

Minutes*

**Academic Freedom and Tenure Committee
Friday, March 9, 2007
9:30 – 11:00
300 Morrill Hall**

Present: Tom Clayton (chair), Yusuf Abul-Hajj, Tracey Anderson, Arlene Carney, Joseph Gaugler, Candace Kruttschnitt, Karen Miksch, John Mowitt, Terry Simon

Absent: Carol Carrier, William Doherty, James Farr, Paul Porter, Jianyi Zhang

Guests: none

[In these minutes: changes to Procedures for Reviewing the Performance of Tenure-Track Probationary Faculty]

Procedures For Reviewing the Performance of Tenure-Track Probationary Faculty

Professor Clayton convened the meeting at 9:30; without ado, the Committee turned its attention to the Procedures For Reviewing the Performance of Tenure-Track Probationary Faculty. These minutes will contain paragraphs from the Procedures with changes recommended as a result of previous Committee discussions or by Professor Clayton (*in italics*) followed by Committee commentary and conclusions. Underlining and ~~strikeouts~~ show additions to and deletions from the existing language of the Procedures. (The editorial changes to correct references to the tenure code, rather than the Regulations, to the title of the Senior Vice President for Academic Affairs and Provost, and to the correct name of this Committee, have been omitted.)

The Committee decided that there will need to be definitions (e.g., of department chair/head) at the beginning of the Procedures, as is the case with the tenure code.

I. Purposes and Application

This document contains procedural rules for the consideration of candidates for tenure and promotion. It is also intended to provide a convenient guide for department heads, tenured faculty members, and candidates, to assist in understanding and organizing the tenure-granting process. The document restates some of the rules ~~which~~ that are found in the tenure code and adds additional procedures. For additional detail or interpretation, see the relevant sections of the tenure code.

The mandatory rules (those using "must") established in this document are minimum requirements. Departments and colleges are free to supplement them to provide further protection for candidates. Other procedures are simply recommendations (those using "should" or "may"). Any supplemental procedures that are created at the collegiate or departmental/unit level must be consistent with the tenure code. When the term "research" is used in these procedures, it refers to the language of subsection 7.11 of the tenure code, which reads, "'Scholarly research' must include significant publications and, as

* These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions, or actions reported in these minutes represents the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.

appropriate, the development and dissemination by other means of new technology or scientific procedures resulting in innovative products, practices, and ideas of significance and value to society." When the term "teaching" is used in these procedures, it too refers to the language of Section 7.11: "Teaching' is not limited to classroom instruction. It includes extension and outreach education, and other forms of communicating knowledge to both registered University students and persons in the extended community, as well as supervising, mentoring, and advising students." When the term "service is used in these procedures, it too refers to the language of Section 7.11: "Service' may be professional or institutional. Professional service, based on one's academic expertise, is that provided to the profession or to the local, state, national, or international community. Institutional service may be administrative, committee, and related contributions to one's department or college, or the University."

The Committee concluded that because these definitions will be part of the revised tenure code (if approved by the Faculty Senate and Board of Regents), there will need to be a footnote to cover current probationary faculty who elect to remain subject to the definitions in the existing tenure code.

The procedural rules established by this document are intended to guide the orderly and fair administration of the tenure process. Departments, review committees, department heads, and other administrators should carefully follow them. They do not, however, give candidates or others a right to set aside a decision based merely upon minor or technical variations from the rules. The Judicial Committee will review a claim that a decision was procedurally incorrect only if it was based in significant degree upon a substantial and prejudicial deviation from the procedures prescribed. (tenure code Section 7.7(3)).

Professor Clayton suggested that the last sentence should read ". . . if it was based in significant degree upon an alleged substantial and prejudicial . . ." Without that qualification, he pointed out, the document prejudges the claim. The Committee concurred.

If it is impossible or impracticable to implement these procedures, a department may apply to the Senior Vice President for Academic Affairs and Provost and the Academic Freedom and Tenure Committee for a written variance. Variances will be given very sparingly, and will be accompanied by requirements that the department take other steps to insure that the process conforms to the maximum extent possible to the principles set forth here. Applications for variance should be made in writing; variances will be granted only in writing.

