?] or provide any evidence of reflection on his past bad behavior. [That past behavior being ... doing the same?]
27. Dean Mertens submitted a complaint under UWS 4 to Chancellor Kopper seeking Dr. Henige's dismissal for cause on February 21, 2017.
28. Chancellor Kopper appointed Shannon Bradbury, Employee Relations and Organizational Development Manager at UW-Milwaukee to investigate the complaint on or about March 8, 2017. [At this point the reader may have noticed that in every case, all parties involved in any way were paid by UW System. One administrator in the UW System recently stated that when people decide to align their actions they tend to do so with the person that’s paying them.]
29. In her report, Bradbury concluded, "It does not take an expert to see the sending of repetitive, excessively-long, often humiliating emails as abusive behavior. Dr. Henige's exhausting messages are angry, frequently threatening, and apparently intended to humiliate and intimidate whoever may be the 'target of the day' ... They cannot work

effectively under that constant pressure." [In another recent UW System action, UW System Legal Attorney Lattis stated that "The [redacted] investigation is not the same as the live testimony as regards how it must be treated by the committee. It forms the basis of the charges, but the charges themselves must be proven in the hearing where the chancellor bears the burden of proof. The committee may not rely on an uncorroborated report as "substantial evidence" to support its factual findings if the report is contradicted by live testimony." Bradbury's testimony in person is irrelevant as well. She cannot corroborate her own report, which is entirely based on what others told her, and in this case those "others" were only people whose actions Henige had criticized. Those people chose not to testify.]

30. On April 13, 2017, Chancellor Kopper met with Dr. Henige to discuss the investigator's report.
31. On April 28, 2017 Chancellor Kopper issued a statement of charges for dismissal for (1) insubordination in violating her directive regarding mediated contact with the department members, and (2) engaging in a continuing pattern of conduct that created an intimidating, harassing, and disruptive environment for members of his department.
32. A faculty hearing panel met on September 8, 2017 and took testimony from a number of administration witnesses and Henige. [Limiting that testimony to three hours per side, including cross-examination]
33. Dr. Cook stated in the hearing that when he first heard the stories about Henige, [by definition, hearsay] he thought the members of the department should just get over it, but he then came to realize that they had been living with this treatment for 6-7 years with no escape. Dr. Cook pointed out that Henige's attacks were directly aimed at the department member's career, livelihood and sense of self-worth. [Cook stated nothing of the kind in his testimony. Perhaps the Regents might provide a transcript of the Hearing and point

out exactly where Cook stated this.] The faculty's distress is reasonable reaction seen in that light. [In light of a statement that was never made?] Because of the fear in the department, the faculty could not accomplish the curricular and other changes they needed. [Completely false. There is no evidence whatsoever that any attempt was made to implement the curricular changes before the time they were actually implemented. Even so, the changes that were made did not in fact accomplish their objective.]

34. Dr. Messer submitted a letter to the panel but declined to appear. [Well, she was there the whole time. She declined to testify in person and risk cross-examination.]

35. Dr. Melton submitted a letter to the panel but declined to appear. [Melton was not there, but her reasons are the same, and she said as much in her written statement.]

36. On a 2-3 vote, the hearing panel rejected the Chancellor's charge that Henige's communications in violation of her "mediated correspondence" directive amounted to insubordination. The panel majority was concerned that Chancellor Kopper could not have extended the directive beyond Henige's semester extension without going through a further disciplinary process. [Fact, as noted in 21 above] The majority also wondered if "mediated correspondence" had resulted in Henige's opinions about accreditation and curriculum going unshared. [None of the communications that were sent through the "mediator" were forwarded to any of the intended recipients. They were simply censored out of existence. That's not "mediation" and the panel knew it.]

37. The faculty hearing panel unanimously recommended Henige's termination. The panel found that Henige had engaged in behavior creating an environment of intimidation and harassment [and yet cited not a single example from any of Henige's communications to support this conclusion] within the Department of Art and Design and that his continuing

pattern of conduct adversely affected his ability to fulfill the duties of his position [no examples of this were cited either. Not one.] and had a disruptive impact upon the Department. [The only testimony regarding any disruption to the department came from Cook, who testified as to what he was told by others who declined to appear as witnesses, and in the written statements of Melton and Messer (see below for why these are irrelevant.)]

38. Chancellor Kopper offered Henige the opportunity to meet with her to discuss the panel's report, but he declined the invitation.

