

SECTION
HUMAN RESOURCES
CHAPTER
FACULTY RIGHTS AND RESPONSIBILITIES
SUBJECT
RANK AND TENURE: LAW

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I. Tenure

A. Time Requirements

Normally, a faculty member will be considered for tenure during the fifth fall semester of the teaching career at USD. Such consideration may be accelerated as a result of credit for prior law teaching experience elsewhere, granted by the tenured faculty at the time of hiring. A faculty member may elect to be considered in the third or fourth year of law teaching. A faculty member may, with the consent of the Dean for good cause shown, elect to delay consideration for tenure until the sixth year. In the case of a visiting professor possessing tenure at the home institution, tenure decisions will normally be made during the first semester of the visit. AAUP rules, to which USD adheres, require that tenure decisions be made no later than the professor's sixth year of employment.

B. Criteria

The granting of tenure to an individual is based on three criteria which are: 1) teaching; 2) scholarship; and 3) University, professional, and community service. In the ordinary case, tenure will be granted when an individual establishes himself or herself as a good teacher and as a good scholar, and has contributed satisfactorily to university, professional, and community service. Subject to the time requirements set forth above, an individual will be granted tenure when the foregoing traits have been demonstrated over a sufficient period of time to establish that they have become an integral part of the individual's career plans.

Unless otherwise specified, teaching and scholarship are of equal importance and shall be given greater weight than University, professional, and community service in making tenure decisions. Both teaching and scholarship must be of the high quality expected of faculty at law schools of national stature. University, professional, and community service shall be considered and may be determinative in otherwise close cases, but it will not make up for deficiencies in teaching or scholarship.

Following are non-exclusive standards to evaluate a person's teaching, scholarship and University, professional, or community service. In all cases, the primary measure is addressed to the quality of what the individual is producing and not merely the quantity.

1. Teaching: The professor enhances significantly the material readily available to students in the casebook or elsewhere by stimulating student thought, inducing a deep comprehension of the material and its place in the legal process, and developing lawyer skills.
2. Scholarship: Scholarship includes publishable legal writing and research which evidence useful insights into the nature of legal problems. Normally, scholarship will take the form of law journal articles, or articles in related fields; casebooks; or textbooks. Book reviews, translations, legislative or other reports or studies, or miscellaneous writings may qualify as scholarship if they evidence useful insights into the nature of legal problems. While it is possible for a primarily descriptive piece to qualify as acceptable scholarship, its acceptability will be enhanced to the degree it is analytical. The purpose of the requirement is to demonstrate that the faculty member has made scholarship a regular part of his or her professional life, and this may be evidenced by one or more works of sufficient quality and extensiveness. While scholarship completed prior to joining USD's faculty will be considered, there must be evidence that scholarship will continue to be a regular part of the faculty member's professional life.
3. University, Professional, or Community Service: This criterion identifies those activities which contribute to the smooth functioning of the Law School and of the University or which present the Law School favorably to the community by enabling it to fulfill its particular place in the life of the community. Included within this criterion is the concept of collegiality: the ability of a faculty member to work with other faculty members and students effectively. As contrasted with being sociable, collegiality means being sufficiently available to and cooperative with other faculty members to be able to participate constructively in the solution of problems. It includes accessibility for discussion of pedagogical problems, discussion of legal process problems, and discussion of substance. It includes cooperation in scholarship. It includes the exchange of ideas in a critical and evaluative fashion. University, professional, or community service includes service on Law School, University, Bar, or civic committees; teaching continuing legal education; consulting in test cases or on legislative matters; or serving as a

Dean or other administrative officer. The quality of the participation is crucial in evaluating the significance of the service.

C. Status

Tenure gives the faculty member the status and privileges set forth in the Principles of Academic Freedom and Tenure of the American Association of University Professors.

