

FACULTY SENATE JUDICIAL COMMITTEE
RULES OF PROCEDURE

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PREAMBLE

The Faculty Senate Judicial Committee exists to hear the claims of faculty members who allege that they have been harmed by administrative action in violation of the regulations embodied in Board of Regents Policy: *Faculty Tenure*. The Committee's jurisdiction is ultimately defined by *Faculty Tenure* and its decisions are advisory to the President. In general, the Committee, through particular panels, seeks to determine in cases brought before it whether administrative action against a faculty member violated the *Faculty Tenure* regulations, and whether the faculty member received due process. In all proceedings, the Committee and its panels will be guided by the aim of maximizing the protection of the principles of academic freedom and due process. The Committee, its panels, the parties, and all witnesses are expected to abide by the restrictions on the disclosure of private and confidential information established by the Minnesota Government Data Practices Act and other applicable laws, regulations, and policies.

While broadly juridical, the Committee and its panels are not, in any legal sense, courts, judges, or juries; and their advisory decisions to the President do not establish legal precedent. The Committee's hearings are conducted in accordance with these Rules of Procedure. The Committee and its panels are not bound by the rules of evidence or the rules of procedure applicable in the courts of the United States or Minnesota. For example, the standards regarding granting summary judgment, the scope of cross-examination, and the consideration of hearsay evidence described in these Rules differ from the legal standards. Similarly, the Committee does not have the same powers as a court: it cannot compel the attendance of witnesses or administer oaths. Mediation of disputes is encouraged. When these Rules do not provide the specificity required, the Committee is guided by reason, common sense, and basic fairness.

RULE 1:

Rules

- (a) Title. Faculty Senate Judicial Committee Rules of Procedure.
- (b) Purpose. The purpose of these Rules is to provide for the fair, effective, and expeditious handling of Complaints that are within the jurisdiction of the Committee.
- (c) Jurisdiction. The jurisdiction of the Committee is established by the Tenure Regulations. The Committee has original jurisdiction in cases involving promotion; tenure; special post-tenure review; improper refusal of a new appointment to a non-regular faculty member; unrequested leaves of absence; suspension or termination for cause; suspension or termination in cases of fiscal emergency; reasonableness of reassignment during programmatic change; and academic freedom. The Committee has appellate jurisdiction in all other faculty cases that have been heard before an appropriate University body (such as the Conflict Resolution Office) and that allege a violation of *Faculty Tenure*.
- (d) Ad Hoc Modification of Rules. Any of the Rules may be modified for a particular case by agreement of the Parties with the concurrence of the Chair or, in cases referred to a Panel, the Hearing Officer.

RULE 2:

Definitions

Advisor: an individual selected by a Party to assist with preparation and presentation of a case

Alternate: a Panel member who participates in a case but does not vote

Attorney: an individual who has a law degree

Burden of Proof: the obligation of a Party to produce sufficient evidence to support a claim or defense

Chair: the Chair of the Committee

Clear and Convincing Evidence: evidence that demonstrates that it is substantially more likely than not that the matter asserted is true. This standard is a more rigorous than proof by a preponderance of the evidence.

Committee: the Faculty Senate Judicial Committee

Complainant: a faculty member who has initiated a Complaint

Complaint: the written document that initiates a case

Days: University working days

Discovery: the process by which a Party learns the basis for the other Party's position prior to the Hearing, which typically consists of requests for production of documents and the disclosure of the names of witnesses

Due Process: procedural and substantive fairness in University proceedings

Findings of Fact, Conclusions, and Recommendations: the Panel's written recitation of the relevant facts of a case (whether based upon evidence presented at the Hearing or by stipulation of the Parties), the conclusions it draws, and any recommended actions

Hearing: the formal meetings at which the Panel receives testimony and other evidence

Hearing Officer: member of the Panel selected by the Chair to organize and preside at the Hearing(s) and related proceedings

Legal Officer: attorney who represents and advises the Committee and its Panels

Minnesota Government Data Practices Act: a state law that classifies data as "public," "private," or "confidential"

Motion for Summary Judgment: a request by either Party to determine the merits of a complaint or a response, in whole or in part, without a Hearing. It is based on the argument that (1) the other Party has no reasonable chance of establishing the claim or defense at a Hearing, or (2) even if the facts alleged are considered in the light most favorable to that Party, the Party's position is without merit. It is generally brought after the discovery period has been completed.

