

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHUYLER

RECEIVED

2016 DEC -6 PM 1:12

SCHUYLER COUNTY CLERK

MUKUND VENGALATTORE,

Petitioner,

- against -

CORNELL UNIVERSITY,
GRETCHEN RITTER
In a Proceeding Pursuant to
CPLR Article 78,

Respondents

State of New York
Schuyler County Clerk's Office } ss

Filed and Entered Dec 6 2016 1:12
County Clerk

DECISION & ORDER
Index No. 2016-0119
RJI No. 2016-0062-M

APPEARANCES:

Keith Fleischman, Esq.
For the Petitioner
With Ananda Chaudhuri, Esq.
Julia Sandler, Esq.
Raymond Schlather, Esq. (Local counsel)
565 Fifth Avenue, 7th Floor
New York, New York 10017

Thomas D'Antonio, Esq.
For Respondents
With Wendy Tarlow, Esq.
(University Counsel's Office)
1800 Bausch & Lomb Place
Rochester, New York 14604

BEFORE: HON. RICHARD W. RICH, JR.

RICH, J.

This matter is before the court on an Article 78 petition challenging the actions of Cornell University in denying tenure to one of its professors, Mukund Vengalattore.

Both counsel have submitted briefs on the petition and oral argument was heard by the court on September 2, 2016. Thereafter counsel submitted supplemental briefs on the issues.

Based upon the papers, the court makes the following Findings of Fact and Conclusions of Law.

Findings of Fact:

Professor Makund Vengalattore was hired in the summer of 2008 as an assistant professor of physics at Cornell University for an initial three-year term beginning on January 1, 2009. Said untenured term was subject to an extension of another three years.

Upon his first review, which was positive, the Professor, by unanimous vote of the tenured professors in the Physics Department, received a second three-year term as an untenured assistant professor, commencing on January 1, 2012 through January 1, 2015.

Pursuant to University policy, the Professor was subject to tenure review in his eleventh semester, to wit in the Spring semester of 2014. A three-member department committee was appointed to review and report on the tenure application. Professor Vengalattore was relieved of teaching responsibilities in the Fall 2013 semester so that he might boost his record of publication.

One of the students who worked in Professor Vengalattore's laboratory from 2009 to October 2012 was graduate student whom the court will refer to as LA. At the time she left the lab, LA made oral statements to Professor Gibbons concerning "angry interactions" with Professor Vengalattore. Professor Gibbons passed this information onto Department Chairman Parpia, who according to University policy should have made Professor Vengalattore aware, so that he might take corrective action. Professor Parpia did not advise Professor Vengalattore of the issue.

Further oral statements/complaints were made by LA to Professor Patterson in February 2014, which were not relayed to Professor Vengalattore.

LA submitted a tenure review letter on May 4, 2014 in which she alleged that she was denied appropriate authorship in certain scientific papers, that Professor Vengalattore had thrown

a five-pound power supply at her person in the lab and that Professor Vengalattore degraded and humiliated his students. The letter was made a part of the tenure dossier.

Upon learning of the letter, the Professor denied the allegations and demanded an investigation into the allegations. When he suggested that he would take the charges against LA to the college level, Vengalattore was advised not to bypass the department, which would conduct an investigation. The Department reported the issue to Dean Ritter and requested an investigation but no investigation was conducted as part of the initial tenure review.

Professor Gibbons was assigned to seek input from graduate students concerning Professor Vengalattore's mentoring abilities. What is referred to as "the Gibbon's Report," contains negative reports concerning Professor Vengalattore. A couple of students have complained that the comments ascribed to them do not reflect their opinions regarding the Professor and asked that the report be corrected.

In September 2014 the Physics Department voted to recommend Professor Vengalattore for tenure. Many times these votes express a lopsided consensus of the department. The vote for Professor Vengalattore was not unanimous. There were four total meetings (more than usual regarding a tenure review) and disagreement regarding which votes to count, as all of the tenured faculty could not make each meeting. The closest count appears to recommend tenure based upon a two vote majority.

Upon learning of the department's vote in favor of granting Professor Vengalattore tenure, LA then alleged that the Professor had sexually assaulted her in December 2010, that he had a long standing sexual relationship with her while she was his student.

The tenure recommendation was sent to Dean Ritter, who had both the letter and the further allegations of misconduct by LA.

An ad hoc committee of faculty members was appointed by Dean Ritter to review the tenure application. The committee recommended against the application citing the negative group dynamics in the lab.

On October 29, 2014, Dean Ritter issued a preliminary decision to deny tenure. The Physics Department requested that a consultant be brought in concerning the group dynamics and issue a report thereon. The extension was granted by the Dean of Faculty. A report termed "the Strausser Report," was submitted which was much more positive and indicated that the atmosphere in the lab had improved with the removal of a couple of students.

