Procedures Governing Appeals of Nonrenewal Decisions

(approved by the Committee on Faculty Rights and Responsibilities, May 1998)

The Committee on Faculty Rights and Responsibilities (CFRR) is a standing committee of the faculty composed of nine faculty members elected for staggered terms of three years, the terms commencing on June 1st of each year.

Although CFRR has a number of responsibilities, these guidelines pertain solely to its role as the review committee designated to hear appeals from members of the faculty from nonrenewal decisions, that is, decisions not to renew the appointments of probationary faculty members at the university.

Appeals from nonrenewal decisions are governed by several sources. The first are appeal rights and procedures adopted by the Board of Regents and appear in sections UWS 3.07 and 3.08 of the Wisconsin Administrative Code [UWS]. They are applicable to all institutions in the University of Wisconsin System. Sections 7.07, 7.08, 7.09 and 7.10 of the UW-Madison Faculty Policies and Procedures [FPP] implement at UW-Madison the administrative code provisions concerning nonrenewal decisions.

It is important to understand the distinction between a tenure denial and a nonrenewal decision because different rules and procedures apply in each case. A nonrenewal decision at the university ordinarily results from a decision by a department or a dean not to recommend a faculty member for tenure. In some cases, however, a tenure denial may take place without a nonrenewal decision.

For example, assume that a faculty member is in his or her third year of a probationary period and requests the department to review him or her for tenure. The department declines to recommend that tenure be granted but recommends that the person be given another probationary appointment. Therefore, tenure is denied but does not result in a nonrenewal. If the person elects to challenge the tenure denial decision, the proper procedure is to file a grievance with the University Committee. The CFRR does not deal with grievances, which should be handled in accordance with FPP 8.15.

For these reasons, this document deals only with appeals from nonrenewal decisions. It is designed to inform prospective appellants and others about procedures before the CFRR.

I. WHO MAY APPEAL, AND HOW?

A member of the faculty whose probationary appointment is not renewed may appeal that nonrenewal decision.
A faculty member who wishes to appeal a nonrenewal decision must first request that the departmental executive committee or the dean making the decision give him or her written reasons for the nonrenewal within time limits established in section FPP 7.07 E. or 7.09 B., whichever is applicable.

Upon timely receipt of written reasons for the nonrenewal decision, if the faculty member wishes to appeal further, he or she must request a reconsideration of the nonrenewal decision by the executive committee or the dean making the original decision, under FPP 7.07 or 7.09 B., as appropriate.

If (and only if) the adverse decision is affirmed by the executive committee or the dean on reconsideration, the faculty member may file an appeal with CFRR for a review of the nonrenewal decision. It is important to understand that in order for CFRR to have jurisdiction over the appeal, the faculty member must cite a proper basis for review. The only bases for an appeal of a nonrenewal decision that the CFRR is permitted to consider are those set forth in section UWS 3.08(1) of the Wisconsin Administrative Code.

The ultimate issue in a nonrenewal appeal is whether the nonrenewal decision was based in any significant degree upon one or more of the factors cited in section UWS 3.08(1), with material prejudice to the individual.

An appeal to the CFRR must be in the form of a written petition or letter to CFRR submitted within the time limit established in FPP 7.10 A. The petition or letter must include or be accompanied by documents that provide the following information:

(a) The name of the deciding body, e.g. department executive committee or dean, whose nonrenewal decision is being appealed;
(b) A chronology of the faculty member's appointment history;
(c) A short description of the pertinent facts and events in the case and/or the decision-making process that is being challenged (e.g., the dates of key decisions, meetings, etc.), including, where known, the actual votes;
(d) The faculty member's Vita, together with a listing of the materials submitted to, and/or presumably considered by, the body whose decision is being appealed;
(e) A copy of the letter of reasons approved by the deciding body indicating its reasons for the decision;
(f) Specification of the factor(s) in UWS 3.08(1) that constitute the basis for the appeal;
(g) A statement of how the faculty member was materially prejudiced by consideration of those factor(s);
(h) Supporting documentation that provides a credible basis for the complaint such as letters of appointment, statements of tenure or renewal criteria, reports of evaluation or review committees considered or presumed to have been considered in reaching the adverse decision, and reports of relevant oral communications;
(i) If the appellant chooses, identification of additional information that he or she does not have access to, but which, in the appellant's opinion, may be relevant to a fair adjudication of the appeal; and
(j) A statement of the specific remedy or remedies sought.
The appeal document should be paginated and have an index, along with corresponding tabs in the document itself to facilitate review by the committee.

