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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

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.

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.

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,

Thomas S. D'Antonio

TSD/mmc

cc: Keith Fleischman, Esq. (via e-mail and First-Class Mail)
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