Dean Ritter did not change her opinion concerning the application and forwarded her preliminary denial of tenure and the tenure dossier containing the letter from LA and the Gibbon's Report to the Provost.

The Provost sent the matter to the Faculty Advisory Committee on Tenure Appointment (FACTA). FACTA voted against the tenure application, with two dissenters.

The matter was returned by the Provost to Dean Ritter, who in on February 13, 2015 denied Professor Vengalattore tenure. To that point, Professor Vengalattore had not been advised of the assault/ sexual relations allegations of LA.

Professor Vengalattore filed an appeal of the tenure denial on February 27, 2015. He was then advised of the romantic relationship/ assault allegations by LA, some five months after those allegations were made.

Pursuant to University policy, the Professor was entitled to notice of the misconduct allegations and to a hearing concerning the allegations.

Following the Professor's appeal, an investigation into the misconduct allegations was conducted by the Division of Workplace Policy and Labor Relations (WPLR). The instigation and report were extensive and were shared with the tenure appeal committee by Dean Ritter. The WPLR report found no evidence of a sexual assault against the student. Dean Ritter concluded that Professor Vengalattore did have a romantic relationship with the student and had lied to the WPLR concerning that relationship. Instead of relaying the matter to the Provost with sanction recommendations, Dean Ritter withheld imposition of sanctions pending the outcome of the tenure appeal. If upon review, the Provost had brought charges in order to impose sanctions, Professor Vengalattore would have been entitled to a hearing.

The Tenure Appeals Committee found that the process had been improperly tainted by the LA allegations, that LA had a conflict of interest in the matter and that her tenure review letter had tainted the process and should not have been included in the tenure dossier. The Tenure Appeals Committee granted Professor Vengalattore's appeal. The Committee recommended removal of the taint and that in order to balance that taint that more recent mentoring information and academic publications should be considered.

In response to the appeals committee findings, Dean Ritter sent the matter to another ad hoc committee, which upon review, unanimously recommended tenure for Professor Vengalattore.

On February 16, 2016, Dean Ritter again denied Professor Vengalattore's tenure application. In her letter she referenced the Professor's romantic relationship with LA, the authorship dispute with LA and Vengalattore's unwillingness to accept responsibility for his actions.

The matter then went back to the Tenure Appeals Committee to determine whether the Dean's actions had sufficiently addressed their concerns expressed in the initial appeal. The Appeals Committee was asked to review the procedure and not the substantive determination. They found that there were still significant deficiencies and that a new independent panel of expert scholars from both inside and outside the University should be empaneled to review the tenure application and provide a report concerning the application and supplemental information directly to the Provost.

In consultation with the Dean of Faculty, Dean Ritter decided instead to submit a redacted copy of the tenure dossier directly to the Provost to make the final tenure decision. It is

apparent that there was some conflict on how to remove the taint perceived by the Tenure Appeals Committee. Professor Vengalattore was not consulted regarding this procedure, was not given an opportunity to submit further comments regarding the dossier and further/ more recent scholarly publications were not solicited. University rules give the Professor an opportunity to make submissions to the Provost, which right was circumvented.

Included in the redacted dossier were the Gibbons report and a reference to LA's publication allegation, but not the Strausser report. The Provost had previously been copied on emails concerning the assault/ romantic relationship issue with LA.

The Provost ultimately denied tenure to Professor Vengalattore and he filed the instant Article 78 action.

Conclusions of Law:

This matter is properly before the court.

The court has jurisdiction to review the actions of Cornell University to determine whether it acted arbitrarily and capriciously, whether it followed University rules in making its determination and whether any sanction imposed was shocking to one's sense of fairness. Matter of Powers v. St. John's University School of Law, 25 NY3d 210 (2015)(school action regarding student); Sackman v. Alfred University, 186 Misc.2d 187 (S. Ct. Allegany Co., 2000)(review of tenure denial). The court has no authority to substitute its discretion for that of the University regarding the ultimate decision. Id.

In the instant matter, Cornell University did not follow its own procedures and acted capriciously toward Professor Vengalattore in that it failed to advise him first of complaints concerning his teaching style so that he could have addressed the same and taken corrective action regarding his teaching style and methods. Further, when allegations of misconduct were made by a student against him involving sexual assault and an alleged romantic relationship with one of his students, these allegations were in effect used against the Professor and he was not advised of the same until he filed his appeal of the tenure denial. The Professor was entitled to due process and a hearing on the matter, which would establish the facts and either clear him or lead to sanctions against him. The University speaks of a level playing field but keeping the allegations secret from Professor Vengalattore while having those allegations sour his tenure review creates anything but a level playing field and was arbitrary and capricious.

