



Cornell Law School

As amended
November 10, 1999

POLICIES AND PROCEDURES GOVERNING FACULTY APPOINTMENTS

Section 1. Scope and Purpose.

This policy statement, originally adopted by the law faculty on May 5, 1976, and amended from time to time, sets forth the policies and procedures of the Law School for making recommendations on the appointment, reappointment, promotion and tenure of faculty and academic professional staff members. It applies to actions taken in connection with those holding, or being recommended for, an appointment in the Law School as Professor, Associate Professor, Assistant Professor, Visiting or Adjunct positions of the same ranks, Instructor, Senior Lecturer, Lecturer, Senior Research Associate or Research Associate. It governs decisions not to recommend for reappointment, promotion or tenure as well as an action recommending an appointment. For the most part, this policy statement reflects the previously uncoded practice of the School.

An appointment action concerns only personnel and does not constitute approval of any course or program as part of the School's curriculum. Normal procedures of program, course, or curriculum approval will be followed whether or not there is a related appointment action.

These rules do not constitute a contract with any individual faculty member and are subject to change at any time by the faculty of the Law school.

Section 2. Search Prior to Initial Appointment.

An initial appointment at any rank shall be made only after a thorough survey of possible candidates by the Faculty Appointments Committee. Special attention shall be given to the identification of qualified women and minority candidates.

Section 3. Appointment or Reappointment of Adjunct Faculty and Research Personnel.

A recommendation to the President that a person be appointed or reappointed for an academic year or a calendar year or less as an Adjunct Professor, Adjunct Associate Professor, Adjunct Assistant Professor, Instructor, Senior Lecturer, Lecturer, Senior Research Associate or Research Associate, as well as decisions not to

recommend reappointment of those previously holding such positions, may be made by the Dean after approval by the Faculty Appointments Committee. The Faculty Appointments Committee may in the case of a proposed appointment of a Lecturer or Senior Lecturer, to teach in the Clinical Program, delegate initial screening and consideration of a candidate or candidates to a committee comprised of two tenured members of the Committee, the Dean or, at his election, the Associate Dean for Academic Affairs, the Director of the Clinical Program and another Lecturer or Senior Lecturer in that Program, if available.

Reappointment for a subsequent term shall be recommended under the procedure in the foregoing paragraph only when the relevant instructional or research position is being continued and the incumbent is judged to be the most qualified person available to fill it.

Senior Research Associates or Research Associates supported by outside funding under a grant with a term exceeding one year and Lecturers to teach solely in the Clinical Program may be recommended for a longer term up to three years, within limits set by University By-laws, under the foregoing procedure, provided that the recommendation is first submitted to the faculty for its approval. Criteria for appointment of or promotion to Senior Lecturer (Clinical Studies) are contained in Section 14. Senior Lecturers, to teach in the Clinical Program, may similarly be recommended for a longer term up to five years. Normally, such appointments shall be for the full five years. Any such appointment for more than one year may be handled as a consent item on the agenda, but if submitted to a vote, the vote shall be by secret ballot after a report by the Faculty Appointments Committee on the qualifications of any recommended or alternative candidates and after full opportunity for discussion. Any other appointment for a period exceeding one year shall be made in accordance with the procedures of Section 5.

Criteria for promotion to Senior Lecturer from Lecturer or to Senior Research Associate from Research Associate shall be developed and applied by the Faculty Appointments Committee from time to time taking into account the particular function of that Lecturer or Research Associate. It is contemplated that Lecturers to teach in the Clinical Program will be eligible to be considered for a Senior Lectureship only after serving an initial term as a Lecturer or after completion of an equivalent experience at another school or legal employer. It is also contemplated that promotion to a Senior Lectureship will be based on achievement of a high degree of proficiency as a Lecturer or in the equivalent prior experience, and that reappointment to an additional term or terms shall be based on a continued high degree of proficiency. The only path by which a Lecturer, Senior Lecturer, Research Associate, Senior Research Associate, or any other person holding an appointment, described in this Section 3, may obtain a tenured or tenure-track position is through compliance with Section 5 et seq. of this Policy and Procedures statement.

