



Memorandum

To: University Faculty Senate Committee on Academic Programs and Policies
From: Eduardo M. Peñalver, Allan R. Tessler Dean & Professor of Law
Date: December 18, 2014
Re: Proposal on Use of Professor of Practice Title

Having obtained the requisite internal approval by two-thirds votes of the tenure-track and non-tenure-track faculties respectively, the Law School proposes to use the title of Professor of the Practice in reference to a limited and defined group of long-term, non-tenure-track appointees whose primary responsibility will be skills and practice teaching in a classroom setting. This title will be available for use at the Assistant, Associate, and Full Professor of the Practice rank, with the expectation being that senior practitioners would come in at a senior rank but other appointees would normally move up a rank at each reappointment stage.

Our purposes are nicely captured by the preamble to the University's enabling legislation of April 9, 2014:

- Whereas the 2002 enabling legislation that created the Clinical Professor titles was an effective first step in modernizing Cornell's titles for non-tenure-track faculty engaged heavily or exclusively in a primary teaching function, and
- Whereas Cornell could further benefit from the addition of the Professor of the Practice titles in common use at peer institutions, and
- Whereas the need for and value of these new titles are widely recognized across campus, and
- Whereas the 2002 enabling legislation, including its various process and approval requirements, provides an appropriate framework for

the implementation of the Professor of the Practice titles as alternatives to the Clinical Professor titles.

The reference to the 2002 legislation's purposes brings to mind its statement:

- Whereas an inadequacy in the current range of available academic titles makes it desirable to create a new non-tenure-track Clinical Professorial Title, and
- Whereas it is clearly important to recognize and reward the status, qualifications, and activities of those faculty members for whom such a title would be appropriate, and
- Whereas units need to improve recruitment and retention of such faculty-members, and
- Whereas, where appropriate and possible, units should be able to reclassify competitive candidates who are currently doing such work de facto, while employed as Lecturers or Senior Lecturers.

In 2005, the Law School instituted the title of Clinical Professor, for a limited and defined group of long-term, non-tenure-track appointees whose primary responsibility is skills and practice teaching in a clinic-like setting. Now in 2014, our renewed consideration of this issue, in connection with appointees who do such teaching in a classroom setting, has produced the following findings and conclusions:

A. Justification

As a combined graduate and professional school, Cornell Law School must instruct its students in both the theory and the practice of law. Indeed, according to the Preamble to the Standards for Approval of Law Schools, generated by the American Bar Association as the law-school accrediting body, all accredited law schools must provide "a curriculum that develops understanding of the theory, philosophy, role, and ramifications of the law and its institutions; skills of legal analysis, reasoning, and problem solving; oral and written communication; legal research; and other fundamental skills necessary to participate effectively in the legal profession." To meet this mandate, the Law School has a rich lawyering-skills and practice curriculum. It starts in the first year with the required year-long "lawyering" course that focuses on mock cases simulating those the students will face as practicing attorneys, and continues with upper-level offerings that include ones in which the students represent actual clients in real cases under the



supervision of the clinical faculty. These courses are taught primarily, but not exclusively, by the Clinical Professors who constitute the Lawyering Program faculty and the various clinics' faculty.

Over the years the Law School has expanded its skills and practice offerings in more traditional classroom offerings. For these, the limited range of titles currently available at the Law School compromises its ability to retain and recruit the best practice skills faculty, to maintain its standard of excellence in teaching the pertinent classes, and to ensure its national reputation in its law-in-practice curriculum.

A review of existing title policies at other law schools reveals that almost all law schools, including virtually all peer schools, use a professorial title for their practice skills faculty. Thus, Cornell is now in a small—and steadily shrinking—minority of law schools that have not yet adopted a professor title for practice skills faculty. Given this widespread practice, the unavailability of the Professor of the Practice title undermines the morale of the Law School's existing practice skills faculty, and it hinders the recruiting of top practice skills candidates with offers from competing law schools. As recognized by the majority of law schools and by the Ad Hoc Committee of the Faculty Senate on Non-Tenure Track Faculty at Cornell, this is a situation in which the old array of titles is "no longer commensurate with the qualifications and responsibilities" of the faculty who hold them. (August 20, 2004, Report of the Ad Hoc Committee of the Faculty Senate on Non-Tenure Track Faculty at Cornell, where it discusses the need for Research Scientist titles at page 9.) Having the Professor of the Practice title will add value to the Law School and allow it to accord deserved respect to its highly credentialed faculty who teach skills and practice.

B. Description of Position

We envisage non-tenure-track positions similar to those of the Law School's current law-in-practice faculty—the clinics' faculty and Lawyering Program faculty—who focus on teaching professional skills in clinic-like settings. Therefore, we first provide a description of these two positions. Unlike tenure-track faculty, clinic and Lawyering Program faculty are not expected to produce scholarship.