Cornell's own Tenure Appeals Committee found that the student had a conflict of interest and that her tenure review letter should not have been a part of the tenure dossier. The letter was a part of that dossier and it is apparent that it quite negatively influenced the tenure review. If the allegations were provided to the Professor, he was given due process and there was a finding of misconduct after a proper investigation and hearing, the then founded misconduct could have been used against him in the tenure review. Instead the procedure was secretive. Petitioner faults the administration and painted the Dean as playing the part of "Darth Ritter." The court does not find that to be completely true. The Dean was undoubtedly attempting to protect the University and its students. When faced with a situation where strict application of the rules was

impossible because review of the matter under the rules was on the whole record, which would have perpetuated the taint, she and the Dean of Faculty made a decision on how to proceed. Due process is fair process, and fair process is fair play. Since there was a necessary deviation, and something new was being implemented, fair play would have called for Professor Vengalatorre to be consulted. It was his tenure, livelihood, research and professional career at stake. The University did not have to proceed as he wished, but good faith would have been shown by at least obtaining his input. The court does not fault the Dean's motives, but does fault the secretive and non-inclusive nature of the procedure. It appears in effect as, we are Cornell and we are going to do what we want, which seems to the court as the essence of being arbitrary and capricious.

Once a new procedure was determined and the redacted dossier was sent to the Provost, there was a further deviation from the rules in that the Professor was not given an opportunity to submit anything to the Provost. Further, the more negative Gibbons report was included in the dossier which went to the Provost, while the more positive Strausser report was not included.

The reference of the matter by the Tenure Appeals Committee to the independent committee of experts from inside and outside of the University was ignored.

The recommendation that the dossier be reopened and that new materials by way of any newer reviews of teaching abilities/ mentoring and recently published materials, all in an attempt by the Tenure Appeals Committee to alleviate the taint they saw in the procedure, was also ignored.

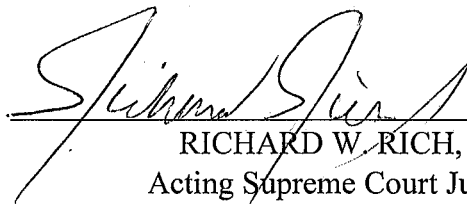
The court does not have an opinion concerning whether Professor Vengalatorre should be granted tenure and frankly that determination is not the court's business. Review of the procedure employed is the court's business and the court finds that the procedure was flawed, secretive, unfair and violated Professor Vengalatorre's due process rights to such an extent as to be arbitrary and capricious.

The tenure determination of the University is vacated and the court remands the matter to the University for a de novo tenure review. It should go without saying that LA's tenure review letter is not to be made a part of the new tenure dossier. The dossier is to be opened up for further appropriate submissions by the Professor and the University, to include publications authored by the Professor since the last tenure review and materials concerning his current teaching style and methods (as recommended by the Tenure Appeals Committee). The period to add to the dossier shall be at least forty-five days from the date of this order. The court declines Petitioner's invitation to appoint an outside person to oversee the tenure process. Both parties have competent counsel. The court has faith that there can be an open and fair process wherein the rules are followed and the parties consult if there is a needed deviation from the rules. In any such matter, it is first a determination for the University to make, but knowing that the matter may be returned on a new petition and remembering the court's admonition that due process is fair process and fair process is fair play.

This constitutes the decision, opinion and order of the court.

The previous tenure determination on Professor Mukund Vengalattore is vacated and the matter is returned to Cornell University for a de novo tenure review in accord with this order.

Dated: November 23, 2016



RICHARD W. RICH, JR.
Acting Supreme Court Justice

Attachment C

10/05

GRIEVANCE PROCEDURES FOR ACADEMIC PERSONNEL
COLLEGE OF ARTS AND SCIENCES
CORNELL UNIVERSITY

(as approved by the Faculty of the College on April 23, 1975)
(Amended October 1982)
AMENDED November 2005

The following procedures are formulated in accordance with *Cornell University Policy 6.2.10, Establishment of College-Level Academic Employee Grievance Procedures* approved by the Board of Trustee Legislation of March 13, 1975, page 8964, as amended on March 13, 2002. This policy is accessible on-line at the following URL: http://www.policy.cornell.edu/vol6_2_10.cfm. It should be emphasized that these procedures represent primarily a mechanism for arbitration and are not formally judicial in character. Any grievance proceeding is advisory in nature to the respective deans and to the President and Trustees of the university.