Motion to Dismiss: a request by the Respondent to dispose of a complaint, in whole or in part, without determining the merits. It is based on the argument that even if the facts alleged by the Complaint are true, the Committee does not have jurisdiction or cannot recommend a remedy. It should be brought early in the case because it generally does not depend on discovery.

Panel: the group of three or more Committee members, selected by the Chair, who conduct Hearing(s) and related proceedings and make findings, conclusions, and recommendations to the President

Party: Complainant or Respondent

Petition for Provisional Relief: a request by either Party to preserve the status quo when it appears that immediate and irreparable loss or damage will result before a Hearing can be conducted on the Complaint

Preponderance of Evidence: evidence that demonstrates that the matter asserted is more likely than not true

Respondent: a member of the University community, typically an administrative head of a department, college, or other academic unit, who responds to the Complaint

Rules: the Committee's Rules of Procedure

Secretary: the secretary to the Committee

Tenure Regulations: *Faculty Tenure* regulations that have been adopted by the Faculty Senate and the Regents

Vice Chair: a member of the Committee who temporarily acts in place of the Chair

RULE 3:

Time Limits

- (a) Computation. Whenever any Rule requires that an action be taken within a definite number of days, counting shall begin with the day following receipt of the document or occurrence of the action that commences the limitation period. The last day of the period shall be included, unless it is not a University working day, in which event the period runs until the end of the next University working day.
- (b) Exceptions. Requests for exceptions to time limits may be granted by the Chair or, when the Panel has been confirmed, the Hearing Officer, in accordance with the *Faculty Tenure* regulations. Exceptions to the time limits established by these Rules may be granted only in extraordinary situations or to accommodate teaching duties. It is understood that actions related to a case have the highest priority to the participants, including Panel

members and University administrators.

RULE 4:

Document Delivery

- (a) Delivery of Documents. The Parties shall deliver documents to the Secretary and/or the other Party, advisor, and attorney(s) as required in these Rules or as otherwise directed by the Secretary, Chair, Hearing Officer, or Panel. All documents shall be correctly addressed and delivery shall be made by campus mail, by U.S. mail (with first class postage provided), by email, by fax, or by hand.
- (b) Privacy. If a document contains sensitive information or private or confidential data (as defined by the Minnesota Government Data Practices Act), the envelope, fax cover sheet, or email subject line shall be marked "Private: Do Not Disclose." Appropriate steps shall be taken so that its contents are not inadvertently disclosed.

RULE 5:

Representation

- (a) Attendance. Complainants and Respondents are expected to appear at all proceedings.
- (b) Advisors. The Complainant may designate one person to serve as advisor. Written communications from the Respondent and the Panel shall be sent both to the Complainant and the advisor. If voluminous materials are involved, the Panel or other Party may send the communication only to the Complainant who will transmit it to the advisor.
- (c) Attorneys. The Respondent may be represented at the proceedings by an attorney only when the Complainant is represented by an attorney. All subsequent written communication with the Party shall be directed only to the attorney, unless the Party requests also to receive copies of the communication.
- (d) Role of Advisors and Attorneys. Advisors and attorneys may prepare or help prepare documents, offer advice, participate in a full or limited role in the prehearing conference and Hearing(s), or perform other services consistent with their roles.

RULE 6:

Complaints

A case is considered filed with the Chair, as required by the *Faculty Tenure* regulations, upon receipt of the Complaint by the Secretary. The Secretary shall maintain a file of forms for the drafting of a Complaint.