These procedural rules apply to decisions beginning after July 1, 2007. Current probationary faculty (as of June 30, 2007) may use either this version of the Procedures or the one that was in effect when they were first appointed. which that are made in the 1986-87 and following academic years. These procedures must be followed, even if the original appointment was made under the Regulations in effect prior to July 1, 1985. Since the procedures do not deviate in substance from those previously in effect, there should be little difficulty in complying with them.

Professor Clayton first asked if the word "should" ought to be replaced by "must" in the sentence "Applications for variance should be made. . . ." The Committee agreed.

The Committee next deliberated whether to allow current probationary faculty to be covered by the existing Procedures or to require that all faculty, irrespective of the date of initial appointment, be covered by the revised document. Dr. Carney maintained that most of what the Committee is doing with

these revisions will help probationary faculty and will provide more protection. If departments have different 7.12 statements in effect at the same time for current and new probationary faculty, to have two different Procedures documents apply has the potential to create more confusion and add to the responsibilities of department chairs. Nothing in these changes will put probationary faculty at a disadvantage, she concluded; to the contrary.

Professor Miksch agreed. She said there is already a lot of angst among probationary faculty, some of whom feel pressure to agree to be evaluated by the new 7.12 statements. She said she would choose these Procedures. Everyone will have to be bound by some new provisions, she noted, because there is no section 9.2 now, governing promotion from associate professor to professor.

Dr. Carney clarified, in response to a question, that she is recommending making only the revised Procedures mandatory for all faculty, NOT the revised 7.12 statements.

The Committee concluded the revised Procedures should apply to all probationary faculty regardless of their date of initial appointment. The paragraph will thus be one sentence:

These procedural rules apply to decisions beginning after July 1, 2007 regardless of the date of initial appointment.

The Committee moved to the next section.

II. Tenure Procedures

A. Actions to be taken generally, without respect to individual candidates.

1. Departmental statement of criteria

The tenure code requires every department to have a document that specifies the indices and standards which will be used to determine whether candidates meet the threshold criteria of subsection 7.11 ("General Criteria" for the awarding of indefinite tenure). ~~"that articulates with reasonable specificity the indices and standards which will be used to evaluate" candidates.~~ (See tenure code, section 7.12). These standards will apply to all candidates for tenure in the department, unless there is a special contract to the contrary (See tenure code, section 3.6).

The Committee noted that at this point it will be necessary to insert language from the new section 7.12 of the tenure code when the code is finally approved.

2. Regular Voting Rules

(The following five sections were numbers 12-17 in the current procedures, moved here into one section on voting.)

Tenure votes are conducted at meetings of the tenured faculty.

Following an extended discussion about the use of telephone and email voting (see below), the Committee realized that nowhere in the Procedures is there a direct statement requiring that tenure

recommendations from a department be made at a meeting of the tenured faculty. The Committee approved adding the language (above [?]).

a. Who is eligible to vote.

Only members of the tenured faculty of the department have the right to attend or participate in the meeting and vote. However, prior to a specific tenure decision, permission may be sought from the senior academic administrator in writing for other faculty to participate and vote. The request must specify the probationer under consideration, the name(s) of those for whom exceptions are sought, and a justification for each such exception. Authorization in writing by the senior academic administrator must be obtained for all exceptional participation and voting. If the department head is a member of the tenured faculty, he or she may participate and vote, but has no additional tie-breaking vote.

The Committee revised the language as follows:

Only members of the tenured faculty of the department have the right to attend or participate in the meeting and vote ~~However, Prior to a specific tenure decision, however, permission may be sought in writing from the senior academic administrator in writing for other tenured faculty members from other departments~~ to participate and vote. This is particularly important in cases of candidates whose work encompasses multiple disciplines [or for other reasons that Vice Provost Carney will provide as examples]. ~~Tenured faculty from several departments may appropriately consider a candidate's record. The request must specify the probationer~~ probationary faculty member under consideration, the name(s) of those ~~for whom exceptions are sought, and a justification for each such exception.~~ tenured faculty members (and their tenure homes) who will be asked to vote on the candidate and the reason for including them. Authorization in writing by the senior academic administrator must be obtained for all exceptional participation and voting. If the department head is a member of the tenured faculty, he or she may participate and vote, but has no additional tie-breaking vote.

b. Disqualifications.