Any commitment that someone who does not have a tenure-track appointment in

the Law School offer a course or courses in the Law School, shall be treated as an appointment of that person as an Adjunct Professor, Instructor, or Lecturer.

Section 4. Appointment of Visiting Professors (or Visiting Associate or Assistant Professors).

A recommendation to the President of an appointment as a Visiting Professor (or Visiting Associate or Assistant Professor) for a term not to exceed one year may be made by the Dean after approval by the Faculty Appointments Committee.

Section 5. Initial Non-tenured Appointments to the Rank of Assistant Professor or Above.

A recommendation to the President that a person receive an initial appointment¹ without tenure at the rank of Assistant Professor or above may be made by the Dean upon the recommendation of a majority of the faculty. The vote on such a recommendation shall be by secret ballot after a report by the Faculty Appointments Committee on the qualifications of any recommended or alternative candidates and after full opportunity for discussion. An initial appointment as an Assistant Professor, Associate Professor or Professor without tenure normally shall be made for the full three year term permitted by the University By-laws. An initial appointment generally will not be made if there is substantial opposition on the part of a significant portion of the faculty. The existence of substantial opposition may be considered by the faculty in passing upon a motion to reconsider an appointment vote.

Section 6. Reappointment of a Non-tenured Assistant Professor, Associate Professor or Professor.

The Faculty Appointments Committee shall conduct a review of the performance and promise of a non-tenured Assistant Professor, Associate Professor, or Professor at an appropriate time during the fourth or fifth semester of the initial three year term. Upon the Committee's affirmative recommendation, duly reported to the faculty, the Dean may recommend reappointment for an additional term of up to three years without tenure. A recommendation of reappointment shall be made only in those cases compliance in which there is a good likelihood, judging from the individual's performance during the initial term, that a tenured appointment will be recommended before the end of the, second term.

If the Committee's recommendation on reappointment is negative, the Dean shall communicate that recommendation to the individual in writing, and shall also communicate the reasons underlying it in whatever form he deems appropriate unless

¹An appointment made following a visiting or adjunct appointment is an initial appointment.

the individual waives receipt of the reasons. After this explanation and on an opportunity to discuss the matter with the Committee, the individual may elect to have the question submitted to the full faculty.

If the individual decides to forego faculty consideration, the Dean shall furnish the individual upon request with a written statement of the adverse decision which shall include the underlying report of the Committee.

If the individual desires to have the matter submitted to the faculty, the Committee will present its recommendation to the full faculty. At the meeting for which the matter is scheduled, the candidate will be given a reasonable opportunity to explain why the Committee's recommendation is believed inappropriate. The full faculty will then have an opportunity to discuss the case and to vote in the absence of the candidate. Following the vote, the Dean will notify the individual of the nature of the vote and the recommendation or action which the Dean intends to make based on it.

If the action of the Committee is negative and its recommendation is communicated to the individual before the beginning of the first term (the first day of regular Law School classes) of the final year of appointment, that year is the individual's terminal year. If the action of the Committee is negative and is communicated to the individual during the final year of appointment, the individual shall be given a terminal appointment for two full academic terms after communication of the notice.

Section 7. Recommendation of a Tenured Appointment for a Person Holding a Non-tenured Term Appointment as Assistant Professor, Associate Professor, or Professor.

The Dean may recommend a tenured appointment to the President and the Board of Trustees pursuant to the following procedures:

(a) Timing.