The university policy spells out the objectives, definitions, assumptions, and coverage of college-level grievance procedures (including both who may lodge a grievance and what actions are grievable). It specifies that "An academic grievance procedure can be applied to the substantive and/or procedural aspects of any grievance arising out of the academician's execution of his or her designated responsibilities" and that "These grievance procedures are not applicable to complaints about appointment, reappointment, promotion, or any tenure decision." Separate procedures exist for complaints about those decisions. Grievances that allege any form of prohibited discrimination or harassment must be immediately referred to the Office of Workforce Diversity, Equity and Life Quality for resolution under the procedures established under University Policy 6.4.

PROCEDURES

- I. Submitting a Grievance. If an academician has a grievance and has made all reasonable efforts to exhaust all avenues of personal negotiation at levels up to and including the College Dean, (s)he may submit a written statement of grievance to the Chairman of the college Grievance Committee, indicating the specific nature of the complaint and the remedies sought. If the Grievance committee determines that the merits of the case do not warrant invoking the college grievance procedures and the dean accepts the committee's recommendation, or if the dean is the principal party against whom the grievance is directed, the author of the complaint may appeal directly to the university-level Committee on Academic Freedom and Professional Status of the Faculty.

Thomas S. D'Antonio
(585) 454-0715
(585) 231-1902
tdanto@wardgreenberg.com

RECEIVED-CHENUNG
COUNTY COURT CHAMBERS
HON. RICHARD W. RICH, JR.

2017 JAN -6 PM 1:26

January 5, 2017

VIA E-MAIL IMAGE AND FIRST CLASS MAIL

Hon. Richard W. Rich, Jr.
Acting Supreme Court Justice
Chemung County Courthouse
224 Lake Street
P.O. Box 588
Elmira, NY 14902-0588
(bdovi@nycourts.gov)

Re: *Mukund Vengalattore v. Cornell Univ. and Gretchen Ritter*
Schuyler County Index No. 2016-119

Dear Judge Rich:

This letter responds to Mr. Fleischman's January 3, 2017 letter to you, which petitioner styles as a "letter-motion" seeking to have the Court, pursuant to CPLR 2221(d)(3) and/or 5109, "clarify and/or amend" its November 23, 2016 Decision and Order. As set forth in more detail below, petitioner's request is procedurally improper, and the relief sought is substantively unwarranted for several reasons:

- Petitioner's letter fails to meet the notice requirements of CPLR 2211;
- Even if it were properly before the Court, petitioner's "letter-motion" is either: (a) not ripe as Dean Ritter hasn't yet taken final action on her findings (by imposing sanctions and thus triggering the opportunity for further procedural review pursuant to Cornell's policies); or (b) it is time barred (as Dean Ritter made the determination petitioner seeks to challenge on October 6, 2015, far more than four months prior to the commencement of his Article 78 proceeding in June 2016); and
- Petitioner identifies no procedural defect warranting Article 78 review, but rather simply disagrees with the results of the WPLR investigation and the resulting determinations.

As an initial matter, the "letter-motion" is procedurally improper because in it, petitioner seeks relief that can be available, if at all, only pursuant to a formal motion, on notice. CPLR 2211 is clear and unequivocal in this regard—"A motion is an application for an order. A motion on notice is made *when a notice of the motion or an order to show cause is served*." A "letter-motion" fails to comply with the CPLR's directive, and thus petitioner has no application for relief that is properly before the Court. Accordingly, the January 3 "letter-motion" should be disregarded in its entirety, and the Court should

Hon. Richard W. Rich, Jr.
January 5, 2017
Page 2

refrain from taking any action unless and until a proper motion on notice is made, and Cornell has been afforded an opportunity to submit opposition to that motion.

If and when a proper motion is made, moreover, Cornell will vigorously oppose the relief Mr. Fleischman's letter requests. As I understand the letter, petitioner plans to request that the Court amend its November 23 Order to provide that it is vacating Dean Ritter's October 6, 2015 determination, adopting a finding made, after investigation, that petitioner violated Cornell's Romantic and Sexual Relationships Policy. However, petitioner's request to vacate the October 6, 2015 determination is at odds with the position he has taken with respect to the timeliness of his challenge to that determination. The Petition in this case was filed well after the four month limitations period applicable to administrative determinations of this sort, and thus as the Court knows the University asserted (among other things) that petitioner's challenge to Dean Ritter's determination was not timely. Petitioner's contention, in response, was that the challenge in fact was timely, because Dean Ritter had not yet issued as part of that determination a final sanction, and thus the limitations period had not yet even begun to run. As the Court may recall, in her October 6, 2015 determination (attached for the Court's convenience as Attachment A), Dean Ritter took the logical step to postpone the imposition of final sanctions against petitioner pending the outcome of his tenure appeal, an appeal which at that point was in process and was governed by a completely separate and distinct process from the WPLR Office's misconduct investigation.