Persons who are or were closely related to a candidate by blood or marriage, or who have or have had an intimate personal relationship with a candidate which would prejudice their judgment, must not attend or participate in the meeting with respect to that candidate. If the candidate (or another member of the tenured faculty) wishes to challenge the participation of any member of the tenured faculty, that challenge must be made in writing to the challenged faculty member and to the head of the department at least two weeks before the scheduled tenure meeting, stating the reasons for the challenge and setting forth the relevant evidence. The fact that a member of the tenured faculty has formed a view of the candidate's teaching, research, or scholarship during the course of the candidate's career is not a basis for disqualification. The challenged faculty member will decide whether to participate in the decision. The record of the challenge and its resolution will be included in the file which is forwarded for review. The same principles of disqualification apply to members of the review committees and to department heads, deans, senior academic administrators, and other academic administrators who may be called upon to review the matter.

The Committee revised the language as follows.

Persons who are or were closely related to a candidate ~~by blood or marriage~~, or who have or have had an intimate personal relationship with a candidate ~~that which~~ would prejudice their judgment, must not attend or participate in the meeting ~~where with respect to~~ that candidate is being considered. If the candidate (or another member of the tenured faculty) wishes to challenge the participation of any member of the tenured faculty, that challenge must be made in writing to the challenged faculty member and to the head of the department at least two weeks before the scheduled tenure meeting, stating the reasons for the challenge and setting forth the relevant evidence. The fact that a member of the tenured faculty has formed a view of the candidate's teaching, research, or scholarship during the course of the candidate's career is not a basis for disqualification. ~~The challenged faculty member~~ In most cases, the unit head will decide whether the challenged faculty member may participate in the decision. In cases where the unit head is the challenged faculty member, the dean will decide. The record of the challenge and its resolution will be included in the file forwarded for review. In the event the challenged faculty member is not permitted to participate in the discussion and vote, that person shall not count toward the quorum requirement established in these Procedures.

The Committee concluded that it was not appropriate for the challenged faculty member to make the decision about whether to participate in a tenure discussion and vote. The authority to make that decision was moved to the department chair. If the department chair is the challenged faculty member, the dean will decide if the chair may participate and vote.

The same principles of disqualification apply to members of the review committees and to department heads, deans, senior academic administrators, and other academic administrators who may be called upon to review the matter.

Professor Clayton inquired if this language meant that the parties could be challenged in the same way that a faculty member could be. Dr. Carney said that it did.

c. Voting procedures.

The decision is by written, unsigned secret ballot. An effort must be made to provide a copy of the file to every tenured faculty member who will be absent from the meeting but who wishes to participate in the vote. Such faculty members must be given an opportunity to vote by written absentee ballot, which should be sent in a sealed envelope. Proxy vote or telephone votes are not permitted

Dr. Carney explained that she receives many questions about email voting. Such ballots are not secret unless a staff member redacts the name and puts the ballot in a sealed envelope—but someone knows the vote. In some units, an email message is sent to a staff member, who transfers the vote to a secret ballot and places it with the other ballots. The goal is to be sure that the person's vote is not revealed because it comes in after the fact (after the votes of those present have already been counted).

The Committee spent much of the remainder of the meeting discussing the issue of voting. A number of points were raised.

-- Professor Clayton said that e-mail ballots should be accepted, and they can be kept virtually secret by being sent to a member of staff sworn to secrecy in such cases.

-- Professor Miksch said that email votes make sense; as with telephone calls, there is a record, and either could be subject to a subpoena. The person using email needs to understand that the candidate might find out how that person voted. Professor Kruttschnitt agreed; there must be disclosure that when an individual (who is abroad) decides to vote, people may find out how that vote was cast. They may decide not to vote.

-- Professor Abul-Hajj said that if a person is out of town but has seen the file, he or she should be able to Fedex a vote. This should not be so complex.

-- Professor Gaugler suggested developing a web-based system that would be anonymous, like the student-evaluation-of-teaching system that is now used in some units. That won't happen by July 1, Dr. Carney assured the Committee; Professor Gaugler agreed it would be a long-term, password-protected system.

-- Sometimes faculty choose not to be present at a tenure vote, Dr. Carney said, and a web-based system could exacerbate the problem, and could lead some to inquire why a meeting is necessary at all. That would be dangerous, she warned. That is a part of department culture, Professor Gaugler commented; Dr. Carney responded emphatically that it should NOT be a part of department culture, it should part of University procedures: Departments must have a meeting. For the small subset who cannot be present, a web-based system would work, Professor Gaugler said. Dr. Carney repeated that such a system could lead people not to come to the meeting; she wondered if people would need to prove they were not in town. Email ballots would be used when someone is not in town. And there are people who participate in the discussions by telephone. A secure web-based system will take awhile to get in place, she concluded, and it would need to be identical across the University.