D. Tenure Rules for the Director of the Legal Research Center

1. Tenure Track Status. The Director of the Legal Research Center may be placed on a tenure track as a professional librarian with faculty status by a majority vote of the tenured and tenure track faculty. Tenure accorded to the Director in this capacity assures ongoing status as a professional librarian.
2. Time Requirements for Tenure. Normally, an individual appointed as a professional librarian with faculty status to be the Director of the Legal Research Center will be considered for tenure during the fifth fall semester of the career at USD. Such consideration may be accelerated as a result of credit for prior experience granted by the tenured faculty at the time of hiring. The individual may elect to be considered in the third or fourth year of the career at USD. As with other tenure decisions, tenure as a professional librarian accorded to the Library Director requires an affirmative vote of two-thirds of the tenured faculty present and voting. Tenure becomes effective with the beginning of the next academic year.
3. Criteria. In granting tenure status as a professional librarian to the Library Director, the individual's academic and professional record and performance as Director of the Legal Research Center shall be considered, including University, professional and community service.
4. Voting. A Library Director appointed as a professional librarian with tenure track or tenure status may be granted on an ad hoc basis the same voting rights as a full-time faculty member on the tenure track or with tenure status. (12/1/89)

5. Request to Change Status. Any request by the Director of the Legal Research Center to change status from tenure as a professional librarian to regular faculty tenure requires appointment to the regular tenure track followed by normal tenure review.
6. Professional Status. When a Library Director who has tenure as a professional librarian either resigns from or is no longer appointed to the position of Library Director, he or she is entitled to remain on the library staff as a professional librarian with tenure in reference to job security, but without faculty voting rights. (10/5/90)

E. Clinical Tenure

1. Voting. Appointment to the Clinical tenure track carries full faculty status; however, persons on the Clinical tenure track may not vote on initial appointments except for initial appointments to the Clinical tenure track and persons granted Clinical tenure may only vote on personnel matters pertaining to faculty on the Clinical tenure track or on rules governing that track.
2. Teaching. Persons with Clinical tenure or Clinical tenure track positions are expected to devote substantially all their teaching time to clinic and professional skills training courses.
3. Criteria. The granting of Clinical tenure to an individual is based on three criteria which are: 1) teaching; 2) scholarship; and 3) University, professional, and community service.

In the ordinary case tenure will be granted when an individual establishes himself or herself as a good Clinical teacher and as a good scholar, in accordance with the standards set forth below, and has contributed satisfactorily to University, professional, and community service. Subject to the time requirements set forth above, an individual will be granted tenure when the foregoing traits have been demonstrated over a sufficient period of time to establish that they have become an integral part of the individual's career plans.

Both teaching and scholarship are important and shall be given greater weight than University, professional, and community service in making tenure decisions. Both teaching and scholarship must be of the high quality expected of Clinical faculty at law schools of national stature. A lesser quantity of scholarship than is required for regular tenure will qualify for Clinical tenure. University, professional, and community service shall be considered and may be determinative in otherwise close cases, but it will not make up for deficiencies in teaching or scholarship.

Following are non-exclusive standards to evaluate a person's teaching; scholarship; and University, professional, or community service. In all cases, the primary measure is addressed to the quality of what the individual is producing and not merely the quantity.

- a. Teaching. The professor significantly enhances student understanding of the law and legal process and the lawyer's professional role, stimulates student thought and assists students in developing individual lawyering skills through the effective use, refinement and integration of Clinical methodologies, which skills may include interpersonal communication, problem solving, oral and written advocacy, fact investigation and development, and the recognition and resolution of professional responsibility issues.
- b. Scholarship.
 - (i) Scholarship for persons on the Clinical track may include publishable legal writing and research which evidence useful insights into the nature of legal problems. Normally, scholarship will take the form of law journal articles, or articles in related fields, casebooks, or textbooks. Book reviews, translations, legislative or other reports or studies, or miscellaneous writings may qualify as scholarship if they evidence useful insights into the nature of legal problems. While it is possible for a primarily descriptive piece to qualify as acceptable scholarship, its acceptability will be enhanced to the degree it is analytical.

