

SENATE BYLAW 7
**Appeal Procedures of the Faculty Senate Committee on Academic
Freedom, Tenure, Professional Relations and Standards**
**(Senate Bylaw 7, April 29, 1965; Amended 9/66, 2/73, 1/74, 9/74,
11/74, 4/84, 2/90, 12/95, 4/2001 and 4/2002)**

(A) Complaints Regarding the Non-renewal of Appointments

The Academic Freedom, Tenure, Professional Relations and Standards Committee shall be advisory to the President in connection with complaints by a non-tenured faculty member who, after administrative reconsideration as described above, alleges that:

1. a property right to continuing employment exists, arising from his or her contract, or from assurances by persons authorized to make the same, or from the University's rules, or Bylaw, or that
2. the contract is not being renewed for constitutionally impermissible reasons, or that
3. the nonrenewal is not in compliance with the relevant standards, criteria and/or procedures, and who desires consideration by the committee in order to refute the cause stated for nonrenewal of contract.

The faculty member should briefly state his or her complaint by letter to the University President who shall submit the complaint to the chairperson of the Academic Freedom, Tenure, Professional Relations and Standards Committee. Upon receipt of the complaint, the Academic Freedom, Tenure, Professional Relations and Standards Committee shall seek to resolve the matter through discussion with the persons involved. If such informal attempts fail, the Committee will then hold formal hearings. If the complaint alleges that a property right to continuing employment exists, there shall be an initial hearing at which it shall be the obligation of the faculty member to prove that a property right of employment exists. If the Committee judges that such a right does exist, it shall, within a reasonable time, hold a hearing to give the faculty member opportunity to refute the cause for nonrenewal.

In all formal hearings, the Committee shall follow all procedures and rules specified in Senate Bylaw 7.

Upon completion of its consideration, the Committee shall report its findings and recommendations to the President. The decision of the President in matters relating to continued employment of non-tenured faculty members shall be final.

(B) Complaints Involving Academic Freedom, Tenure, Professional Ethics or the General Welfare of the Faculty

This procedure establishes informal and formal procedures to resolve charges and complaints brought by faculty members not in the collective bargaining unit involving University practices bearing on academic freedom, tenure, professional ethics or the general welfare of the faculty.

1. Time Limit for Filing and Informal Appeal Procedures: Charges and complaints involving University practices bearing on academic freedom, tenure, professional ethics or the welfare of the faculty should be resolved prior to commencement of formal proceedings whenever possible. However, attempts to informally resolve the charges and complaints do not remove the 30-calendar-day time limit for the filing of charges and complaints stated in section 3 below. If additional time is necessary to reach an informal resolution, an extension must be requested in writing before the 30-calendar-day time limit has expired. The extension shall be requested from, and may be granted by, the University President's designee. Proceedings through the Academic Freedom, Tenure, Professional Standards and Ethics Committee may be denied to any faculty member who fails to comply with the applicable time limits set forth herein.
2. Composition and Jurisdiction: The Committee on Academic Freedom, Tenure, Professional Standards and Ethics shall be a standing committee of the Faculty Senate as set forth in Article III, 6(B) of the University Constitution. The Committee shall have jurisdiction to hold hearings and make findings of fact, conclusions of law and recommendations in matters involving University practices bearing upon academic freedom or tenure, and University practices generally applicable to faculty members bearing upon professional ethics or the general welfare of the faculty. Such proceedings may be commenced by the University President through charges filed by the same or by a faculty member individually affected by the alleged practices.
3. Commencement and Pre-Hearing Procedures: (NOTE: All periods of time in this Bylaw refer to calendar days, unless otherwise specified. If any deadline falls on a non-business day, the period shall be extended to 5 p.m. of the next business day.)
 - (a) Commencement of Proceedings by Faculty Members:
 - (1) A faculty member (including any administrator who has faculty status) may commence proceedings before the Committee by filing one or more charges or complaints within 30 days after the complainant knew or should have known of the occurrence of the alleged action(s) on which the claim is based by stating his or her charge or complaint in a letter to the University President. A faculty member may request an extension of time from the University President, or the President's designee for such filing. The request must be in writing and it must be received before the 30-day time limit has expired. The granting of the extension of time must be in writing and for a definite time period. Filing of

such a letter of complaint or charges (hereafter “letter”) shall constitute waiver of all other grievance procedures as provided in Rule 6C1-7.041, Florida Administrative Code (F.A.C.).