The decision whether to recommend a tenured appointment to a person holding an appointment as an Assistant Professor, Associate Professor, or Professor without tenure will normally be made during the person's fifth year in professorial rank, which will, normally, be the second year of the three year reappointment term. If the decision is not to recommend for tenure, that decision should be made before the end of that year so that the final year of the reappointment term may constitute the final year's appointment which University regulations require following an adverse tenure decision. **A grant of tenure will be accompanied by promotion to the rank of Professor of Law.**

In cases in which the record for tenure is unusually strong, the tenure review may be initiated, at the discretion of the Dean or the initiative of the Faculty Appointments Committee, after a shorter period of nontenured service.

(b) Committee Review.

When a tenure review has been initiated, the first step is the collection of relevant material by the Faculty Appointments Committee, which also serves as the School's Committee on Tenure. The candidate shall be notified of the review and asked to submit at minimum: an up-to-date resumé, copies of the products of scholarship which the candidate desires the Committee to consider, and the names of persons expert in the area or areas of that scholarship who might assist in assessing its value. The candidate shall be invited to submit any other evidence relevant to the Committee's task.

The Committee will proceed to conduct a thorough inquiry into the candidate's performance and promise measured against the School's standard for tenure.

The Committee shall notify the full faculty that the tenure review is underway and invite members of the faculty to submit relevant information or views. In addition, the Committee shall actively seek out members of the faculty and students with considerable knowledge about the candidate to obtain their assessment of the individual's strengths and weaknesses. The Committee will also normally seek the views of outside experts on the quality of the individual's scholarship.

(c) The Committee's Recommendation and Faculty Vote.

When the Committee has completed its inquiry it will formulate a recommendation for submission to the tenured faculty. The candidate will be informed of that recommendation.

If the recommendation is negative, the Committee shall explain the grounds of the decision to the candidate and provide a full opportunity to discuss the recommendation and the reasons underlying it. After this notice and opportunity to discuss, the candidate will be given the opportunity to forego full faculty consideration of the matter. If the candidate does decide to forego faculty consideration, the Dean upon request shall furnish the individual with a written statement of the adverse decision which shall include the underlying report of the Committee.

If the candidate desires to have the matter submitted to the faculty, the Committee will present its recommendation to the full faculty. At the meeting for which the matter is scheduled, the candidate will be given a reasonable opportunity to explain why the Committee's recommendation is believed inappropriate. The full faculty, including non-tenured members, will then have an opportunity to discuss the case in the absence of the candidate. When that discussion is concluded, the non-tenured members will be excused. Further

discussion by the tenured faculty will then be permitted and a vote will be taken by secret ballot.

In cases where the Committee's recommendation is that the faculty support the grant of tenure, the procedure outlined above will be followed except that opportunity for the candidate to have the recommendation explained, to forego full faculty consideration and to present his case at the faculty meeting shall be omitted.

Following the vote of the tenured faculty, the Dean will notify the candidate in writing of the nature of that vote and the recommendation or action which the Dean intends to make based on it.

If the action of the Dean is negative and is communicated to the individual before the beginning of the first term (the first day of regular Law School classes) of the final year of appointment, that year is the individual's terminal year. If the action of the Dean is negative and is communicated to the individual before the beginning of the first term (the first day of regular Law School classes) of the final year of appointment, that year is the individual's terminal year. If the action of the Dean is negative and is communicated to the individual during the final year of appointment, the individual shall be given a terminal appointment for two additional terms.

(d) Confidentiality of Information.

All records, communications, reports, and correspondence gathered by the Committee in the course of a tenure review shall be held in confidence. The information developed and used by the Committee in forming its recommendation may be referred to by individual faculty members (other than the candidate) prior to the faculty meeting at which a Committee recommendation will be presented, and it may be submitted to University personnel who are participating in subsequent phases of the appointment or review process.

Section 8. Recommendation of an Initial Appointment as Professor or Associate Professor with Tenure.

Recommendation of an initial appointment with tenure may be made by the Dean only upon the recommendation of both the full faculty and the tenured faculty. Such recommendations shall be preceded by a review and report by the Faculty Appointments Committee comparable in rigor and thoroughness to that which would be prepared for a non-tenured member of the faculty being considered for tenure. Initial appointments with tenure that are not preceded by at least a visiting appointment shall be recommended only in the most compelling circumstances.