- (ii) Scholarship for persons on the Clinical track also includes and may consist entirely of Clinical teaching materials, publishable writings on teaching methodology and Clinical education, practice books and manuals, and other practice-oriented materials, writings, or documents. Significant trial and appellate briefs may also be considered but are not alone sufficient to demonstrate scholarship. Greater weight will be given to scholarship under this subsection which is suitable for dissemination to a broad professional audience.
- (iii) The purpose of the requirement is to demonstrate that the faculty member has made scholarship a regular part of his or her professional life, and this may be evidenced by one or more works of sufficient quality and extensiveness. While scholarship completed prior to joining USD's faculty will be considered, there must be evidence that scholarship will continue to be a regular part of the faculty member's professional life.
- c. University, Professional, or Community Service: This criterion identifies those activities which contribute to the smooth functioning of the Law School and of the University or which present the Law School favorably to the community by enabling it to fulfill its particular place in the life of the community. Included within this criterion is the concept of collegiality: the ability of a faculty member to work with other faculty members and students effectively. As contrasted with being sociable, collegiality means being sufficiently available to and cooperative with other faculty members to be able to participate constructively in the solution of problems. It includes accessibility for discussion of pedagogical problems, discussion of legal process problems, and discussion of substance. It includes cooperation in scholarship. It includes the exchange of ideas in a critical and evaluative fashion. University, professional, or community service includes service on Law School, University, Bar, or civic committees, teaching continuing legal education, consulting in test cases or on legislative matters, or serving as a Dean or other administrative officer. The quality of the participation is crucial in evaluating the significance of the service.

- d. Termination. The grant of tenure on the Clinical tenure track shall carry the academic freedom and job security associated with tenure, subject to the Retrenchment policies and procedures set forth in this manual. Termination of faculty appointments with Clinical tenure or on the Clinical tenure track may be based on bona fide discontinuance or a substantial reduction by the Law faculty in the scope of the Clinical program and professional skills training course. Such termination shall be in compliance with the educational policies and procedures of Section II of the University's Policy on Termination of Faculty Appointments (see Retrenchment Policy).
- e. Change of Status. Persons on the Clinical tenure track may be appointed at their request or with their consent to the regular tenure track (or vice versa) by a majority vote of the faculty voting on the track for which appointment is sought.
- f. Time Requirement and Tenure Vote. Time requirements for tenure are the same as in Section I-A hereof and as with other tenure decisions. Clinical tenure requires an affirmative vote of two-thirds of the tenured faculty present and voting.

II. Promotion and Rank

A. Time Requirements

Normally, a full-time faculty member without prior teaching experience will be appointed at the rank of Assistant Professor. Where the candidate possesses sufficient experience, the rank of Associate Professor or Professor may be granted. A faculty member is normally eligible for promotion from Assistant Professor to Associate Professor after two years of continuous service with the USD Law School, and from Associate Professor to Professor at the time a tenure recommendation is approved. In exceptional cases, a person may be promoted to Professor for good cause although the tenured faculty has not yet recommended him or her for tenure.

B. Criteria

The granting of promotion in rank from Assistant Professor to Associate Professor is based on a finding that the individual is making such satisfactory progress toward meeting the standards for tenure that is more probable than not that the Faculty member will meet the criteria for tenure within the time remaining.

C. Rank

All full-time instructors of Law have the rank of either Professor, Distinguished Professor, Associate Professor, Assistant Professor, or Visiting Professor in one of the previous ranks. Part-time instructors have the rank of either Lecturer, Adjunct Professor, Distinguished Professor, or Professor Emeritus. A full-time instructor is any person who normally teaches at least six semester credits per semester in this Law School, and who normally devotes substantially her or his entire working time to responsibilities as a teacher, scholar and educator at this Law School. All other instructors are deemed part-time. The Law Librarian is a full-time instructor.

III. Reappointment

A. Time Requirements

All full-time tenure track faculty members shall be formally reviewed for reappointment during the second year, fourth year, and any subsequent years of their teaching career at USD, unless the tenured faculty approves a longer term contract. These formal reviews shall be performed in accordance with the procedures for personnel decisions set forth below in Section IV.

1. During their first and third years at USD, each such faculty member shall be informally reviewed by the Dean or the Dean's designate(s) with respect to the relevant criteria for reappointment set forth in Section B below. The Dean or the Dean's designate(s) shall report his or her findings to the faculty prior to a vote on reappointment of a faculty member.