- (2) The letter must state that the faculty member elects to have the Committee investigate the charge(s) or complaint(s) and state that by this election he or she waives all other grievance procedures available within the University system. The letter must assert sufficient facts to reasonably inform the University of the nature of the charge(s) or complaint(s). It is important that the faculty member describe which of his or her rights have been violated, in what manner, and clearly delineate what remedy(s) is sought. Copies of any and all papers, statements, documents or other items in the possession of the faculty member filing the letter that bear upon the matter, together with a list of the names and addresses of all persons believed to have pertinent information, shall be filed with the letter. The University President, or the designee, shall refer to the letter to the Committee Chairperson, unless the letter is untimely and no extension has been granted.
- (3) If the Committee Chairperson believes the letter does not meet the requirements of this Bylaw, including whether the charges or complaints fall within the jurisdiction of the Committee, the faculty member may be directed in writing by same to amend his or her charge(s) or complaint(s) within a designated period of time, and failing that, the Committee Chairperson may dismiss the matter and may advise the faculty member of other grievance procedures that may be available.

The Committee Chairperson shall, upon receipt of the letter, provide a copy of it to the person(s) against whom the charge(s) or complaint(s) has been lodged. The Committee Chairperson shall attempt to resolve the matter informally by discussion with the persons involved.

- (4) The Committee Chairperson shall appoint, within 25 days of receipt of the written complaint or the failure to informally resolve the matter, whichever is later, a three-member Inquiry Panel. Upon appointment, the Inquiry Panel will schedule a meeting which generally should be held within 25 days of the appointment, with at least 15 days notice to affected parties. The Inquiry Panel shall investigate the validity of the charges and evaluate the evidence presented to determine probable cause for proceeding to formal hearing by the Committee. Alternatively, the parties may agree upon an expedited process in which the Inquiry Panel will conduct a collegial review of the complaint under the procedures

set forth in section 6 below. The parties must elect the option of an expedited process through a written request signed by all parties addressed to the Committee Chairperson. The request must be received prior to the first meeting of the Inquiry Panel.

- (5) The Inquiry Panel shall issue a report to the Committee Chairperson within 25 days after the conclusion of the meeting, which shall be a preliminary hearing if no request for an expedited process has been received unless otherwise agreed by all affected parties. A recommendation to proceed to a formal hearing before the Committee requires that at least two members of the Inquiry Panel find that probable cause exists. If at least two members of the Inquiry Panel conclude that no probable cause exists, the matter shall be considered closed. Copies of the Inquiry Panel probable cause report shall be provided to all affected parties.

Within 25 days after the Inquiry Panel's report finding probable cause to proceed to a formal hearing has been received by the Committee Chairperson, the charges or complaints shall be referred to a Hearing Panel by the Committee Chairperson for proceedings in accordance with section 7 hereof.

- (6) At any time prior to the conclusion of the formal hearing, an informal resolution may be reached. If the matter is informally resolved, the terms of any informal agreement shall be put in writing and signed by all parties. The signatures of the parties shall indicate: 1. full resolution of all issues raised by the faculty member commencing the charge(s) or complaint(s), and 2. relinquishment of the right to bring any future action based on any of the issues involved in the charges or complaint.

(b) Commencement of Proceedings by the University:

- (1) The President or the President's designee may commence proceedings by referring matters to, or filing charges with, the Committee on Academic Freedom, Tenure, Professional Relations and Standards. The University shall file charges by providing an original written notice of the issues to the Committee Chairperson and a copy thereof to the faculty member charged. The notice shall assert sufficient facts to reasonably inform the faculty member of the nature of the charge. Copies of any and all papers, statements, documents or other items in the possession of the party commencing the proceedings, bearing upon the charges, together with a list of the names and addresses of all persons believed to have pertinent information, shall be filed with the charges. The Committee Chairperson shall transmit to the faculty member

charged a copy of this Bylaw. At any time prior to the conclusion of the formal hearing, an informal resolution may be reached.