- (a) Time Limits. The Tenure Regulations provide time limits for the filing of Complaints. A Complaint is timely filed if the Complainant (1) files a Complaint with the Secretary within the time limit, or (2) requests a complaint form from the Secretary within the time limit and files the completed Complaint with the Secretary within seven (7) days of receipt of the form..
- (b) Contents. The Complaint shall include the following:
 - 1. Name of the Complainant
 - 2. Date on which the Complaint is filed
 - 3. Statement in plain and simple language of the specific actions about which the faculty member is complaining. Copies of any contract, notices of appointment, or other writings relevant to the case should be attached to the Complaint.
 - 4. Verbatim quotation and reference number of the Tenure Regulation(s) or other governing documents that the Complainant regards as (a) having been violated, and (b) specifying the Committee's jurisdiction
 - 5. Statement of the action or other relief desired from the Committee
- (c) Petition for Provisional Relief. A Petition for Provisional Relief may accompany a Complaint or be made any time during a case. [See Rule 12.]
- (d) Delivery. The Complainant shall deliver two copies of the Complaint to the Secretary. The Secretary shall note on the Complaint the date on which it was received.
- (e) Distribution. The Secretary shall promptly deliver one copy of the Complaint to each

Committee member. At the same time, the Secretary shall also deliver one copy of the Complaint and a copy of these Rules to the Respondent.

RULE 7:

Respondent

- (a) Identity. The senior vice president responsible for the administrative action shall be named as Respondent in the Complaint. However, within three (3) days of receipt of the Complaint, he or she may designate another individual to serve as Respondent. Only one person shall ordinarily serve as Respondent.
- (b) Substitution. In case of the separation from office of any person named or designated as a Respondent, the successor in office shall automatically assume the responsibilities of the Respondent, unless otherwise directed in writing by the senior vice president responsible for the administrative action.

RULE 8:

Jurisdiction

- (a) Determination by the Chair. Upon receipt of a Complaint, the Chair shall determine whether the Committee has jurisdiction. The Chair shall distribute the jurisdictional determination to the Parties. If the Chair believes that an inquiry into factual issues is required, the Chair may convene a Panel to receive evidence and report to the Committee, which in turn shall determine jurisdiction. The Chair will inform the Parties of the referral to the Panel for an evidentiary hearing.

Cases that fall within the appellate jurisdiction of the Committee [See Rules 1(c).] should initially be heard by another University body (e.g. Conflict Resolution Office). In doubtful cases, the Chair will confer with the Conflict Resolution Officer or other bodies to determine jurisdiction. The Chair shall also ensure that a record will be made, which will also allow for subsequent review by the Committee.

- (b) Committee Review. If the Chair determines that there is no jurisdiction, the question shall be referred to the next Committee meeting for review. The Parties shall be advised that they may submit written statements on the question to the Secretary for distribution to the Committee. The Committee may, at its discretion, permit oral argument on the question.

If the Chair determines that there is jurisdiction, the Respondent may challenge the determination by a written motion to the Committee. The motion and the Complainant's response shall be delivered to the Secretary and reviewed by the Committee at its next meeting. The Committee may, at its discretion, permit oral argument on the question.

RULE 9:

Response

- (a) Time Limits. The Respondent shall deliver a Response to the Secretary within ten (10) days of Respondent's receipt of the Complaint, unless the Chair has determined that there is no jurisdiction. In that case, a Response shall not be due until ten (10) days of Respondent's receipt of a Committee decision, if any, concluding that there is jurisdiction.
- (b) Contents. The Response shall contain the following:
 - 1. Name of the Complainant
 - 2. Date on which the Response is filed
 - 3. Narrative explanation of the actions taken, including admission or denial of the allegations in the Complaint
 - 4. Allegation of any additional fact(s), not revealed in the Complaint, believed to be pertinent
 - 5. Reference(s) to the specific provisions in the Tenure Regulations or governing documents that justify the action(s) taken
- (c) Motion to Dismiss. The Response may contain a motion to dismiss the Complaint on the ground that, even if all facts are accepted as stated in the Complaint, the Complainant is

not entitled to relief. This motion may be filed without admitting the truth of any allegation of the Complaint. Even in cases where the Respondent moves to dismiss, the Respondent shall also include in the Response the contents called for under Rule 9(b). The Chair may determine whether to grant the motion to dismiss in the same manner as questions concerning jurisdiction are decided [See Rule 8(a).] This determination may be appealed to the Committee. Alternatively, the Chair may refer the motion to the Committee for its determination.