2. The Dean is also authorized, in his or her discretion, to utilize the formal sub-committee process set forth in Section IV in reviewing a specific faculty member during the first and/or third year review process.
3. Faculty members choosing to be considered for tenure on the third or fourth year shall notify the Dean at the beginning of the fall semester of such year (or earlier) so that the Dean can schedule an additional formal review, if possible, before final tenure review.

B. Criteria

A full-time faculty member in the first year of full-time Law School teaching will normally be reappointed for a second year unless: 1) such serious problems exist that it seems unlikely that the faculty member will meet the criteria for tenure in the required time, and 2) the individual's teaching has been so deficient that it is not likely to be even minimally adequate during a second year. After the first year, a faculty member shall be reappointed if that person is making such reasonable progress toward meeting the standards for tenure that it is more probable than not that such faculty member will meet the criteria for tenure within five years from the date of appointment or by the latest time for making the tenure decision under AAUP rules, whichever is earlier. Reappointments without tenure after five years of USD Law School full-time employment may only be made in cases of compelling equity and when the individual's teaching is above average. Normally, such reappointments shall be for a terminal year. Provided, however, that the tenured faculty may refuse to reappoint any faculty member subject to reappointment whose actions indicate a high degree of irresponsibility or other traits inconsistent with performing adequately the functions of a faculty member, if that person's intellectual or pedagogical strengths are not deemed sufficient to compensate for these negative traits.

IV. Procedures for Personnel Decisions

A. Notice and Opportunity to Present Evidence

The Dean shall timely notify any faculty member who is eligible for a personnel decision during an academic year of that fact, and afford that faculty member an opportunity to submit a written statement of any facts which he or she believes are relevant to the decision and, if the faculty member so desires, a statement as to why a

favorable decision should be reached. These statements will be made available to the tenured faculty.

B. Comments of Others

All non-tenured members of the-full-time faculty shall be invited by the Dean to submit any oral or written comments they deem relevant to a personnel decision concerning another faculty member. These comments along with their source shall be made known to the tenured faculty by the recipient.

C. Sub-Committee Process

After consultation with the faculty member being evaluated (hereafter called the "faculty subject"), the Dean shall appoint a three-to-five-person sub-committee (five in the case of tenure) for each faculty subject. Each tenure sub-committee member must be tenured; members of reappointment or promotion sub-committees must be senior in rank and longevity of full-time law teaching to the faculty subject.

1. It shall be the obligation of all sub-committee members to familiarize themselves with the educational and professional background, activities, available scholarly writings, and teaching objectives and theories of the faculty subject. Each sub-committee member will also attend at least two classes taught by the faculty subject, and at least two sub-committee members should attempt to attend at least one class together. A faculty subject may request at least one class video-taped and made available for review by the tenured faculty. The sub-committee shall prepare a written report summarizing its findings and impressions concerning the faculty subject, and evaluating the subject in light of the criteria specified in these rules for the particular personnel decision(s), based on the information above and other relevant information developed by the sub-committee. Any member of the sub-committee may write a dissenting or concurring report. The sub-committee report shall not contain a recommendation to the tenured faculty on the specific disposition of the pending personnel decision(s).
2. The report(s) shall be given to the faculty subject who may make a written response, supplemental statement, or request for clarification. The sub-

committee may modify its report(s) in response to the faculty subject's statement.

3. The sub-committee shall present to the tenured faculty all original and revised reports along with any statement or response of the faculty subject. The tenured faculty may require a supplemental or modified report from the sub-committee to assure compliance with these rules.
4. Sub-committee members may be reappointed to the same faculty subject's sub-committee in future years but the subject shall have the right, by notice to the Dean, to veto service by one faculty member who has previously served on his or her-sub-committee.

D. Other Visitation

Any other member of the tenured faculty is welcome to visit any class of a faculty subject, but the former should respect any reasonable restrictions on time or prior consultation requested by the latter.

