

From: Lawrence Krauss <[REDACTED]>
To: J <jeevacation@gmail.com>
Subject: Fwd: request to use some of my research funds for travel during this academic year.
Date: Wed, 28 Nov 2018 19:34:09 +0000

I have written a response that I am sending out today.. will send you a copy if you want.

Lawrence M. Krauss

Professor

School of Earth & Space Exploration and Physics Department
Arizona State University, P.O. Box 871404, Tempe, AZ 85287-1404
Research Office [REDACTED] | Assistant (Jessica): [REDACTED]
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Begin forwarded message:

From: Mark Searle [REDACTED]
Subject: RE: request to use some of my research funds for travel during this academic year.
Date: November 27, 2018 at 9:41:01 AM PST
To: Lawrence Krauss <[REDACTED]>
Cc: Patrick Kenney [REDACTED]

Lawrence,

The University is committed to enforcing the settlement agreement as written, as I informed you a few weeks ago when I reminded you of your obligations under the non-disparagement provisions of that agreement. The purpose of an agreement like this is for the parties to end their relationship – as reflected in the express language indicating that you have no remaining capacity to act on behalf of the University, regardless of the delayed effective date of your retirement. Your continued insistence on coming to campus and participating in meetings and events at your discretion defeats the purpose of the agreement. You remain on leave with pay through your retirement date, and you therefore should not be on campus without permission.

I have already reaffirmed that, if you wish to be involved in sorting and packing the personal items in your office, you are welcome to schedule an appointment with Dean Kenney to do so. Similarly, if you need to be on campus to be involved in an OEI or grievance proceeding, please contact Dean Kenney and he will grant permission for you to be on campus for those purposes. I am not aware of any other retirement preparations that would require you to be on campus, but if there are any, then please contact Dean Kenney to explain when and why you need to be on campus and obtain the necessary permission.

As for your academic work, to the extent you are engaged in any remaining academic work, you are not doing so on behalf of the University, as specified in the settlement agreement. You have not identified any aspect of that work that requires you to be on ASU's campus and have confirmed that you continue to live in and work from another state, which suggests that you are capable of doing that work remotely. If there is a reason that your work necessitates being on the University's campus, I would expect that you could articulate that reason in a specific request, which we would then consider.

Mark S. Searle, Ph.D.

EFTA01015223

Executive Vice President & University Provost
and
Professor, School of Community Resources & Development
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Ph: [480-965-9585](tel:480-965-9585)

From: Lawrence Krauss [<mailto:>]
Sent: Tuesday, November 20, 2018 10:13 PM
To: Mark Searle
Cc: Patrick Kenney ; Lawrence Krauss < >
Subject: Re: request to use some of my research funds for travel during this academic year.

Mark:

I agree that there is no ambiguity or confusion here. Your attempt to restrict my access to campus, my office, research materials, colleagues, lectures, and to the resources required to adequately prepare for my retirement in May, violates my rights as a tenured faculty member on leave and interferes with my ability to carry out my research work, and is not justified based on the settlement agreement we signed.

The substance of your argument is incorrect for the following reasons.

1. ABOR 6-201 J states that restrictions related to the review process end when the review process ends, as it did when the settlement was signed.
2. There was no stipulation made, either during negotiations or in the substance of the resulting settlement agreement, restricting my presence on campus or access to any resources there.
3. The agreement supersedes all former arrangements made during the review process.
4. The language in the contract is suggestive of the notion that I will have access to my materials and University resources, including my office, until I retire.

The lawyer who negotiated with the University attorney during the conciliation process has confirmed item #2 above. As he put it in an email to me, "I can assure you that we never discussed any sort of ban from campus." In the extract you list from the correspondence between lawyers it was determined that the type of leave during which I "do not teach, perform any official duties, etc.." should be referred to as leave with pay.