- (d) Delivery. The Respondent shall deliver two copies of the Response to the Secretary. The Secretary shall note on the Response the date on which it was received.
- (e) Distribution. The Secretary shall promptly deliver one copy of the Response to each Committee member. At the same time, the Secretary shall also deliver one copy of the Response to the Complainant.

RULE 10:

Panel and Hearing Officer

- (a) Challenges to Potential Members. The Secretary shall provide both Parties with the names of the Committee members. Both Parties shall then have an opportunity to challenge Committee members that might be appointed to the Panel by presenting to the Chair a statement containing the reasons for the challenge. The Parties must submit their challenge to the Secretary within five (5) days of receipt of the names of the Committee members. The Chair shall show this document to the Committee member concerned, who shall have the right to contest the challenge in writing. If the challenge is not contested, the challenged Committee member shall not be appointed to the Panel. In the event of a contested challenge, the Chair shall send all documents to other Committee members. At a Committee meeting, and in the absence of the Committee member challenged, the challenge shall be discussed. With the advice of the Committee, the Chair shall rule on the challenge and this decision shall be final.
- (b) Appointment. The Chair shall appoint a Panel of Committee members to hear the case. The number appointed must be sufficient to provide for the required minimum number under Section 13.4 of the Tenure Regulations, following optional dismissal of one member under section (c) below. The Chair shall designate one of the Panel members as the Hearing Officer. The Chair shall appoint an Alternate member to the Panel who participates in Panel proceedings but does not vote. The Alternate shall replace a Panel member if necessary.
- (c) Dismissal of Appointed Panel Members. Once the Panel has been appointed by the Chair, both Parties have the option to dismiss one Panel member. This dismissal shall be presented within three (3) days of receipt of the names of the Panel members. Once that Panel member has been replaced, no further challenges or dismissals are allowed.
- (d) Reports. The Hearing Officer or a Panel member shall periodically report to the Committee on the progress of the case.

RULE 11:

Discovery

- (a) Party Responsibility. It is the responsibility of each Party to obtain and present to the Panel all documents and other evidence believed necessary to a decision in the case. The Respondent and the University shall make available to the Complainant the documentary evidence requested using the authority they possess. The Complainant shall cooperate with efforts of the Respondent to obtain similar information.
- (b) Request for Documents and Names of Witnesses. A Party may obtain discovery of any document in the possession or under the control of the other Party (including, in the case of the Respondent, any non-privileged document in the possession or under the control of any employee or agent of the University) relevant to any issue in dispute in the case. A Party may also obtain discovery of the names of witnesses.

Discovery is obtained by delivering to the other Party a written request for the

production of documents and/or names of witnesses. The request shall include a description of the document(s) by name, date, and location, if known. A Party complies by providing the names of witnesses and/or delivering a copy of the documents or by making the documents available for inspection and copying.

- (c) Motion and Compliance. A Party may file a motion with the Secretary to obtain documents and/or names of witnesses whose production has been denied. The other Party shall have the opportunity to respond to the motion. The Hearing Officer shall decide the motion with the advice of the Panel.
- (d) Time Limits. Discovery shall be completed within thirty (30) days of receipt of the Response to the Complaint by the Secretary. For good cause, an extension or reduction of this time limit may be granted by the Hearing Officer.

RULE 12:

Provisional Relief

- (a) Petition. A Petition for Provisional Relief may accompany a Complaint or be made any time during a case. The Petition shall be submitted to the Secretary who shall distribute copies to the Committee and the Respondent. It shall specify the grounds on which it is based and the relief requested.
- (b) Review by Committee. The Committee shall review the petition, on an expedited basis, and make a recommendation to the President. If, in the opinion of the Chair, it appears that immediate and irreparable injury or loss will result before action can be taken by the Committee, the Chair may bring the matter to the immediate attention of the President. The submission of a recommendation shall not affect the Panel's jurisdiction as to the remainder of the Complaint.
- (c) President's Decision. The Secretary will distribute the President's decision on provisional relief to the Committee, Parties, advisor, and/or attorney(s), unless the President has already done so.