Section 9. Criteria Governing Tenure and Professorial Appointments Generally.

(a) Tenure.

The serious consequences of a grant of tenure require that the School apply the highest possible standard; the issue is whether past performance permits a confident prediction that the individual will be not merely an adequate member of the faculty but a strong asset to the institution throughout the balance of the individual's career. Tenure is not earned by past diligence; however, a solid record of performance as a member of this faculty or its equivalent is the only basis upon which an adequate level of confidence about future contributions can rest.

The three principal areas of performance and prospective contribution which shall be evaluated and considered in recommending, or deciding not to recommend, tenure are: scholarship, teaching, and collegial contribution.

(1) Scholarship.

Scholarship in law or about law, legal institutions, and the legal profession is central to the life of the Law School. Scholarship in a professional school quite naturally takes more diverse forms than in some other parts of the University. Legal scholarship may be theoretical, empirical, or devoted to improving professional practice, public policy or legal education. It may find appropriate expression in forms other than books and articles. But whatever form it may take, an individual being considered for a tenured appointment must have demonstrated the capacity for engaging in significant scholarship of high quality. Far more than with teaching or successful professional practice, the capacity for significant scholarship requires a capacity for self-initiation. For this reason, it is especially important in considering this aspect of the tenure question to be clear that it is not past performance but future productivity as indicated by past performance which is the relevant perspective.

(2) Teaching.

Effective teaching is essential in a professional school. No person shall be recommended for tenure unless there is firm evidence that the individual will add significant strength to the educational program of the School.

(3) Collegial Contribution.

An outstanding faculty is far more than a collection of able teachers and scholars, engaged in autonomous activity. The work

of each benefits from the contributions of others. The improvement of the institution's total educational program takes conscientious and time-consuming effort. Therefore, an individual's contributions to the intellectual life of the institution and to the overall improvement of the program of the School are proper considerations in a tenure evaluation. This criterion, however, will be given less weight than the more important criteria stated above.

(b) Professorial Appointments Without Tenure.

The same ultimate standard and areas of performance and prospective contributions shall be considered in recommending actions on professorial appointments and reappointments without tenure. The only difference in such cases is that the prediction of future performance must be based on a more limited record of past performance.

(c) Weight Given to Professional Experience.

A law school should not apply its appointment and tenure standards in so rigid a way as to prevent consideration of those with an extended career as a professional, in either private practice or public service, who seek opportunity for lateral entry into an academic career. In such cases the standard should be no different from that applied to those with more substantial academic experience; but gauging performance and promise against it may require greater reliance on performance outside an academic setting than would normally be justified.

Section 10. Promotion in Rank.

The Dean, after consultation with the Faculty Appointments Committee and a report to the faculty, may recommend that an Assistant Professor without tenure be promoted to Associate Professor without tenure and that an Associate Professor with tenure be promoted to Professor. The latter promotion normally shall occur after three years in rank.

Section 11. Appointment to Named Chairs.

The Dean, after soliciting suggestions from the faculty, may recommend that a person otherwise duly appointed to the faculty be appointed to a named chair.

Section 12. Committee and Faculty Votes and Role of the Dean.

The Dean, who has the ultimate authority to make a positive or negative recommendation of appointment, reappointment, promotion, or tenure to the President, shall be a nonvoting member of the Faculty Appointments Committee. The Dean is entitled to a secret ballot vote as a member of the full and of the tenured faculty.

A vote on a recommendation by the full faculty means a vote by secret ballot taken at a faculty meeting after full opportunity for discussion, with only those present and voting being counted. The vote at such a meeting is limited to active and permanent faculty members with at least a half-time appointment in the Law School as Assistant Professor, Associate Professor or Professor. Participation in the portions of faculty meetings devoted to appointment actions shall be limited to those eligible to vote.