Clinical Faculty: Their teaching occurs in a clinical setting. The faculty create varied instructional materials such as lecture presentations; discussion questions; and simulation exercises, which the students perform and the faculty critique. Most of the clinic's teaching, however, is performed in the context of individual supervision of student representation of real clients. In the course of that representation, the students learn, inter alia, to interview and counsel clients, investigate facts, plan case strategy, engage in discovery, resolve ethical dilemmas, and appear before administrative hearing officers and judges in both motion and trial practice. The faculty must challenge the students to utilize their fullest abilities, while providing sufficient support as the students assume the lawyer role for the first time. The faculty are to model excellence in practice skills and instill a commitment to high ethical standards of practice.

Moreover, the faculty are expected to contribute to the Law School, the University, and the larger legal community through membership in faculty committees; service as student advisors; and participation in local, state, and national legal-education organizations, bar associations, and organizations serving the interests of the clinics' clients.

Lawyering Program Faculty: As to teaching, they prepare interactive classroom sessions, lectures, and in-class skills-related simulations for their year-long lawyering course. Through a series of simulated problems, which the faculty research and design for that course, they instruct students how to identify and analyze legal issues, investigate and develop facts, master several forms of legal writing, and engage in written and oral advocacy. The faculty also extensively train, and closely supervise the work, of upper-class students who serve as teaching assistants. Some of the faculty additionally teach upper-level courses, either skills-based seminars or clinical courses. As to one-on-one teaching, the faculty provide students with in-depth written critiques of their work and regularly meet with them to discuss progress on writing and other assignments.

Moreover, the faculty are expected to engage in collegial contributions similar to the clinical faculty. In addition, Lawyering Program faculty commit substantial time to their program's development.



New Professors of the Practice: We expect these teachers to teach more traditional classes, but to focus them on the practice of law rather than overtly on the theory of law. They would be top lawyers, who come into the academy usually after substantial practice and who are now prepared to share their experience with students. In the words of the enabling legislation, they would be persons “who are distinguished and highly experienced individuals in a relevant field of professional practice and who can provide effective, practice oriented instruction in areas that supplement the core pedagogical instruction provided by the tenured and tenure track faculty.”

While specific responsibilities will vary by the individual and by the school’s needs, two primary responsibilities will be part of each Professor of the Practice position: (1) substantive teaching responsibilities in degree programs and (2) responsibilities to contribute to the school’s mission over and above his or her teaching contribution.

C. Terms of Appointment

Nature of Search for Candidates: The current Lawyering Program and clinical faculty members, all of whom are designated Clinical Professors of various rank, were hired following a serious search. In future hiring of Professor of the Practice positions, the Law School will conduct a serious search, utilizing the conventional means for such law professor searches.

Required Credentials of Candidates: Applicants for the position of Assistant Professor of the Practice shall have a J.D. or the equivalent, excellent practice credentials, and preferably some academic credentials. Applicants for the position of Associate or Full Professor of the Practice must display the qualities sought in Assistant Professors of the Practice, but will be held to a higher standard of performance. Appointment will be governed by Sections 14 and 15 of the Cornell Law School Policies and Procedures Governing Faculty Appointments, as amended through December 7, 2005, which currently apply to appointment of Clinical Professors.

Appointment Approval Process: The approval process will follow the provisions set forth in Section 3 of the Cornell Law School Policies and Procedures Governing Faculty Appointments, which currently applies to Clinical Professor positions.



Length of Appointments: Assistant and Associate Professors of the Practice normally shall be appointed for a term of three years. Full Professors of the Practice normally shall be appointed for a term of five years. Shorter terms may be appropriate for initial probationary appointments or to meet short-term needs. Appointments shall be renewable indefinitely.

Possibility of Movement between Non-Tenure-Track and Tenure-Track Paths: Movement between the non-tenure-track and tenure-track paths shall be governed by Section 3 of the Cornell Law School Policies and Procedures Governing Faculty Appointments.

Procedures for Renewal and Promotion: The procedures for renewal and promotion shall be governed by Section 3 of the Cornell Law School Policies and Procedures Governing Faculty Appointments. The appointment of a holder of any Professor of the Practice title whose appointment is not renewed shall extend for two academic terms after receiving notice of nonrenewal.

D. Percentage Limitation

We currently plan that the total number of Professors of the Practice and Clinical Professors will not exceed 25% of the number of tenure-track faculty after any appointment. But the limit is presenting problems for the Law School, and we also plan to petition for relief from it.

E. Voting and Other Rights

The Law School plans no changes in rights by going from a lecturer title system for practice skills to a Professor of the Practice title system. Currently, those lecturers have limited voting rights in conformity with University legislation, and they have full access to the grievance and appeals processes available to tenure-track faculty (Policies and Procedures Governing Faculty Appointments; Academic Grievance Procedures, adopted by the Law Faculty on March 3, 1976). No change is proposed thereto.

F. Impact Statement

Use of the Professor of the Practice title will be limited to non-tenure-track faculty engaged in skills and practice teaching, persons who are now titled as Lecturers or Senior Lecturers or as adjuncts. Some current holders of these positions will be retained and will have their designations changed to one



of the Professor of the Practice titles. This proposal will have no effect on other non-tenure-track titles and their holders, now or in the future. Accordingly, non-tenure-track positions under titles such as Research Associate and Distinguished Practitioner in Residence will continue. No tenure-track or non-tenure-track faculty positions will be eliminated as a result of this proposal.