RULE 13:

Prehearing Conference

The Hearing Officer shall conduct a prehearing conference to prepare for the Hearing. The Panel members, Parties, advisor, and/or attorney(s) are expected to attend. The prehearing conference shall ordinarily be held within thirty (30) days of the appointment of the Panel. At the discretion of the Panel, more than one prehearing conference may be held.

All Parties shall be given an opportunity to participate in the prehearing conference. If, however, a Party is given a reasonable opportunity, but declines to or does not appear, the Hearing Officer or Panel may conduct the prehearing conference in the Party's absence.

- (a) Preparation. The Hearing Officer shall notify the Parties which of the following, or additional, matters must be completed before the prehearing conference:
 1. Submission of statements in order to ascertain the relevant points at issue. Supplementary statements may be required.
 2. Submission of witness lists with a description of the testimony that each witness will give
 3. Submission of a list of documents that the Party seeks to offer as evidence
 4. Submission of copies of all documents that the Party seeks to offer as evidence
 5. Conferences between the Parties, advisor, and/or attorney(s) to discuss and report to the Panel on the possibilities for settlement
 6. Conferences between the Parties, advisor, attorney(s), and the Hearing Officer or the Panel as to any matter under this Rule
- (b) Matters to be Considered. The Panel considers matters that will expedite the Hearing, avoid repetitious evidence, eliminate frivolous issues, facilitate reasonable discovery, prevent abuse of discovery, or otherwise lead to a fair, effective, and expeditious Hearing. The Panel may direct the Parties to make further good faith efforts at settlement, schedule discovery, set deadlines, or take other action to facilitate resolution of the case.

- (c) Motion for Summary Judgment. Either Party may request a prehearing conference to present a motion for summary judgment. The motion may be presented with or without supporting materials or oral arguments. The Panel shall grant summary judgment if it determines that the case can be fairly decided on the basis of the existing record and arguments, without the need for a Hearing. If the Panel concludes that justice can be done without holding a Hearing, it may grant summary judgment even if it has to resolve issues of material fact. Partial summary judgment may also be granted.
- (d) Prehearing Conference Order. In preparation for the Hearing, the Panel or Hearing Officer may prepare an Order that includes the following matters.
1. Issues in dispute
 2. Discovery that may be conducted
 3. Schedules for discovery and Hearing(s)
 4. Stipulations of the Parties as to undisputed facts and the authenticity of documents
 5. Assignment of burden of proof
 6. Admissibility of disputed documents
 7. Order for presentation of evidence
 8. Limits upon repetitious evidence
 9. Time allotted to each Party
 10. Any other matter that will lead to a fair, effective, and expeditious Hearing
- The Prehearing Conference Order controls the subsequent course of the Hearing(s), unless amended. Challenges shall be made within five (5) days of receipt, and shall be considered and determined by the Panel. The Hearing Officer or Panel may issue more than one prehearing conference order.

RULE 14:
Mediation

At any time during the case, the Chair may appoint as mediator any person who is not a Panel member. If the mediator is a Committee member, he or she shall recuse himself or herself from Committee discussions of the case. The mediator shall confer with the Parties, together or separately, to facilitate settlement. The mediator cannot make a binding decision on the merits of the case. The mediator shall not be a witness at the Hearing. Statements made by the mediator, the Parties, and any other participants during mediation shall not be admitted in evidence at the Hearing without an independent basis. A Party's participation or refusal to participate in mediation does not affect the Party's right to a Hearing in cases in which settlement is not reached.

RULE 15:
Hearing(s)

- (a) Time and Place. The Hearing(s) shall be held at the time and place determined by the Panel and ordinarily commence within thirty (30) days of the prehearing conference.
- (b) Hearing Officer. The Hearing Officer shall preside at the Hearing and make decisions on evidence, adjournment, continuances, and other matters. The Panel may override any decision by majority vote.
- (c) Case Presentation. Both Parties shall be given fair opportunity to present their cases with oral testimony and other evidence, cross-examine witnesses, and rebut evidence. The Panel shall see that the Hearing is conducted in a fair, efficient, and expeditious manner.
- (d) Order and Scope of Examination. A Party who produces a witness shall complete direct examination of the witness before cross-examination. Cross-examination may involve questioning on any matter that is relevant to the case.
- (e) Duty to Testify. Faculty members and administrators have a duty to testify before the Panel, if asked [See Tenure Regulations, Section 13.3.] Should an individual refuse to testify, the Panel may take appropriate steps to secure testimony, including filing a report with the President.
- (f) Witness Rule. Witnesses, other than the Parties, shall be excluded from the Hearing(s)