A vote by the tenured members of the faculty means a vote by secret ballot taken at a meeting of the tenured members of the faculty after full opportunity for discussion with only those present and voting being counted. Those permitted to vote at such a meeting are limited to active tenured members of the faculty, with at least a half-time appointment in the Law School.

Before making any final recommendation, the Dean may consult with non-present faculty.

Section 13. Opportunity for Reconsideration or Review of Adverse Decisions.

In instances of adverse decision on reappointment or tenure at the conclusion of the Section 6 and 7 process, which instances include a positive faculty vote that the Dean decides not to follow, the faculty or tenured faculty may reconsider its own vote that preceded such adverse decision in any of the following circumstances: (a) upon a motion to reconsider that is made by a faculty member who attests to having voted negatively, is seconded, and is carried by majority vote; (b) upon the recommendation of the Faculty Appointments Committee on the ground that an error occurred during the process that may have affected the outcome; or (c) upon the request of the Dean. Following the reconsideration, the Dean will notify the individual of the nature of the vote on the reconsidered question and the recommendation or action that the Dean intends to make based on it.

In instances of adverse decision on reappointment or tenure at the conclusion of the Section 6 or 7 process, the individual shall be afforded an opportunity to discuss the decision with the Dean, who may then reconsider his or her action.

Further review of the Dean's recommendation or action by University officials shall be in accordance with University Procedures.

Section 14. Criteria for Appointment of or Promotion to Senior Lecturer (Clinical Studies).

Appointment of or promotion to the rank of Senior Lecturer (Clinical Studies) is a major commitment of the School. The past performance of the candidate must permit a confident prediction that the candidate will be a strong asset to the School throughout the term of the appointment; promise of mere adequacy of performance is not

sufficient. The three principal areas of performance and prospective contribution which shall be evaluated and considered in recommending, or deciding not to recommend, appointment or promotion to the rank of Senior Lecturer are: (1) teaching through supervision of student case handling, simulated exercises, and classroom instruction; (2) communication of insight and knowledge through curriculum development or expository materials directed to students, lawyers, or legal scholars; and (3) collegial contribution.

(a) Teaching.

(1) Supervision of Student Case Handling.

The clinical teacher must encourage and develop in students excellence in the performance of professional tasks on behalf of individual clients. This includes placing the individual matter in a larger conceptual frame work. In acting as mentor to students, the clinical teacher must challenge each student to the fullest of the student's abilities, while providing sufficient support as a student assumes the lawyer's role for the first time. In all aspects of performance, the-clinical teacher must demonstrate high standards of performance and aspiration, since excellence as an attorney is the foundation of successful teaching by example. Because supervision of student lawyering activities is so central and timeconsuming, if a candidate does not demonstrate high proficiency in this area of performance, the candidate should not be promoted or appointed to the Senior Lecturer position regardless of the performance in other areas.

(2) Simulated Exercise.

When teaching students through the use of simulated exercises in which the student assumes professional or client roles, the clinical teacher must provide critiques that encourage the student to relate legal theory and theory and knowledge about lawyering to the critique. The teacher, whether acting as professional participant or critic, must demonstrate a mastery of the lawyering skills and substantive areas that are the subjects of the exercise.

(3) Classroom.

Although the clinical teacher teaches primarily through critical reflection upon a student's performance of simulated or real professional tasks, the teacher must be able to communicate theories of substantive law and lawyering effectively outside of the domain of individual case-handling.

(b) Communication of Insight and Knowledge.

The communication of insights and knowledge about law and lawyering may be satisfied in a variety of ways: development of class materials or simulation exercises, expository materials for use by students or practicing lawyers, or studies intended for legal scholars. The clinical teacher's contribution to curriculum development must demonstrate the teacher's ability to develop and execute an overall conceptual framework to deal with a wide range of lawyering activity. Communicative skills are important both as they relate to excellence in clinical supervision and teaching and as an independent desideratum.