The document should be bound or fastened in an appropriate manner.

A copy of all materials submitted to CFRR must also be submitted to the chair or dean of the deciding body.

II. CFRR'S INITIAL REVIEW

CFRR will review the appellant's petition and supporting documents to determine whether:

1. The appeal falls within the jurisdiction of CFRR;
2. A violation of UWS 3.08(1) is alleged;
3. The information requested above is provided;
4. The information provided gives some evidence to support the allegations.

CFRR may request information from any party to assist in determining whether these criteria have been met. If CFRR judges that they have not, it will dismiss the appeal, with or without prejudice. If the appeal is dismissed without prejudice, the dismissal does not prohibit the faculty member from bringing the appeal again with sufficient reason.

III. DECISION ON THE MERITS

If CFRR determines that the criteria of the initial review have been met, it will proceed to consider the case on its merits. CFRR may in its judgment decide a case on the basis of written communications alone. It may also schedule fact finding meetings to obtain additional evidence. In either case it may request further evidence or clarification from the appellant. It shall also invite the deciding body to respond to the allegations and to submit additional relevant materials. The appellant will be invited to respond to the deciding body's arguments and evidence.

If fact finding meetings are held, both the petitioner and the deciding body or the dean will be invited to attend. CFRR will determine the list of witnesses after consultation with the parties. CFRR meetings are governed by the provisions of the Wisconsin Open Meetings Law (Wisconsin Statutes 19.81-19.85). Fact finding meetings will normally be closed except upon timely written request by the appellant that they be open, then that portion of a meeting when information is being presented to CFRR shall be open.

Any party or witness at a CFRR fact finding meeting may be represented or advised by an attorney or other designated person, although nobody is required to be represented by counsel. However, only members of CFRR may ask questions of witnesses. Cross-examination is not permitted, but, where feasible, CFRR may invite each party to submit written questions which CFRR, in its sole discretion, will direct to the designated party or witness. Each party or his or her representative will have the opportunity to make a brief oral summary or rebuttal, and will be invited, at the conclusion of the fact finding meeting(s), to submit a final written statement. If a case arises near the end of the committee year, newly elected members of CFRR may be invited to attend the hearings and, at the discretion of the existing committee, may be extended the right to ask questions of witnesses.
When, in its judgment, all relevant evidence is at hand, CFRR will consider and decide the case in executive session. CFRR will report on the validity of the appeal to the faculty member, the departmental executive committee, the appropriate dean and the chancellor. Cases shall be remanded to the deciding body for reconsideration unless the CFRR finds that remand would serve no useful purpose. The CFRR retains jurisdiction during the pendency of any reconsideration. The chancellor's decision in all such matters is final.

Parties to a CFRR appeal should understand that CFRR is not itself a tenure granting agency. Nor does it make substantive judgments on the wisdom of a nonrenewal decision or on the quality of an appellant's teaching, research, or service. It may, however, when necessary, weigh in the balance whether a decision appears to be consonant with, or contrary to, the weight of the evidence. Its function in a nonrenewal appeal is to determine whether the nonrenewal decision was based in any significant degree upon one or more of the factors cited in section UWS 3.08(1), with material prejudice to the appellant.

IV. GENERAL OBSERVATIONS

Meetings of CFRR to review submissions, discuss an appeal, consider its recommendations, or frame its report will be in closed session.

Twelve copies of the initial petition and accompanying documents, and of all other submissions to CFRR, must be provided. Communications to CFRR should be directed to CFRR, in care of the Office of the Secretary of the Faculty, 133 Bascom Hall (262-1677).

In addition to the twelve copies for the CFRR members, each party must also provide to the other party(ies) a copy of any material submitted to the CFRR. This requirement does not apply to confidential information, such as confidential personnel documents. CFRR shall determine to what extent confidentiality is required or permitted by law and whether confidential documents should be provided to both parties. Confidential information will not be provided to the parties without their agreement not to disclose the information to any other person or use it for any other purpose without the written consent of the person who is the subject of the confidential information.

CFRR speaks through its reports. By CFRR rule, only the chair is authorized to speak on its behalf. The chair of CFRR will not discuss the final report about a case except when clarification is requested by the chancellor or the chancellor's representative.

UWS 3.08(2) & 3.08(3) provide that CFRR reports on cases are recommendations to the chancellor, whose decision is final. By a practice recently adopted by the chancellor, once CFRR's final report is issued, the chancellor or the chancellor's legal representative will, before the chancellor's decision is rendered, provide each side an opportunity to respond to CFRR's findings, conclusions, and recommendations.