E. External Review of Scholarship

Scholarship submitted for consideration by a tenure candidate should be reviewed under the internal review procedures contained in Rank and Tenure Rule IV.C. In addition, it should be submitted to outside evaluators for their judgment as to the merits of the work or works.

The following standards and procedures apply to the manner in which the evaluators are nominated and contacted, the intended scope of the evaluation that will be solicited, and the procedures to be followed with respect to the candidate's response to evaluations, and submission of other evaluations that are not part of this process.

1. Nomination and Selection of Evaluators. The candidate and his/her tenure review committee will meet to discuss the scholarly work the committee wishes to consider for purposes of the tenure decision. Under no circumstances will the candidate be required to submit unpublished work for

either internal or external review that he/she does not feel is ready for consideration in the tenure process.

After the articles and other work are selected by the committee, the candidate may nominate as possible outside reviewers as many as five persons for each piece of scholarly work that will be submitted for review. The committee members (or one of them designated by the chair of the committee as having primary responsibility for review of scholarship) may also nominate as many as five persons for each piece to be reviewed. Final selection of the committee nominees shall be subject to committee approval by majority vote. In order to assure that the candidate will not be evaluated by someone he/she believes is unsuitable to make an evaluation (for whatever reason), the candidate will have the opportunity to veto any persons proposed by the committee and the committee may replace those vetoed.

The committee should solicit a minimum of three outside evaluations for each piece for which evaluations are sought. The committee may, however, choose to submit more than one article or the entire body of a candidate's work for review by a particular person.

2. Written Contact with Reviewers; Solicitation of Evaluation. The committee will send a letter to each evaluator specifically setting out the sorts of issues the evaluation should address. At a minimum, the committee will ask the reviewer to comment on the piece in terms of its importance to the field of scholarship, the adequacy and cogency of the arguments, and its general worthiness as a guide to the scholarly ability and future scholarly potential of the candidate. In addition to the substantive aspects of the review, the reviewer should be asked to state his/her connection or association with the candidate, if any. The reviewer will be advised that the committee and faculty will honor the confidentiality of an evaluations.
3. Candidate's Response to Evaluations; Submission of Other Solicited and Unsolicited Evaluations for the File. The tenure candidate should receive

from his/her committee a copy of the scholarship evaluations made by the outside reviewers, along with the other materials in its report. Copies of any external evaluations given the candidate should not include any references that would identify the reviewer. As with the other parts of the report, the candidate will be permitted to respond in writing to the outside reviews. The candidate may also submit for inclusion in the file any reviews of, or comments about, the scholarship that he/she has received. Although these should generally be unsolicited, the candidate may submit commentary that he/she requested, but that fact must be divulged to the committee and indicated in the report.

F. Discussion

Following initial discussion by the tenured faculty, the Dean or the Dean's delegate shall prepare a written summary of any additional favorable and unfavorable points made concerning the faculty subject. (Tape recordings or minutes may be used to assist in this.) the summary shall be distributed to the tenured faculty to provide an opportunity for supplementation or correction. Without consent of the person making the comment, no member of the tenured faculty shall reveal the source of any comment or, except as otherwise provided in these rules, the nature of any comment, to anyone not on the tenured faculty at the time the comment was made.

Should the faculty subject not be recommended to the President for tenure, or should the President propose to reject a tenure recommendation, the faculty subject may request and receive a copy of the summary, and may make a written statement to the tenured faculty or to the President in response to the summary. After such new statement has been received and discussed by the tenured faculty, a new vote will be taken.

G. Voting

All personnel decisions shall be made by secret ballot after review and discussion of all resumes, sub-committee reports, statements and documents submitted by the faculty subject, teaching evaluations for the past year, and any other relevant materials. Only tenured faculty members present may vote, but other tenured

faculty may ask that the Dean or another member of the tenured faculty make their views known to the tenured faculty. The Dean shall serve as voting chair of the tenured faculty. A quorum shall be 2/3 of the tenured faculty, excluding those on leave.

H. Appointment and Reappointment Decisions

No appointment or reappointment shall be made unless a majority of those present vote in favor, including the affirmative vote of the Dean. All regular tenured and tenure-track faculty who are not visitors may vote on the initial appointment of a member of the Law School faculty.