(c) Collegial Contribution.

The clinical teacher must make significant contributions to the furtherance of the work of the Clinic and to its mission within the Law School. Contributions to the University and to the larger legal community are also valued.

APPENDIX

In making a recommendation, the Dean will forward the following items or information to the President's office.

1. Curriculum vitae of the candidate.
2. Bibliography of all scholarly work considered in the Law School decision.
3. External letters, if any were sought; reviewers suggested by the candidate to be so identified.
4. Summary of information bearing on teaching ability.
5. Report of the Appointments Committee.
6. Vote(s) of the Law School faculty.
7. Dean's recommendation, with whatever explanation the Dean deems appropriate.
8. The usual forms accompanying appointment recommendations where required for administrative purposes, such as academic change of status form, academic personnel vitae form, academic personal data form, and affirmative action forms, see Cornell University Academic Appointment Manual 2.14-2.15, June 1979.

GUIDELINES ON COLLEGE PROCEDURES FOR REVIEW OF ACADEMIC REAPPOINTMENTS AND PROMOTIONS

Each college and school shall set forth in writing its internal procedures for making recommendations on the reappointment, promotion, and/or tenure of faculty and academic professional staff members.²

College and school procedures should include the following as a minimum set of requirements on the review of decisions:

1. Notification: Faculty and academic professional staff members will be informed in writing if an adverse decision is made with respect to their future status. If the faculty or academic professional staff member so desires an explanation of the principal reasons for the decision it will be provided in writing.
2. Informal Review: A faculty or academic professional staff member shall be afforded an opportunity to discuss an adverse decision and the explanation for it with his or her department chairman or Dean, as appropriate.
3. Request for Reconsideration: If, after informal discussion, a faculty or academic professional staff member so desires he or she may request formal reconsideration as follows:
 - a) When a decision has been communicated by a department or division chairman in a school or college, a request for reconsideration should be directed to the Dean of the school or college within 30 days of notification in writing of the initial decision.
 - b) When the adverse decision has been communicated by a Dean initially or after review of a departmental decision or by a Director of an independent center or unit, a request for a reconsideration should be directed to the President of the University within 30 days of the notification in writing of the initial decision.

²Included within the ranks of faculty and academic professional staff members are those men and women holding appointments as Professor, Associate Professor, Assistant Professor, Instructor, Senior Lecturer, Lecturer, Senior Research Associate, Research Associate, Senior Extension Associate, Extension Associate, Postdoctoral Associate, the academic staff of the University Librarians, Associate Librarians, Senior Assistant Librarians, Assistant Librarians, Archivists, Associate Archivists, Senior Assistant Archivists, and Assistant Archivists. Not included are degree candidates having appointments such as Teaching Assistant, Research Assistant, or Graduate Research Assistant.

c) In requesting reconsideration, a faculty or academic professional staff member should set forth in detail the reasons why reconsideration is believed appropriate and why the initial decision is deemed inappropriate or unfair.

4. Review Procedures:

a) The President or Dean shall review the decision to determine whether appropriate procedures have been followed and/or whether the initial decision or the concurrence with or denial of reconsideration was arbitrary or capricious.

b) The President or Dean shall respond to the request for reconsideration in writing within a reasonable period of time, not to exceed 60 days.

c) The decision of the President is final in all cases. In accordance with University By-laws, significant weight will be accorded the initial decision of the appropriate academic body of officers. The President may seek the advice of the Committee on Academic Freedom and Responsibility in his review.

5. Confidentiality: All records, communications, reports, and correspondence shall be held in confidence throughout the initial decision and review process.

D. C. Knapp, 2/2/76

Approved by Executive Committee, Board of Trustees, January 29, 1976, Records, p. 9183, Appendix E; Board of Trustees, January 30, 1976, Records, p. 9216.