39. In her letter to President Cross, Chancellor Kopper urged the Board to terminate Henige because of the disruptive and deleterious effect that Dr. Henige's behavior had on his colleagues, rendering them unable to express their opinions on matters related to the regular business of the Department out of fear of retaliation by Dr. Henige. [No examples of this were presented, and the individuals making this claim declined to testify to that effect.]

#### ISSUE

The ultimate issue presented to the Board of Regents is whether, based on the record, there is just cause for Dr. Henige's dismissal from his tenured faculty position.

#### CONCLUSIONS OF LAW

1. Dr. Henige has been afforded the due process and procedural guarantees required by UWS Chapter 4, Wisconsin Administrative Code. [False. Henige's first exceptions brief identifies all of those failures, which will be addressed below.]
2. Just cause for the dismissal of Dr. Henige from his position as a full professor in the UW-Whitewater Department of Art and Design has been established by a clear preponderance

of the evidence. *See Safransky v. Personnel Board*, 62 Wis. 2d 464, 215 N.W.2d 379 (1974). [This “standard” being published nowhere.]

## DISCUSSION

### *Charge I: Insubordination*

The evidence supports the Chancellor's assertion that Dr. Henige was insubordinate when he failed to follow the Chancellor's directive to engage in mediated correspondence through the Dean rather than via email. The Faculty Hearing Panel raises the question as to whether the directive amounted to discipline that should not have been imposed on Dr. Henige absent due process.

The Board finds that Chancellor Kopper had the inherent authority to require Henige to engage in mediated correspondence and was not required to invoke the disciplinary process to issue her directive. However, even if the charge of insubordination had not been substantiated, the Board finds substantial evidence to terminate Dr. Henige under the second charge.

### *Charge 2 - Intimidating, harassing, and disruptive conduct*

The evidence supports the Chancellor's assertion that Dr. Henige engaged in intimidating, harassing, and disruptive conduct. [Which evidence is this? Where are the citations and examples from Henige's communications, which are the ONLY evidence at issue?] Dr. Henige began a campaign of abusive, intimidating, and disruptive conduct against his colleagues in 2013. He received progressive discipline for these behaviors including a letter of counseling, a three-day suspension, a one-month suspension, and a one-semester suspension. [The Regents in fact argued that the “Letter of counseling” was NOT discipline in an earlier decision and order. Which is it?

Progressive discipline also requires that the punishments suit the alleged offense, and not be established solely for the convenience of the administration.] For each discipline, Henige received the due process provided for in the applicable rules. [Absolutely false. The record of all of the failures of due process in all proceedings can be found at <http://cchenige.org/UWW/PHP/Exhibits.php?id=Procedural> ] Dr. Henige was repeatedly instructed that continuing misconduct would result in additional discipline. [None of the alleged “misconduct” was ever specified in any of the previous actions. What, exactly, was Henige supposed to cease? Conveying legitimate concerns that were conveyed to him by students? Sending “harassing”, “threatening” or “intimidating” communications where no one can point out exactly which communications or why they are any of those things, even when asked specifically to do so?] Though occasionally Henige would apologize and promise to mend his ways, eventually he returned to the same patterns of behavior. [And occasionally the administration would even draft their own letter of apology on Henige’s behalf, and represent it to the faculty as his own language.]

The University is a place of teaching and learning. In order to fulfill its mission, the University, like any other place of business or government, relies on its staff to behave in a professional and appropriate manner. [Which is not the same as being a lemming and doing whatever one is told regardless of the consequences for those whom the university exists to serve.] The Board will not tolerate the type of incivility [How about some examples – please?] exhibited by Dr. Henige toward his colleagues. As Chancellor Kopper expressed, Henige's insistence in engaging in such misconduct even after he was counseled, warned, and disciplined, demonstrates his inability or unwillingness to change his behavior to conform to those reasonable expectations we must have of professionals on our campus. [Lemmings – and what

hypocrisy in the face of their recent proclamations about academic freedom.] No one can be expected to work in such an environment. [Henige has been at the University since 2001, and yet the issues only began when students started complaining that they couldn't graduate on time, or even close to on time. Why is that? Before 2013 Henige did complain to other administrators who instead of filing complaints and taking out restraining orders, actually spoke to Henige and came to mutually acceptable resolutions. Why is it that that hasn't been the case since 2013? Why has no one ever, at all, spoken with Henige about these issues?]