I. Promotion Decisions

No promotion shall be made unless a majority of those present vote in favor.

J. Tenure Decisions

The President of the University is the ultimate authority for the granting of tenure, but no person may be considered for the granting of tenure by the President unless a favorable recommendation is concurred in by two-thirds of those tenured faculty members voting. The Dean shall furnish the President, along with each tenure recommendation, the number voting in favor and against the recommendation, the sub-committee report and responses, recent teaching evaluations, the revised summary statement, if any, any written response or statement submitted by the faculty subject before or after the final tenure recommendation vote, and any other relevant personnel data or summaries thereof contained in the faculty subject's file. Upon request of the President for comments, the Dean or any other tenured faculty member is free to submit a written or oral statement concerning any person for whom a tenure recommendation has been made. In the event the President proposes to reject a tenure recommendation, he or she will be requested to withhold formal action until the faculty subject and the tenured faculty have had an opportunity to respond to any reasons for the proposed rejection that the President agrees to furnish.

K. Notice of Non-retention

All notices of non-retention shall be in accordance with AAUP standards, to wit:

1. Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.
2. Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.
3. At least twelve months before the expiration of an appointment after two or more years at the University.

L. Appointment as Dean

Appointment to the office of Law School Dean will be made by the President pursuant to recommendations made by majority vote of all full-time instructors holding tenure. Recommendation to the President will consist of one or more candidates acceptable to the majority and will include an indicated priority of choice if more than one is recommended.

V. Academic Freedom and Sabbatical Leave

A. Academic Freedom

Academic freedom is defined in the Principles of Academic Freedom established by the AAUP, having in mind that this is a Catholic institution and each faculty member is expected to conduct his or her teaching in such a manner so as not to be contemptuous of or disparage the principles and teaching of Judeo-Christian morality.

B. Sabbatical Leave

All full-time instructors are eligible for sabbatical leave after six (6) years of full-time instruction. The University will pay the instructor fair compensation during the sabbatical year consistent with the needs and plans of the instructor when considered

together with the benefits the Law School will derive from the instructor's sabbatical program, incorporating by reference the present University policy.

VI. Dismissal for Serious Cause

A. Dismissal

A faculty member may be dismissed for serious cause.

B. Definition

Serious cause consists of gross professional incompetence, continued neglect of academic duties or responsibilities, exploitation of students for private advantage, final conviction of a felony indicating behavior incompatible with a faculty position, or such other serious violation of professional ethics or responsibility as would constitute cause for disbarment.

C. Screening Procedures

When reason arises to question whether a Law faculty member who has tenure or whose term appointment has not expired should be dismissed for serious cause:

1. The Dean shall ascertain that the allegations being made are substantial.
2. The Dean shall discuss the matter with the faculty member. At the initial discussion the faculty member shall be given copies of all pertinent allegations, and shall be given the opportunity to defend his or her position. An attempt shall be made to terminate the matter by mutual consent of the Dean and the faculty member by a thorough examination of various means of resolution.
3. If a resolution does not result, the Dean shall convene the tenured faculty (who shall select by lottery a three-member Ad Hoc Committee to inquire informally into the situation) and shall forward the charges, with the supporting evidence, to the Ad Hoc Committee of the tenured faculty. Copies shall also be forwarded to the faculty member concerned.

4. The Ad Hoc Committee shall render confidential advice in the matter and attempt to effect a resolution. If a resolution is not effected, the committee shall determine whether, in its view, formal proceedings to consider dismissal should be instituted. The committee's recommendation shall be forwarded to the Dean, Provost and faculty member.

D. Commencing Formal Proceedings

If the Ad Hoc Committee recommends that formal proceedings to consider dismissal should be instituted, the Provost or the Provost's delegate shall commence a proceeding under these rules. A statement with reasonable particularity of the grounds proposed for the dismissal shall then be jointly formulated by the Provost and the Ad Hoc Committee. Normally, if the Ad Hoc Committee recommends against formal proceedings, the matter shall be terminated. However, the Provost may for good cause, after setting forth such good cause in writing, institute a proceeding despite an adverse recommendation.