I have also consulted numerous legal scholars for their advice on this matter and they have unanimously agreed that there is no provision related to a ban on being on campus or access to my resources, and moreover that the earlier ABOR 6-201 J (3) provision is no longer relevant. Here, for example is one such analysis of the Dean's letter to me:

"The problem with the Dean's position is:

- If your settlement agreement supersedes ABOR 6-201(J)(3)(d), which states that Leave With Pay ends when the administrative proceedings end, why does not it not also supersede ABOR 6-201(J)(3)(a), which concerns presence on campus? I see no principled reason to apply one of these provisions and not the other.
- In other words, arguably your settlement agreement does not follow ABOR 6-201(J) at all. So the Dean's attempt to insert ABOR 6-201(J)(3)(a) into your agreement seems baseless.
 - Note that the settlement agreement has an integration clause (Para. 12, "The parties intend for this Agreement to define the full extent of their legally enforceable undertakings. The parties do not intend that any representations or statements made in any prior conversations, discussions,

negotiations, correspondence, or writings between them be legally enforceable, and all other agreements and understandings between them relating to the subject matter of this Agreement are superseded by this Agreement." So to the extent the Dean is adding new limitations on you now that are beyond the scope of the Settlement Agreement, Paragraph 12 forbids it.

- Your agreement says nothing about visiting campus explicitly. It does, however, appear to contemplate that you will be in your office and using ASU property until your retirement, in Para. 3: "Krauss agrees to return all University property, including, but not limited to, keys, files, records, computer access codes, computer programs and any other property belonging to ASU no later than May 16, 2019." To me, this paragraph demonstrates the parties' mutual understanding that you will be on campus and will have access not only to your personal property, but to ASU property until retirement."

Moreover, your claim that by attending a talk given at the University I will be representing the University simply makes no sense. If this were the case, then all members of the public and students who attend lectures should be alerted to their new status and responsibilities when they take their seats in any ASU auditorium. Your rationale for making these unsupported claims can reasonably be inferred to be punitive and retaliatory, something that is forbidden based on the settlement agreement, and your continued effort to interfere with my ability to function is harassing and discriminatory.

As I have indicated to the Dean, I do not intend to spend significant time at the University, nor to violate the terms of my settlement agreement. As you are aware, I live in Portland Oregon. I intend to come to the University only when I absolutely need to do so for my own research purposes, or to prepare for my retirement and to vacate my office in an orderly fashion.

I stress that no one is to touch the items in my office without my presence or permission, and I assert that you have no legal or moral justification, under the settlement agreement we signed, to restrict my visits to campus for any reason, including something as simple as retirement planning.

Sincerely,

Lawrence Krauss

On Nov 19, 2018, at 5:11 PM, Mark Searle [REDACTED] wrote:

Lawrence,

I'm writing to follow up on your correspondence with Dean Kenney regarding access to campus during the remainder of this academic year.

I have reviewed the agreement language and the correspondence between your attorney and the University's attorney, and I do not see any ambiguity or basis for confusion. The agreement expressly provides both that you will "remain on leave with pay," that you will "have no authority to act for or on behalf of ASU" and that you will make no statements misrepresenting that you have such authority.

"Leave with pay" is a defined term in ABOR policy, and refers to a leave in which the faculty member continues to be paid and receive benefits, but may not be on campus without permission. The meaning of leave with pay was explained to you in March of this year when you were first placed on that status. That meaning was expressly reaffirmed in the negotiations between your attorney and the University's attorney, as excerpted below.

- Under ABOR, *can* ASU keep him on administrative leave once this process is over (and the agreement would indeed end it)? I'm not sure it can. If you look at it and agree, then we could change this to say that he will be reinstated but will not teach classes, perform any official duties, etc., after the effective date of the agreement.

This type of leave is probably more accurately described as “leave with pay,” which is the terminology used in ABOR 6-201(J)(3). I’ve changed it accordingly.

As you can see from this exchange, the original draft of the settlement agreement used the language “administrative leave” rather than “leave with pay.” In the bulleted text, your lawyer raised the question of whether you could remain on administrative leave under ABOR policy, and suggested that the language be changed to indicate that you were “reinstated” but could not take certain actions during the term of the agreement. The University’s lawyer, in the blue text below the bullet, refused to change the language as requested to reflect that you were being reinstated and instead pointed out that the appropriate terminology under ABOR policy 6-201(J)(3) was “leave with pay.” At that time, the language was changed to “leave with pay,” and that language remained intact through the final version of the agreement you signed.

Therefore, you should not be coming to campus without receiving permission to do so.

The University will of course grant any permission necessary for you to participate in OEI or grievance proceedings, though you will need to let the Dean know in advance when you will need to be on campus for these purposes and your activities on campus will be limited to only those specific purposes. We will not be granting permission for you to come to campus to participate in meetings, lectures, or other campus events. As you have no ability to act on behalf of the University during the remainder of the academic year, it is not appropriate for you to be involved in on-campus events of this type. You are of course welcome to continue to engage in academic endeavors elsewhere, provided that you make clear that you have no remaining capacity to act on behalf of the University.