Dr. Henige's behaviors meet and exceed the *Safransky* test for just cause. [This assumes the Safransky test is relevant, but it is not.] His mistreatment of colleagues impaired the ability of his department to pursue its mission and serve its students. [Why do we see no examples here? People who were caught lying to their colleagues claim that the person that caught them is "harassing" them and this has impaired their ability to perform their obligations? What about all of our obligations to the students? Is it not the decisions of those individuals that have impaired all of our abilities to serve our students? Where is the evidence that they have been disciplined in any way? Why doesn't their conduct meet the "Safransky standard"?] Persons could not engage in even the most minor of academic disagreements with Henige without fear of coming under his constant drumbeat of accusations. [Also missing from all this is that Henige has had no presence whatsoever in the Department since January 16, 2015.]

The Board rejects Henige's assertion that he had a right grounded in the First Amendment and the general concept of academic freedom to demean and denigrate his colleagues. [There has yet to be produced any evidence in any of Henige's communications of "demeaning" or "denigrating" language. None.] Neither the First Amendment nor academic freedom have ever been interpreted to prohibit a public university from restraining uncivil speech that disrupts the



workplace. [There is also, so far, no credible evidence that there has been any disruption to the workplace.] Dr. Henige may have had important things to say and relevant points to make, but those were lost in the insults he inflicted on his colleagues. [Where are these insults?] The courts have long recognized that a public employee's interest in free expression may be outweighed by the public employer's need to effectively perform its mission. *See Waters v. Churchill*, 511 U.S. 661,668 (1994). Dr. Henege's speech crossed that boundary long ago. [A reading of Henige's reply brief will belie these statements.]

#### *Response to Dr. Henige 's procedural arguments*

For the reasons set forth, the Board rejects Dr. Henige's procedural arguments. [Of course they do, they are being advised by an attorney from UW System Legal, the same office that sanctioned the repeated violations of Henige's due process rights from the start. This is exactly why such proceedings are simply a joke.]

#### 1) Faculty Hearing Panel selection

UWS 4.03 requires the faculty of each institution to provide a "standing committee" charged with hearing dismissal cases and making recommendations." Dr. Henige argues that the UW-Whitewater must have committee membership elected or appointed rather than via a process, commonly used in UW-System, where the faculty senate chair draws names from an available pool of those willing to serve, and the resulting panel then chooses its chair. [The rules for doing so are somewhat more specific than this, and they were not followed.] This process comports with UW-Whitewater faculty adopted rules, and there is nothing in UWS 4.03 or its use of the term "standing" that imposes an election or appointment requirement. [In fact, Henige never claimed this, anywhere.] Nor does that term require that committee membership and the

chair be named ahead of time. Doing so would likely be impractical. [False. The rules in place require “selecting the five members of this committee whose names are at the top of the list of members”. This could be done in advance. It could be done right now. Those people could be contacted, asked to select a chair from among them, and then wait for the next request for a hearing. A standing committee, with a chair. Simple. But this was not done, the Faculty Senate cannot possibly demonstrate that the selection of panelists complied with their own policy for doing so, or that the membership of the hearing panel in the instant case was not hand-selected by the administration and/or was not limited to people who were willing to be inconvenienced by conducting panel business while off contract and without compensation.]

## 2) Open Meetings Law

Dr. Henige claims that his department was prohibited from excluding him from meetings by operation of Wis. Stat. sec. 19.89, which prohibits a governmental body from excluding a "duly ... appointed" member. It is UW-Whitewater's position that once Dr. Henige was removed from his service duties, he was no longer a "duly appointed member" of the Department for purposes of attending department meetings. [Nonsense. Henige cannot be “unappointed” from being a member of the Department of Art and Design until he is either dismissed or assigned to a different department, and everywhere in this document he is identified as such, and that was the “government body” that was meeting.] Even if UW -Whitewater is incorrect on this point, [UW System Legal never admits to being incorrect unless they know that they are. All of the citizens of the State of Wisconsin will soon find out to what degree an employer can interfere with the rights of its citizens and taxpayers to participate in the governance of the State and its agencies.] the appropriate remedy is for Henige to pursue an enforcement action pursuant to Wis. Stat.

19.97, not to commence a campaign of threats and accusations against colleagues. [Both are appropriate. The faculty, Henige's friends and colleagues, have a right to know that they are potentially subject to fines if they meet illegally. It is up to them to demand proof that Henige is wrong (the plain language of the statute is sufficient proof that Henige is right) and then demand that the UWW provide proof that their position is correct, *despite* the clear language of the statute. If the faculty choose not to question the administration in the face of the clear language of the statutes, then they become subject to any potential fines that might result.]