If petitioner's argument with respect to timeliness is credited, and the limitations period has not yet begun to run because no final sanction has issued, then petitioner's effort to challenge the Dean's determination is premature because the determination is not final and binding, and the additional internal review processes at Cornell have not yet been exhausted. Those review processes are described in Attachment B (in the event the final sanctions are deemed "severe") and Attachment C (for "minor" sanctions. If petitioner now is claiming that the October 6, 2015 determination is final and binding absent the imposition of a final sanction and the completion of the internal review processes, then his challenge indeed is time-barred.

As a relevant point of information in this regard, it is my understanding that given: (a) the Court's ruling issued in late November; (b) the Court's expressed concern in that ruling that Dean Ritter's decision not to impose sanctions deprived petitioner of certain procedural rights he would otherwise have had; and (c) the likelihood that petitioner will be remaining at Cornell for at least several more months, Dean Ritter has revisited her decision to delay the imposition of final sanctions with respect to the romantic relationship findings. Those sanctions are in process, and upon their issuance petitioner will be entitled to grieve them internally. Once that process concludes, to the extent that there remains an adverse determination with respect to the romantic relationship issue and/or a sanction applicable to such a determination, petitioner will have the ability to seek judicial review. But his request at this juncture is premature and inappropriate.

Hon. Richard W. Rich, Jr.
January 5, 2017
Page 3

Finally, the Court's November 23, 2016 Order did not address at all the validity of Dean Ritter's October 6 determination, and the Court identified no procedural defect in the underlying investigative process conducted by the University's Workplace Policy and Labor Relations Office. As the Court may recall, that Office concluded that petitioner had been engaged in a romantic relationship with a graduate student that he failed to disclose as required. Dean Ritter accepted that conclusion. There is simply no basis on this Record to vacate the determination by the WPLR Office, or Dean Ritter's October 6, 2015 determination adopting the WPLR Office's findings. (*See LaGraff v Hamilton Coll.*, 10 Misc 3d 1074(A) at ***6-7 [Sup Ct Tompkins Cty 2005] [Relihan, J] ["the doctrine of judicial deference, explicated by the Court of Appeals in *Maas*, extends to issues of conduct and behavior as fully as decisions regarding appointment, renewal or termination based on academic quality and performance"]; *see generally Maas v Cornell Univ.*, 94 NY2d 87 [1999]). Simply stated, Dean Ritter's October 6, 2015 determination was well within her province, and there exists no basis to disturb that determination. And as noted above, to the extent that the decision not to impose sanctions deprived petitioner of any procedural rights, now that Dean Ritter will move forward with the imposition of sanctions, petitioner will be accorded all process he is due under Cornell's procedures.

Presumably in an effort to sidestep the appropriate and detailed analyses discussed above, Mr. Fleischman characterizes the requested relief as a "clarification" that allegedly does not affect the substantive rights of either party. He is woefully misguided, and his contention in this regard is specious. The relief requested would vacate a properly made determination of the University and completely end run the prescribed internal processes, which without question will intrude on the substantive rights of the respondents.

For the reasons set forth above, respondents respectfully request that Mr. Fleischman's January 3, 2017 letter be disregarded in its entirety. If petitioner wishes to pursue the relief discussed in that letter, he must do so by way of formal motion practice so that respondents have an opportunity to respond, and a proper record is created.

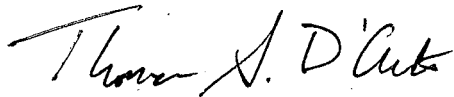
Hon. Richard W. Rich, Jr.

January 5, 2017

Page 4

We are available at the Court's convenience should there be any questions, or should the Court need further information. We thank the Court for its consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas S. D'Antonio". The signature is fluid and cursive, with the first name "Thomas" and last name "D'Antonio" clearly legible.

Thomas S. D'Antonio

TSD/mmc

cc: Keith Fleischman, Esq. (via e-mail and First-Class Mail)
Raymond M. Schlather, Esq. (via e-mail and First-Class Mail)
Wendy E. Tarlow, Esq. (via e-mail and First-Class Mail)

Attachment A



Cornell University
College of Arts and Sciences

Office of the Harold Tanner Dean

147 Goldwin Smith Hall
Ithaca, New York 14853-3201
t. 607-255-1097
f. 607-255-8463
AS_Dean@cornell.edu

Professor Mukund Vengalattore
Department of Physics
Cornell University
Ithaca, NY 14853