With regard to the personal property in your office, the University regularly packs and ships personal property for departing faculty, especially when they are unable to do so themselves on a timely basis. If you would instead prefer to sort and pack your personal property, I expect that we will be able to work out a plan for you to do so, as Dean Kenney previously offered. However, you will need to schedule specific times to be on campus for this purpose and limiting your on-campus activities to this specific purpose while you are here. You may contact Dean Kenney to schedule your visits for this purpose.

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Ph: [480-965-9585](tel:480-965-9585)

From: Lawrence Krauss [<mailto:>]
Sent: Friday, November 16, 2018 9:20 AM
To: Patrick Kenney
Cc: Mark Searle >; Lawrence Krauss <>
Subject: Re: request to use some of my research funds for travel during this academic year.

Pat:
Just so there is no further ambiguity, let me make it clear that I do not give you, or anyone else, permission to touch and go through my personal possessions without my consent or my being present during the process as long as I remain a tenured faculty member.

Your statements regarding my leave and settlement letter are not accurate. What you describe may be what you or the University had intended, but it was not a negotiated part of the settlement agreement, nor does the agreement specify this. There are many different types of 'leave with pay'. I have checked with the lawyer who negotiated the settlement agreement with the University lawyer, and he has sent me the relevant correspondence regarding that phrase, and he has also specifically stated that nowhere in any communication was a limitation on my going to campus to consult my research materials, organize my office, or attend public events discussed, nor, as you can see, is it in the agreement. The term 'leave with pay' is itself innocuous. It does not specify any ban on my being on campus. As my lawyer described it to the University attorney, we agreed that I would not teach or take on administrative duties during this period—a leave with pay, that is all.

. Had you intended such a ban your lawyer should have put it in explicitly, as she did the provision that I would not claim to represent ASU during my period on leave. And had it been there, I wouldn't have agreed to it. As my lawyer made clear in his correspondence to the University lawyer during the negotiation, ABOR section J (3) makes it quite clear that that administrative leave, referred in your March email to me, ends when the review process ends. Nowhere in the settlement agreement does it even suggest that the leave with pay would resemble the administrative leave I was on, and if that was your intent, the University lawyer should have explicitly described the terms of the leave. What you describe is not what is written in the settlement agreement, nor in the email documentation between lawyers that led to the settlement agreement. Without any such specifics, you have no justification for restricting my access to campus or my office. I should also note that even when I was on administrative leave you specifically allowed me to come on campus to get research materials, move some things, talk to colleagues, on numerous occasions, as well as to meet with OEI and the Conciliation committee. So even then a wholesale ban on my being on campus did not exist. And, since you felt it necessary to clarify my experience with Nancy Gonzales, I point out that your description is the same as my description, just with different words. Nancy said she could understand how I could have come to the conclusion I came to: i.e. the conclusion I came to regarding your lack of response was not unreasonable. I never suggested she adopted it.

As you may be aware, I have filed a grievance complaint with the Senate Grievance Committee, and I have also filed a formal complaint against with to the Office of Equity and Inclusion regarding actions taken since Oct 26th. I will consider any further unilateral action by you without having this issue resolved by the appropriate authorities at the University, or before we come to some agreement on this issue, to be further cause for University action regarding harassment and discrimination against me. I am forwarding a copy of this email correspondence to both groups.

Having said this, I am hoping we can come to some reasonable and non-adversarial agreement. I do not plan to be on campus regularly. As I indicated, I plan to come in perhaps 3-4 times between now and May to get some of my research materials, to go through the materials in my office in preparation for vacating it, and also to talk to some colleagues about some physics projects I am working on. If, as happened last week, there is a lecture of relevance to my work, I may schedule a special trip to attend it. Otherwise I will be working away from campus. Although I am not required to do this, as a courtesy, I am willing to inform you in advance when I am coming down, not for permission, but just for your information. I am also happy to let you know when the materials in my office have been packed and ready for shipping. It is quite possible that this may happen well before my May 16th retirement. I hope this proposal is satisfactory. If it is not, I am willing to discuss reasonable alternatives. If no such alternatives are suggested, then we will await the conclusion of the grievance and OEI processes.

Lawrence

Lawrence M. Krauss

Professor

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