-- Professor Anderson said that if people will be gone, they should say so and make arrangements to vote. Some do, Dr. Carney said, but she is troubled when they leave a signed ballot and are not present for the discussion. Discussion of candidates can change people's minds, she pointed out.

-- Professor Abul-Hajj related that in his department they use two envelopes, the one on the outside with the signature of the person casting the ballot and the one on the inside containing the actual ballot—so if someone calls or emails, the staff member taking the vote can put it inside the second envelope and it is indistinguishable from any of the other ballots.

-- Dr. Carney suggested it would be appropriate to ask the General Counsel's office about telephone and email ballots. The concern, Professor Miksch said, is that in either case the vote is discoverable.

-- Professor Mowitt asked if, should the Committee not favor email or telephone ballots, someone might be forced not to take a research leave in order to vote on tenure candidates. And voting from afar assumes the person has seen the file. No one is obligated to vote, it was said. The system is based on trust, Dr. Carney said, and it must be assumed that those voting have looked at the file.

-- The Committee agreed that a statement should be inserted at the beginning of section II(A)(2)(a), "who is eligible to vote," this statement: To be eligible to vote, a faculty must have reviewed the candidate's file. Professor Clayton commented that a department could require faculty to sign a statement affirming they have read the dossier.

-- Practices followed by departments to keep the candidate files private vary. Some keep the files in a locked room. Others provide copies of the file to all department members. The file may be faxed to someone out of town. Providing copies to everyone could mean a violation of the confidentiality of the file, Dr. Carney said.

-- The University should think about getting tenure files on line, Professor Anderson said. They have talked about it, Dr. Carney replied, but few people will read files on-line; they will print them out. Some people share printers; they could send off the file to print and then forget about it, leaving it to be read by anyone. Or the printer can run out of paper so the file is missing pages. They have talked with people at other universities about electronic dossiers, and at some point the University will adopt them; the question is how to do it.

In order to get a proposal on the table, Professor Mowitt moved that the Committee NOT allow proxy, telephone, or email votes. He also moved that the language be changed to indicate that if someone is not present at the meeting, he or she may not vote on the candidate.

If they must be present, would that mean they cannot sign a ballot before they leave, Professor Kruttschnitt asked? It would, Dr. Carney said. That seems draconian, Professor Kruttschnitt said.

Professor Clayton called for a vote. The Committee voted 2 in favor, 5 opposed to allowing email ballots. The Committee also voted 2 in favor, 5 opposed to telephone ballots.

Professor Simon noted that this is a temporary position (to be incorporated in the Procedures, for now), because a time will come when such votes will be practicable. Dr. Carney agreed, and said that a secure web-based system would not be bad, but it will need to be set up carefully.

The Committee concluded it did not wish to require dossiers be kept in a locked room or otherwise regulate the number of copies that are made. Professor Clayton, however, said that this is one instance where more rules may be better, because the Committee does not favor making many copies of a dossier, except for those who are away.

-- One point that has arisen is in the case of someone on sabbatical or research leave who never indicated an intention to vote in a tenure recommendation: in such cases, one might assume he or she might wish to participate, Dr. Carney said. But for those on medical leave, one does not know, and they should not be allowed to make a last-minute request for the file. There should be a requirement that departments inquire and that faculty who are not present must let the department know at least a month in advance of the time of the vote, in order that the department has time to send the file. Files sent to faculty not on site contain confidential information and must be destroyed or returned to the department.

Dr. Carney commented that when the Committee is finished with the changes to the Procedures, there will need to be some kind of roll-out to departments to let them know of the changes. Perhaps the document should be renamed; it is essentially the promotion-and-tenure handbook for the University.

Professor Simon asked if these Procedures could require that departments change their procedures. Dr. Carney thought that in most cases it would not, but it could.

d. Questions to be voted upon.

If it is desired to take a vote at any time before the final probationary year, either (or both) of the following questions may be put:

Shall (the candidate) be recommended for tenure?

Shall (the candidate) be given notice of termination of appointment?

If no vote is taken or if there is no majority for either motion, the appointment will be continued.