October 6, 2015

Dear Professor Vengalattore,

I write to inform you of my findings concerning the complaints that have been brought against you by one of your former graduate students, as detailed in the September 25, 2015 report by Alan Mittman and Sarah Affel of the Workforce Policy and Labor Relations Office. After carefully reviewing the evidence contained in the report, its appendixes, as well as subsequent responses from the complainant and respondent, I find that a preponderance of evidence supports the claim that you were involved in a sexual relationship with your former graduate student over a period of several months while also serving as her graduate advisor. As a result, I find that you have violated the university's "Romantic and Sexual Relationships" policy by engaging in such conduct. I also find that there is not significant evidence to support the claim that the initial sexual encounter between you and the graduate student involved a sexual assault. (Hence, I do not find that there was conduct that would constitute a violation of the university's policy 6.4 - prohibiting sexual assault - had such a claim been timely made.) Given the finding of an inappropriate sexual relationship, I also find that in your denial of a sexual relationship you have lied to the investigators in this case.

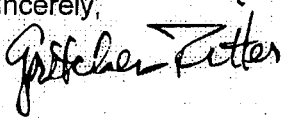
Given these findings, I intend to impose significant sanctions on you that may include restrictions on your ability to accept or supervise female graduate students as well as financial sanctions. However, I will suspend the imposition of any sanctions pending the outcome of your tenure appeal. Should you leave Cornell as a result of being denied tenure then the need for these sanctions will become moot. If, on the other hand, you are granted tenure as a result of your appeal, then significant sanctions will be imposed.

More immediately, given these findings and while you remain a faculty member at Cornell, I direct you not to take any retaliatory action against the complainant in this case, and forbid you from taking on any additional female graduate students under your supervision. Further, I remind you that the material collected for the Mittman report is confidential in nature and should not be shared with others - including any colleagues at Cornell or elsewhere or any current or former students at Cornell or elsewhere. I also direct you not to encourage actions or efforts by others that would be harmful to the reputation or professional stature of the complainant. Further, as specified last April in communications with the Workforce Policy and Communications office, and while you remain an employee of Cornell University, you should avoid any communication with the complainant or her family. You should also continue to decline talk invitations and avoid conference or workshop appearances on occasions where it is known that the complainant will be present. (This should be handled, as previously arranged,

through communications by the complainant to the Physics Department about any conferences or workshops she plans to attend.) Credible evidence that you have failed to abide by these directives may lead to further sanctions.

To the degree that my findings here do not address specific issues or arguments that you have made in relationship to this report, including those related to the credibility of the parties, it is either because I have rejected your arguments or found that they are not pertinent to the main findings above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gretchen Ritter".

Gretchen Ritter
The Harold Tanner Dean of Arts & Sciences

Cc: Jeevak Parpia, Chair of Physics

Attachment B

Policy on Sanctions for Job-Related Faculty Misconduct

Prepared by: Committee of Academic Freedom and
Professional Status of the Faculty, 04-04-05

Policy Statement: (To be standardized by University Policy Office)

Reason for Policy: (To be standardized by University Policy Office)

Entities Affected by this Policy: University professors and college or school faculty members.

Who Should Read this Policy: (must include faculty and deans, to be standardized by University Policy Office)

I. Definitions

A. College or school faculty member: as defined by Art. XIII of the Bylaws of Cornell University:

Each college or school faculty, except the Graduate Faculty, shall be composed of the President; the Dean or director of the college or school; and all professors, associate professors, and assistant professors in the department or departments under the charge of that faculty. Instructors, senior research associates, senior extension associates, lecturers, senior lecturers, clinical professors, associate clinical professors, and assistant clinical professors, and those bearing the adjunct title shall be non-voting members. Each college or school faculty may, in its discretion, grant membership to senior scholars, senior scientists, and other professional personnel for whom such membership is deemed appropriate by such faculty. Any college or school faculty may elect to its membership persons who are already members of other faculties of the University for so long a period as they continue to be members of such other faculties.

B. Emergency suspension: A suspension with full salary pending the ultimate determination of the faculty member's case where the member is charged with misconduct and the member's continuance threatens imminent serious harm to the member or others or to property.

C. Minor sanction: any sanction other than a "severe sanction."

D. Severe sanction: dismissal or suspension.

E. Suspension: a temporary abrogation of the faculty member's rights or responsibilities that effectively prevents the faculty member from carrying out the responsibilities of his or her position or a temporary partial or full reduction of a faculty member's salary will be considered a suspension for the purposes of

this policy, whether or not it is named as such.

II. Purpose and Scope of this Policy

To ensure fair and adequate processes for faculty charged with job-related misconduct or failure to perform the duties required of the position held, the following procedures govern the imposition of severe sanctions, minor sanctions, and emergency suspensions.