### 3) Inability to call and cross-examine witnesses

Dr. Henige claims that he was unable to force witnesses to attend his hearing, and that this violates the adequate due process guarantees of UWS 4.05. [No he didn't. This is a false claim. Henige only asserted that the inability to compel witnesses to participate meant that the Chancellor must prove their case without the testimony of those witnesses, and that any written testimony that is not corroborated by in-person testimony cannot be considered "substantial evidence".] He is incorrect. Neither the parties nor the panel (nor the Board for that matter) has the ability to compel witnesses to appear in the proceeding. Nor is such a power commonly conferred in internal personnel proceedings.

Dr. Henige also complains that he was unable to cross-examine Melton and Messer because they submitted written statements. UWS 4.05(1)(e) does permit Henige the right to cross-examine adverse witnesses, which he was unable to do. However, there is also no prohibition on the Board's considering hearsay evidence or receiving statements in lieu of testimony. [Correct, and if they give it credence without substantiation, then they open

themselves to judicial review. Anything is “admissible”, but nothing that is unsubstantiated can inform the judgment of guilt or innocence, and clearly that has been the case here.]

To resolve the dispute, the Board has chosen not to rely upon the Melton and Messer written statements. [This is irrelevant. The Board did not “hear” the case, their hearing agent – the hearing panel – did, and clearly they relied upon those written statements. The horse is already out of the barn on this one. Cook and Bradbury only testified to what they were told by others who did not testify themselves. That means that the only first-hand testimony that there has been any disruption to the Department came in the form of Flanagan’s testimony, and he did not testify to any disruption of his ability to perform his job. Therefore, the entire second charge falls flat.]

#### 4) Swearing of witnesses

Dr. Henige objects that hearing witnesses were not sworn and cannot therefore be held to criminal perjury standards. [This is also entirely false. Henige argued in his exceptions brief that that the perjury laws must apply precisely because the Hearing in question was “authorized by statute to determine issues of fact” (which explains the “finding of facts” above) and “under oath or affirmation”. A viewing of the video of the hearing will demonstrate that each witness who testified affirmed that they would tell the truth. It seems UW System Legal are arguing that witnesses can perjure themselves to their heart’s content and nothing can be done about it. This is consistent with a similar assertion in their reply brief that the perjury laws were “not applicable”. What an assertion to make! Add to that their claim that hearsay evidence is perfectly fine and that it is not appropriate to compel people who have provided adverse testimony to an investigator to actually testify in person and we have proceedings that cannot be construed as

anything other than a joke.] There is no requirement in UWS Chapter 4 that witnesses be sworn, nor does such a requirement usually attach to an internal personnel proceeding. [except in this case the “proceeding” involved the potential deprivation of tenure, a property interest, and as such brings in all of the due process protections afforded under the Sixth and Fourteenth Amendments.]

#### 5) Collusion between the Panel and the Administration

Dr. Henige alleges collusion but presents no concrete information supporting his suspicions. University officials receive the benefit of the doubt that they are acting with integrity unless the facts create an impermissibly high probability of actual bias. [A review of the record will indicate that the persistent and consistent failure to comply with established and published internal policies, with the consent of the administration, creates an impermissibly high probability of bias. What possible reason would any hearing panel have to completely ignore the rules that they alone are charged with enforcing, without the express sanction of the administration or counsel paid for by the administration? In fact, don't the members of the hearing panels have a “ministerial duty” to enforce those very rules? Is that not the very reason for their existence? As for university officials receiving the benefit of the doubt as to their integrity, one need only review the countless documented instances of perjury on their part to put that benefit to rest.] See *Marder v. Board of Regents of the University of Wisconsin System*, 2005 WI 159, para. 34. The Board does not see any evidence of bias or collusion. [Of course not. What do you think they're going to say?]

#### 6) Hearing time limits

Dr. Henige states that he was given insufficient time to present his case to the faculty hearing panel, but he does not state what evidence he would have presented had he more time. [Henige stated that at the hearing. The administration alleged a “pattern of behavior” and a history of “progressive discipline” so Henige had every right, but no time, to pursue each and every one of those actions and test them for reliability.] Dr. Henige was given the same amount of time as the Chancellor and did not use it all. [This will be addressed in judicial review. The courts have been clear that the amount of time does not need to be equal, and that they recognize that it frequently takes far longer to defend against an allegation than to make one.] It is very common in the courts and in administrative cases for parties to be given time limits. [And in every instance the courts have ruled that such time limits MUST be based on an examination of the evidence to be proffered, witness lists, and estimates by each party as to the amount of time that may be needed PRIOR to the establishment of those limits. None of these was the case in this instance.] The Board finds that the faculty hearing panel's imposed time limits were reasonable and appropriate. [Of course they do. And that’s why judicial review exists.]