- except when they are testifying.
- (g) Oaths. The Panel has no power to administer oaths. Nonetheless, the Hearing Officer shall remind each witness of the gravity of the proceeding and the importance of accurate and truthful testimony.
 - (h) Evidence. Decisions concerning the admissibility of evidence, including hearsay, are governed by common sense and fairness. Evidence that is not reliable or does not contribute to a fair, effective, or expeditious Hearing may be excluded.
 - (i) Burden of Proof In cases involving suspension or termination for cause, or unrequested leaves of absence, the Respondent has the burden of proof by clear and convincing evidence. [See Tenure Regulations, Section 14.3.] In all other cases, the Complainant has the burden of proof by a preponderance of the evidence. [See Tenure Regulations, Section 15.3.] The Panel may shift the burden of proof on specific issues if a Party shows good cause.
 - (k) Panel Members. A Panel member who has not been present during each of the Hearing(s) shall read the transcript(s) of any portions missed in order to vote. Panel and Committee members shall not conduct investigations or interview witnesses outside of a Hearing. They shall not discuss the merits of the case with any Party unless all other Parties are present or consent.

RULE 16:

Transcript

- (a) Official Record. The Secretary shall arrange for a registered court reporter to be present for all prehearing conferences and Hearings. The Secretary shall retain original transcripts as part of the case file.
- (b) Copies. The Secretary shall provide copies of the transcripts to the Hearing Officer, Panel members, the Legal Officer, the Parties, advisor, and/or attorney(s). A Minnesota Government Data Practices Agreement signed by the Parties, advisor, and/or attorney(s) shall ordinarily be provided to the Secretary before a copy of the transcript is released.

RULE 17:

Findings, Conclusions, and Recommendations

- (a) Preparation. After the Hearing(s), the Panel shall prepare its proposed Findings, Conclusions, and Recommendations.
- (b) Committee Review. The Secretary shall circulate the Panel's proposed Findings, Conclusions, and Recommendations to the Committee so that it may advise the Panel.

The proposed Findings, Conclusions, and Recommendations shall ordinarily be made available to the Committee within thirty (30) days of receipt of the transcript(s) by the Secretary. They shall be discussed at the next meeting of the Committee. If necessary, further discussion may occur at subsequent Committee meeting(s). If the Committee takes a vote, it shall be confidential. The vote shall not bind the Panel.
- (c) Comments from the Parties. Following Committee review, the proposed Findings, Conclusions, and Recommendations shall be circulated to the Parties, advisor, and/or attorney(s) for written comments. The purpose of these written comments is to give both Parties an opportunity to advise the Panel of any factual mistakes that have been made, but is not to further argue the case or to debate the merits of the recommendations. Written comments shall be delivered to the Secretary within five (5) days of receipt of the proposed Findings, Conclusions, and Recommendations.
- (d) Final Action. The Panel shall consider comments by the Committee, Parties, advisor, and/or attorney(s) and ordinarily finalize the Findings, Conclusions, and Recommendations within ten (10) days of receipt of the Parties' written comments. The Findings, Conclusions, and Recommendations shall be signed by each concurring member of the Panel and submitted by the Secretary to the President. Copies shall also be distributed to the Parties, advisor, attorney(s), the Committee, and the Legal Officer.
- (e) Further Proceedings. Only the President can direct that further proceedings shall occur.

Rule 18:

Case Files

- (a) Maintenance. The Secretary shall maintain the case files.
- (b) Case Abstracts. Following completion of each case, the Secretary or a designated member of the Committee shall prepare an abstract of the case without names or other identifiers of the individuals involved.
- (c) Archives. The Secretary shall periodically determine which of case files will be delivered to University Archives. Suitable arrangements shall be made with the University Archives regarding the integrity and confidentiality of the case files.