The formal proceedings shall be commenced by a written communication addressed to the faculty member by the President, informing the faculty member of the statement formulated, and informing him or her that, if he or she so requests, a hearing to determine whether he or she should be removed from a faculty position on the grounds stated will be conducted by a faculty hearing committee. The faculty member shall state in reply within two weeks of receipt of the President's communication whether he or she wishes a hearing and, if so, shall answer in writing at the same time the statements in the President's letter.

E. Suspension During Proceedings

In extraordinarily grave cases where there is a threat of imminent harm, the President may immediately suspend a faculty member from his or her teaching or administrative duties in the University. Such suspension shall be effective as long as the procedures set forth in this part are in process. In all cases, an accused faculty member, even if suspended, shall receive his or her salary, at least until a final decision according to this part is reached.

F. Hearing Committee

The hearing committee shall be composed of seven members: 5 tenured Law faculty members chosen by lottery and 2 tenured University faculty members. The two tenured University faculty members shall be chosen as follows: the two highest ranking officers of the University Senate who are tenured and are not Law faculty (chair, vice-chair, secretary, then parliamentarian); if more need be chosen, they shall be chosen by lottery from among the other tenured University faculty. No person who is a complainant, who holds an administrative position, or who served on the Ad Hoc Committee shall serve on the hearing committee. The faculty member shall have a maximum of two challenges without stated cause. The committee shall elect its chair.

G. Committee Proceeding

The committee shall set the matter for hearing at such a time as will permit the Provost and the accused faculty member to prepare their cases. The committee, in consultation with the President and the faculty member, will exercise its judgment as to whether the hearing should be public or private. At the request of the Provost, the faculty member, or the committee, a representative of a responsible educational association shall be permitted to attend the procedures as an observer. The Provost and the faculty member may each employ the assistance of counsel, and each shall have the right, within reasonable limits, to question all witnesses who testify orally. The committee should determine the order of proof, should normally conduct the questioning of witnesses, and, if necessary, should secure the presentation of evidence important to the case. The faculty member shall have the opportunity to confront all adverse witnesses unless the witness is reasonably unavailable. The rules of legal evidence shall not apply and any evidence of probative value may be admitted. A verbatim record of the hearing shall be made and a typewritten copy provided the faculty member without cost. After hearing all the evidence, the hearing committee shall give the Provost and the faculty member an opportunity to orally argue before it. The hearing committee may request briefs if it thinks them helpful. In all matters, the committee shall act by majority vote.

H. Consideration

The hearing committee shall reach its decision in conference. It shall prepare a reasoned opinion making explicit findings of fact and deciding whether serious cause

for dismissal exists. Its opinion shall be forwarded to the President, along with a transcript of the evidence and the oral arguments, and any written briefs filed. The Provost and the faculty member shall receive copies of material supplied the President.

I. Consideration by President

Upon receipt of the hearing committee's opinion, that serious cause for dismissal exists, the President shall review the entire record transmitted to him or her. The President may, either by him or herself or in consultation with the Board of Trustees, take one or more of the following actions: 1) return the matter to the hearing committee for clarification or additional fact-finding; 2) dismiss the proceedings with prejudice; 3) affirm the finding of serious cause for dismissal, but order a less severe remedy where extenuating circumstances exist; 4) affirm the hearing committee's finding and dismiss the faculty member for serious cause. The faculty member and the Provost may submit written argument to the President as to which disposition he or she should adopt. Normally, if the hearing committee's opinion is that serious cause does not exist, the matter shall be terminated. However, upon finding that the committee's opinion is contrary to the overwhelming weight of the evidence, the President may either: 1) dismiss the faculty member, or 2) order a less severe sanction. In either case, the President shall furnish the Provost and faculty member with a written opinion setting forth the reasons for his or her decision and the evidence upon which it rests.

VII. Amendment

These rules may be amended by two-thirds vote of the tenured faculty, and approval of appropriate University authorities. Any such amendments may not serve to divest any faculty member of any rights or status previously acquired hereunder.