III. Procedures

A. Severe Sanctions

1. Duration of suspensions: No suspension, other than emergency suspension, shall be imposed for a period of less than two weeks, nor more than 12 months.
2. Reporting requirements for dismissals or suspensions: All dismissals or suspensions, including those resulting from informal settlements, shall be reported to the Dean of Faculty by the appropriate administrator. Such reports shall include a summary of both the complaint and its resolution, and shall be maintained in a permanent archive.
3. Suspension procedures for university professors, professors, associate professors, and assistant professors¹:
 - (a) The term "faculty member" in subsection III A. 3. shall refer exclusively to university professors, professors, associate professors, or assistant professors.
 - (b) If the administration believes that the conduct of a faculty member is sufficiently grave to justify imposition of a suspension, the procedures in III.A.3. (d) below shall apply.
 - (c) Where the recommendation for a suspension is a result of action taken under any other university policy (including those policies governing "academic misconduct," "sexual harassment," "financial irregularities," and "conflict of commitment/interest"), the faculty member may appeal the recommendations issued under that policy by requesting a hearing according to III.A.3.(d) below. In this case, the administrator shall not implement the sanctions recommended under the initial policy procedures but shall instead report to the Provost the results of any investigations undertaken, together with his or her recommendations. The Provost shall cause the faculty member to be furnished with a

¹ The procedure used for dismissals is the procedure adopted for that purpose by the Board of Trustees.

written and detailed statement of the charges against him or her if, after receiving the administrator's report and making such independent investigation as may seem appropriate to the Provost, it is the opinion of the Provost that further proceedings are warranted.

- (d) The charges against the faculty member shall be heard by a hearing panel appointed as follows. The faculty member and the Provost shall each choose four members of the University Appeals Panel. The faculty member's nominees shall choose two of the Provost's nominees, and the Provost's nominees shall choose two of the faculty member's nominees. The four so chosen shall then choose a fifth tenured University member, who shall chair the hearing panel. Any person nominated who has participated in the matter being heard or feels unable to render an unbiased judgment or perceives a conflict of interest shall disqualify him or herself.
 - (e) At the hearing, the faculty member shall be entitled to be accompanied by an advisor or counsel of his or her own choice, to present witnesses in his or her own behalf and to confront and question the witnesses against him or her. The faculty member's advisor or counsel may not address the panel or question the witnesses unless requested to do so by the chair of the panel.
 - (f) If the faculty member requests before or at the opening of the hearing, he or she shall after its conclusion be furnished, without cost to him or her, a full report of the proceedings before the panel, including an audio recording of the testimony taken, copies of documents received, and the panel's findings and recommendations.
 - (g) The panel shall report its findings to the President in writing within eight weeks of being formed. The decision of the President will not be subject to further appeal or reconsideration.
 - (h) The office of the Dean of the Faculty will provide staff support for the panel.
4. Procedures for suspension and dismissal of college or school faculty members other than professors, associate professors, and assistant professors:
- (a) When complaint from any source is made against such member which might lead to the imposition of a dismissal or suspension, and unless the alleged misconduct falls under the jurisdiction of a specific Cornell policy containing alternate

procedures, the Dean of his or her college shall inform the member of the complaint against him or her, investigate the case, and if the faculty member is willing, consult with him or her regarding it.

- (b) If the matter is adjusted informally to the satisfaction of the Dean and the faculty member, no further proceedings shall be invoked by them. If the matter is not adjusted informally, the Dean shall cause the faculty member to be furnished with a written and detailed statement of the charges against him or her.
- (c) No dismissal or suspension shall be imposed without first giving such member an opportunity to invoke grievance procedures and seek review by the Committee on Academic Freedom and Professional Status of the Faculty [AFPS], to the extent permitted by the specific policy guidelines governing such reviews, and within the following stated time periods: The member shall have 4 weeks after being informed in writing of the charges and recommended sanctions to invoke grievance procedures or review by the AFPS. Where a review by the AFPS is requested following a grievance action, the faculty member shall have 4 weeks after the completion of the grievance procedure to request review by the AFPS.
- (d) The opportunity to invoke grievance procedures and seek review by the AFPS before the imposition of a dismissal or suspension, as described above, applies also to cases where the recommendation for a dismissal or suspension is a result of action taken under any other college or university policy (including those policies governing "academic misconduct," "sexual harassment," "financial irregularities," and "conflict of commitment/interest").

B. Minor Sanctions

If the administration believes that the conduct of a faculty member justifies imposition of a minor sanction, the following procedures will be followed:

1. If a minor sanction is imposed under a specific university policy (such as "academic misconduct," "sexual harassment," "financial regularities," and "conflict of commitment/interest"), the faculty member may obtain consideration and, possibly, redress by invoking a formal grievance action according to the grievance procedures adopted by his or her college and, where appropriate, request review by the AFPS.