(2) Upon receipt of charges, the Committee Chairperson may refer the charges to a three-member Inquiry Panel for investigation. Upon appointment, the panel will schedule a meeting, the preliminary hearing, which generally should be held within 25 days of the appointment, with notice of at least 15 days to affected parties. The panel shall investigate the validity of the charges and evaluate the evidence to determine if there is probable cause for proceeding, seek an informal resolution agreeable to all parties, or allow the University to amend the charges if desired. The Inquiry Panel shall issue a written probable cause report within 25 days after the hearing, which shall be furnished to all affected parties. A recommendation to proceed to a formal hearing requires that at least two members of the Inquiry Panel find that probable cause exists. If at least two members of the Inquiry Panel find no probable cause, the case shall be closed. Copies of the preliminary report shall be provided to all affected parties.

(3) Within 25 days after the Inquiry Panel's report finding probable cause to proceed to formal hearings has been received by the Committee Chairperson, the charges shall thereupon be referred to a Hearing Panel by the Committee Chairperson for proceedings in accordance with section 7 hereof.

4. Inspection of Evidence. Should an Inquiry Panel be appointed, the Committee Chairperson shall deliver all papers and other items or information received by him or her to the Presiding Officer of the Inquiry Panel at least 10 days before the first meeting of the panel. The Committee Chairperson shall notify the party charged of the Committee's custody of such evidence before the first meeting of the Inquiry Panel, and the names and addresses of witnesses obtained by investigation shall be made available to all parties in like manner. No provision hereof shall prevent the introduction of any other evidence, provided that affected parties shall be entitled a reasonable time in which to examine and consider same. Upon the request of the faculty member or the Committee, the University shall supply the faculty member and the Committee all relevant information pertinent to the charges or complaint.

5. Burden of Proof. The burden of proof shall be on the faculty member bringing the complaint(s) or charge(s), who must support his or her position regarding the matters complained of or charged by a preponderance of the evidence, except that if the complaint challenges disciplinary action under Rule 6C1-7.048, F.A.C., the burden of proof shall be on the University to establish by a preponderance of the evidence

that a violation under that rule occurred. Counseling is not considered disciplinary action.

6. Expedited Proceedings. If the parties elect in writing an expedited review process by the Inquiry Panel, the Inquiry Panel shall, generally within 25 days of receiving the request, schedule a meeting with the complainant(s) and the person(s) complained or charged. Notice of at least 15 days shall be given to these affected parties.
 - a. At the meeting the faculty member bringing the complaint(s) or charge(s) shall have the right to present any evidence in support of the complaint(s) or charge(s) to the panel. The person(s) complained of or charged shall have the right to present any evidence in support of his or her position to the committee. The panel may interview other persons and seek other evidence. The review shall be as collegial as possible, yet compatible with formulating a recommended resolution of the charge(s) or complaint(s).
 - b. The Inquiry Panel shall adopt a final report to the President containing findings of fact, conclusions of law, and recommendations on the matters considered. The report, along with all evidence submitted to the panel, should be forwarded to the President, with copies to the parties, within 60 days of the referral of the complaint to the Inquiry Panel for expedited review. The President shall then dispose of the matter pursuant to section 8 hereof.
7. Formal Hearings of the Academic Freedom, Tenure, Professional Relations and Standards Committee.
 - (a) Composition of Hearing Panels
 - (1) Any formal hearings shall be conducted by a panel of ~~five~~ three members of the Academic Freedom, Tenure, Professional Relations and Standards Committee plus at least one alternate (from among the remaining members of the Committee) who shall have a vote only under the conditions specified in paragraph (6) below. The Committee Chairperson shall select the members of the Hearing Panel and designate a Presiding Officer and Vice Presiding Officer under the circumstances specified in sections 3(a)(4) or 3(b)(3) above.