In the last year of the probationary period, the question should be, "Shall (the candidate) be recommended for tenure?" If there is no majority for that motion, the recommendation is automatically for termination of the appointment.

The Committee proposed no changes to section "d. Questions to be voted on."

e. Required majority.

A quorum must be present at the meeting at which the vote takes place. A quorum is defined as greater than 50% of those faculty eligible to vote on a personnel question, except that those faculty who are not present and do not vote are not counted for the purposes of determining a quorum. Except as indicated below, the action of the department is based on the majority of those voting on the question. If there is a tie vote, the recommendation is in the negative. In the final year of the probationary period, a tie vote on the question of tenure creates an automatic recommendation for termination of the appointment.

In a department that ~~which~~ has a rule requiring an alternative majority (see section 2 below), if a recommendation to grant tenure receives an ordinary majority but not the required exceptional majority, the department must prepare and send forward the file, but without a recommendation for tenure, unless the candidate requests in writing that no further review take place.

The Committee voted to add two sentences to the beginning of section e., as included above. Several points were made in the following discussion.

-- In terms of the quorum requirement, if someone is not present and not voting, he or she does not count in the quorum requirement, Dr. Carney said. [If there are 10 faculty in a department, the normal quorum would be 6; with 1 away on leave and not participating, there are 9 voting members so a quorum would be 5. If the department has 9 voting members and 1 is away on leave and not participating, there are 8 voting members—and a quorum would still be 5.]

-- The Procedures say there must be a meeting and there must be more than 50% of the eligible faculty present, and that is not necessarily a large number, Dr. Carney observed. People should be at the meeting and participate in the discussion if they are in town. Sometimes people need to be absent because of research leaves, etc., but if the absence is because of a medical emergency, they should be able to participate in the discussion by telephone if possible. The votes, however, should not be counted until the person who participated by telephone can deliver his or her ballot. A department should NOT count the ballots and then add in later a mail or later-delivered vote, but anyone who participates in the discussion by telephone must understand a vote is needed as soon as possible.

-- If someone wanted to vote "no," he or she simply need not appear in order to withhold approval, Professor Mowitt observed. That practice would come to her attention, Dr. Carney said. And it would only happen once, Professor Mowitt agreed.

-- Dr. Carney affirmed that a tie vote is a negative vote. The department chair has no special vote. When the department vote, a part of what goes to the Provost, is a tie, it clearly indicates a split in the department. In some units, the department discussion and vote is reported by a faculty member, and the chair sends a separate letter. In other units, the chair reports the unit vote and reveals his or her own vote in the letter.

f. Report of the vote

In all cases, the actual vote is to be reported. The report should indicate the number who are qualified to vote, the number of affirmative and negative votes, the number of persons present at the meeting who abstained, the number who were absent and not voting. It should also indicate how many absentee ballots were cast. If there is a "reconsideration" after an initial vote, both the original and the reconsidered vote ~~should~~ must be fully reported. Although the department's recommendation is based upon the required majority by the rules applicable to the particular department, reviewing committees and administrators may legitimately take into consideration the strength of the majority in conducting their own review of the candidate.

The Committee concluded that this paragraph should be given its own section heading, and that "must" would replace "should" in the reporting requirement.

-- There is no majority and minority report, Professor Kruttschnitt asked? That is a problem, Dr. Carney said. If there is no minority report, the chair can try to describe the views of the minority, but if there is little or no discussion, the chair can only say that he or she cannot explain the minority votes. It is a difficult situation; how can candidates respond when they do not know the basis of the negative votes? The Committee might include a provision in the Procedures requiring a minority report to reflect the views of those who voted in the minority.

-- In some cases, people will not talk at the meeting because they know the information will be transmitted to others, Professor Clayton observed, and they do not want to be on the record. Dr. Carney agreed but pointed out that that puts the candidate at a disadvantage; what can he or she write when there is no explanation? Professor Abul-Hajj said his department asks faculty to write comments (anonymously) and include them in the evaluation of the candidate. Some do not want to express negative views in front of their colleagues but are willing to write things down. Dr. Carney said that that would be good because it would allow the chair to refer to reasons in reporting the vote. The department report should reflect majority and minority opinions, a report of the discussion, and the mechanics of the voting.

Professor Clayton thanked everyone for participating in the meeting and adjourned it at 11:00.

-- Gary Engstrand