2. If the conduct justifying a minor sanction is not regulated under any other specific university policy, the appropriate administrator will notify the faculty member of the basis of the proposed sanction and provide the faculty member with an opportunity to persuade the administration that the proposed sanction should not be imposed. A faculty member who believes that a minor sanction has been unjustly imposed may invoke a formal grievance action according to the grievance procedures adopted by his or her college and, where appropriate, request review by the AFPS.
3. A faculty member who believes that a sanction proposed under the procedures for "minor sanctions" is, in fact, a "dismissal or suspension" may invoke a formal grievance action according to the grievance procedures adopted by his or her college and, where appropriate, request review by the AFPS.

C. Emergency Suspension

1. If a university professor, or college or school faculty member, is charged with misconduct and if the member's continuance threatens imminent serious harm to the member or others or to property, the faculty member may be suspended by the President (or his or her designee) or assigned to other duties in lieu of suspension pending final resolution of the charge.
2. The scope and duration of the emergency suspension shall be tailored as narrowly as possible to the nature of the harm posed, so that the faculty member's rights and privileges are not summarily abrogated more broadly than is reasonably necessary to protect persons or property pending completion of the suspension procedures. Whatever other rights and privileges may be withdrawn by an emergency suspension, the faculty member's full salary shall continue during the period of the emergency suspension.
3. The President (or his or her designee) shall promptly report to the Dean of Faculty concerning the propriety, the length, and any other conditions of the emergency suspension.

II. Grievance Committee. *Independent of the existence of any particular grievance, a standing, three-member Grievance Committee, serving overlapping three-year terms, shall be appointed by the College Dean from among the elected membership of the Academic Integrity Hearing Board. The Dean of the College shall designate the chairperson of this committee from among the committee members. When a written grievance is submitted, and unless its nature requires referral, as noted above, to the Committee on Academic Freedom and Professional Status of the Faculty, the Grievance Committee shall encourage further direct negotiation between the parties if the committee believes this avenue has not been exhausted; failing a resolution, the Committee shall decide on the basis of the information it has in hand or may request whether the merits of the case are such that a grievance procedure (requiring the composition of a Select Committee) is to be initiated. It shall also determine, in cases of ambiguity, which party is to be considered the principal against whom the grievance is properly directed.*

III. Select Committee. Upon initiation of a grievance procedure, a Select Committee shall be formed as follows: each of the two principals in the case designates one member; these two members jointly select *one more member who will chair the committee. No individual directly affected by this issue and no one who has taken part in the decision that is being grieved shall be a member of this committee.* All committee members shall be academicians as defined in the university policy and at least *two of the three* must be members of the College of Arts and Sciences.

Upon its formation, the Select Committee shall transmit copies of the statement of grievance to all persons directly involved in the case. It shall invite these persons to submit written responses within ten days. The committee shall begin its deliberations within twenty-one days of its formation.

IV. Select Committee Aims and Procedures.

- (a) The foremost aims shall be to clarify the issues underlying the grievance and to help the contending parties reach a decision acceptable on all sides.
- (b) Failing an accommodation, the Committee shall render a recommendation for action to the Dean of the College. Such recommendation will be advisory.
- (c) The Committee shall determine the facts of the case by using all available documentation, supplemented as necessary by interviews, hearing, and depositions. The Committee shall keep minutes of all its proceedings and there shall be no undue delay in its procedures.
- (d) Strict confidentiality shall be maintained with regard to all matters relevant to an individual grievance. At the request of a party to the issue, the Committee may publish a summary notice of the case, the issue, and its resolution, with omission of personal references as it deems appropriate.

- (e) At the termination of the case, the Select Committee is dissolved and its records are transferred to the office of the Dean of the College for safekeeping.
- (f) The Dean of the College shall promptly notify all parties to the case, in writing, stating the Select Committee's recommendation and his or her decision with respect to implementing it. A similar notification shall be sent to the Dean of the Faculty and to the Provost. If the college Dean decides not to comply with the committee's recommendations, (s)he shall fully state his or her reasons.

Appeal. *When one of the interested parties disagrees with a dean's decision, he or she may ask for a university-level review of that decision according to the procedures of the Committee on Academic Freedom and Professional Status of the Faculty.* These procedures are available from the office of the Dean of Faculty.

- V. Conformance with University Policy. Decisions made under the academic grievance procedures must conform to existing university policies. Such decisions may lead to the establishment of new policies, but they may not, in and of themselves, constitute new policies.

- VI. Grievance Expenses. See the University Policy at the following URL:
http://www.policy.cornell.edu/vol6_2_10.cfm.

Revised 11/01/05