- (2) Whenever feasible, at least one panel member shall be a person familiar with due process of law by training or experience, and no member of the Inquiry Panel should be on the Hearing Panel for the same case.
 - (3) In pre-hearing conferences and the formal hearing, a full panel of ~~five~~ three members must be present at all times.
 - (4) All parties to the action shall have the right to challenge a panel member's right to serve for cause prior to the presentation of evidence. Members of the Hearing Panel, other than the challenged member, shall determine by a majority vote if a member challenged for cause shall be excused.
 - (5) After the formal hearings of a particular case has begun, any Hearing Panel member shall serve to the conclusion of the case even if his or her term as a Committee member may have expired.
 - (6) If a panel member is not present at a formal hearing session, the remaining members of the panel shall decide by majority vote whether to postpone the session or to remove the absent member from the panel and replace him or her with an alternate. If an alternate is formally seated, he or she will retain the voting status of a regular member of the Hearing Panel for the duration of the case.
- (b) The University President or the President's designee shall appoint an appropriate person to serve as the legal advisor to the Committee, including the Inquiry Panel and the Hearing Panel.
 - (c) Following selection, the Hearing Panel may meet for pre-hearing conferences and schedule a hearing after notice to affected parties. The hearings shall be held no earlier than 15 days after notice to affected parties, unless otherwise agreed by all affected parties.
 - (d) Parties shall have and be informed of the following rights:

1. To be represented by a colleague authorized in writing by the party to act on his or her behalf or by counsel;
2. To make an opening statement;
3. To identify witnesses for the hearing, or when required by circumstances which involve the inability of a witness to appear and testify at the formal hearing, to request that the sworn statement of such witnesses be taken and transcribed;
4. To examine and cross-examine any witness who may testify;
5. To offer any relevant material and competent evidence; and
6. To make a closing statement at hearing.

(e) Witnesses:

1. The Presiding Officer shall require all witnesses to affirm or swear to tell the truth prior to testifying. The oath or affirmation shall be administered by a notary public or by any other person authorized by law to administer oaths or affirmations.
2. If requested by any party, any witness shall be excluded from the formal hearing save when giving his or her testimony, except that in any case initiated by a faculty member, the University may have one representative present throughout the hearing, even though the representative may be required to testify.

(f) Evidence:

1. Admissible evidence shall be any evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs; however, hearsay may be used only to supplement or explain other evidence, and shall not be sufficient, in itself, to support a finding.

2. All rulings as to the admissibility of evidence shall be made by the Presiding Officer of the formal Hearing Panel, subject to objection by any member. Only the majority vote of the formal Hearing Panel, including the Presiding Officer shall overcome the Presiding Officer's ruling.
 - (g) Parties charged shall not be required, either during any investigation or at any hearing or meeting, to make any statement or to testify unless they expressly desire to do so, and in the event that they elect to remain silent, such fact shall not be considered by the Hearing Panel making its report. The term "party charged" shall mean only an individual against whom proceedings have been commenced in his or her individual capacity, and shall not apply to any official or representative capacity in the matters under consideration. The charge shall clearly state the status or capacity in which he or she is alleged to have acted.
 - (h) Within 60 days after conclusion of a formal hearing, the Hearing Panel shall adopt a proposed report containing findings of fact, conclusions of law and recommendations on the matters considered. Copies of same shall be furnished to all parties by the Presiding Officer of the panel. Within 10 days after receipt of such report, the parties shall have the right to submit written exceptions thereto.
 - (i) After consideration by the Hearing Panel of any exceptions to its proposed report, the Hearing Panel, by a majority vote, shall adopt a final report containing findings of fact, conclusions of law, recommendations and the vote on the report. Members in the minority may adopt separate reports, which shall be appended to the majority report. Copies of the final report shall be furnished to all parties.
 - (j) A hearing in which evidence is presented may be recorded by the Hearing Panel.
8. Report to the President:
 - (a) Upon completion of the proceedings by the Inquiry Panel under the expedited review process or by the Hearing Panel, the final report and record shall be filed with the President.

- (b) Within 25 days of receipt of both record and report, or as soon thereafter as is possible, the President shall adopt as is, or modify, and implement as he or she deems appropriate, the conclusions of law and the recommendations contained in the final report, or reject the report in its entirety. In taking action the President may not rely on “ex parte” communications and may not reject or modify findings of fact if they are supported by competent substantial evidence in the record. If the report or recommendations are modified or rejected, affected parties shall be furnished specific reasons therefore, and the President shall meet with the Hearing Panel to discuss the decision.

9. Records:

- (a) The record of the proceedings shall include all physical evidence considered by the Committee along with pleadings, notices, tapes of the hearing and transcripts (if any) and reports.
- (b) The record shall be retained by the Secretary of the Senate for a period of not less than three years after the final resolution of the appeal.

— *Proposed Bylaws Change by Constitution Committee, 11/04/05, revised.*