#### 7) Standard of proof

Dr. Henige correctly points out that UWS Chapter 4 does not impose a specific standard of proof for most cases (sexual misconduct being the exception). Under Wisconsin administrative law, if there is no rule stating otherwise, the required burden of proof in an administrative proceeding is that of other civil cases which is that the facts be established "to a reasonable certainty by the greater weight or clear preponderance of the evidence." *Reinke v. Pers. Bd.* 53 Wis. 2d 123 at 137 (1971). [Let’s imagine that’s true. Then why did they not convey this to the panel when asked to do so? Why did the panel never convey this to Henige? Why did the panel not specify

the standard of proof they applied to the case? Why does UWS 4 not specify this when it would have been so easy to do so AND while its near analogue UWS 7 does? There is currently another dismissal proceeding underway at another campus. In their report following the hearing in that case, the standard of proof was clearly stated by the Hearing Panel as “clear and convincing evidence”. If that’s true, then how can the “hearing agents” for the Regents apply two different standards of proof to the same action under the same statute? Now both parties can claim unequal treatment under the law.] The Board has applied the "clear preponderance of the evidence" standard of proof in its most recent faculty termination cases and continues to apply that standard here. [But its agent, the hearing panel, did not, or at least we have no way of knowing whether they did or not. Fundamental to the constitutional right to due process is “a fair and impartial hearing”, and when neither the administration nor the hearing panel will specify what standard of proof they are holding each party to, the hearing cannot be considered fair or impartial.]

#### 8) Definition of "just cause"

In a somewhat convoluted argument, Henige takes issue with the Board's use of the just cause definition in *Safransky v. Personnel Bd.*, 62 Wis. 2d 464 (1974). The Wisconsin courts have held neither that the *Safransky* case does not provide an adequate definition of just cause nor that a public employer's use of the definition is incorrect. [The Wisconsin courts have not been challenged on this issue, and especially not in relation to UWS 4. The Regents have consistently cited it, and Henige will argue before the courts that this interpretation is flawed.] Dr. Henige argues that the Board should determine whether there is sufficient rational connection or nexus between his misconduct and the performance of his duties of employment. This is a reasonable

interpretation of part of the *Safransky* standard, which looks to impairment of the effective performance of duties. What Henige appears to overlook is that engaging professionally with colleagues is his duty. [Except that the administration has declined at every opportunity to point out exactly what has been “unprofessional” about his conduct. The Administration also fails to recognize that a great many of his colleagues across the country might consider his duties to the students to far exceed his duties to relent to the whims of his immediate coworkers.] Chancellor Kopper asserts that Henige's failure to communicate professionally is a failure of performance. [Cite some examples and we can have that conversation. In the absence of any citations, we cannot even engage in that argument. UW-Madison Faculty Legislature documents II-303 and II-332 provide definitions of what constitutes inappropriate conduct and none of Henige’s communications fit those definitions.] Dr. Henige also overlooks that part of the *Safransky* standard where the employer looks at the effect of the misconduct on the efficient performance of the workplace. [Of over 30 colleagues in the department of Art and Design, the only individuals professing any effect on performance are the very same four who have been caught, in writing and on paper, lying to the faculty and cheating the students and their programs. Despite this latter issue being central to Henige’s case, the administration has avoided it completely in this document. Also conspicuously absent from this document is any mention of *Demers v Austin*, the decision which provides faculty with the constitutional right to speak out in the public interest against incompetence and corruption.] Here it is abundantly clear that the Department of Art and Design cannot function with Henige as a member; its efficient performance is undoubtedly impaired by Henige's misconduct. [“Undoubtedly”, but we just hope you’ll take our word for it because we sure haven’t provided any actual evidence of it here.]

ORDER



For the foregoing reasons, the Board of Regents orders that Dr. Christopher C. Henige be dismissed from his position as an associate professor in the UW -Whitewater Department of Art and Design, effective February 8, 2018, the date of this decision and order. This decision may be judicially reviewed by filing a petition for review in the appropriate circuit court, as specified in Wis. Stat. section 227.S3(1)(a)(3), Wis. Stats., within 30 days of the mailing of this order, which must name as a party respondent the Board of Regents of the University of Wisconsin System.

Dated at Madison, Wisconsin, this 12 day of February, 2018.

Jess Lathrop  
Interim Executive Director and Corporate Secretary  
Office of the Board of Regents