

**Faculty Appointments,
Rights, and Responsibilities**

Draft as of
November 24, 2010

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FACULTY APPOINTMENTS, RIGHTS, & RESPONSIBILITIES
As Amended Through XXXXX XX, 2010

I. ACADEMIC FREEDOM, TENURE, AND SCHOLARSHIP.

- A. The Common Good. Legal education is conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.
- B. Necessity of Academic Freedom. Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth and the exchange of ideas. Academic freedom is also fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.
- C. Purposes of Tenure. Tenure is a means to certain ends, specifically:
 - (1) freedom of teaching and research and of extramural activities, and
 - (2) a sufficient degree of economic security to make the profession attractive to women and men of ability. Freedom and economic security are indispensable to the success of an institution in fulfilling its obligations to its students and to society.
- D. Freedom in Research, Publication, and Instruction. Faculty members are entitled to full freedom in research and the publication of results subject to the condition that all academic responsibilities are adequately performed. In the performance of academic responsibilities, the faculty member is entitled to full freedom to exercise sound professional judgment in the selection and treatment of material and the determination of methods proper to the achievement of the course objectives.
- E. Correlative Responsibilities. In the performance of professional activities, the faculty member should bear in mind the fact that, as a citizen, a member of a learned profession and a representative of the Law School, she or he has a special responsibility to be accurate, exercise appropriate restraint and respect the opinions of others. When the faculty member is not acting on behalf of the Law School, special efforts should be made to assure that it is understood that the faculty member is not an institutional spokesman.
- F. Expectation of Scholarship. The Law School recognizes scholarship is an integral part of the academic life of full-time faculty members. Each faculty member regularly should engage in research, produce scholarship, and publish

the results. The Law School embraces a broad definition of scholarship, including published work that:

1. Advances understanding of the law, legal profession, or legal education;
2. Enhances the scholar's professional and personal growth and development;
3. Furthers the improvement of teaching and learning in law school;
4. Addresses the needs of underserved communities;
5. Aids lawyers, policymakers, and judges in the practice and making of law; or
6. Represents a like contribution that is multidisciplinary.

II. NONDISCRIMINATION.

No one shall be treated differently with respect to employment, continuation, tenure, alternative security, or terms of employment, or dismissed as a faculty member on account of age, sex, race, ethnicity, religion, creed, sexual orientation, political beliefs or adherences, handicap, or any non-violent expression, display, or exercise pertaining to any of the foregoing.

III. DEFINITIONS.

- A. **Tenure** is the privilege, subject to dismissal for cause under § XX below, to continue as Professor at the Law School for life or until retirement, and the right to vote on granting tenure or alternative security to others.
- B. **Alternative Security** is the privilege to continue as Professor at the Law School for five year terms, automatically renewed, and subject to dismissal for cause or material program modification under §XXI.
- C. **Continuation** and **Retention** both refer to the affirmative vote of the faculty required to permit a faculty member eligible for tenure or alternative security to remain so employed beyond an initial two-year hiring.
- D. **Emeritus Status.** Professors Emeritus are retired faculty granted that honorific by the Board of Trustees in recognition of past distinguished service. To continue or return to direct student instruction, emeritus

faculty must be employed in the usual way according to the terms of one of the other five active categories in §IV.

- E. **Faculty.** Unless context otherwise requires, “faculty” means all faculty except Adjuncts, Emeritus faculty, and Visitors.

IV. **FACULTY CLASSIFICATIONS, TITLES, AND VOTING.**

A. Classifications.

All Law School employees or contractors directly responsible for instruction and evaluation for academic credit must be:

- 1.. Tenured or eligible for tenure;
2. Alternatively secured or eligible for alternative security;
3. Contract faculty with a discrete term (including Senior Faculty as defined in §VII. D.;
4. Visiting Faculty;
5. Adjunct Faculty (including staff primarily employed for non-teaching duties); and hired as such according to the procedures established in these rules; or
6. Emeritus Faculty.

B. Titles.

All those in categories 1-4 in § IV. A. above shall have the title Professor, without regard to any seniority or degree of security yet achieved. Adjunct Professors who are also employed by the Law School in other capacities shall have the title Assistant Professor rather than Adjunct Professor.

C. Voting.

1. Eligibility to Vote.

When a formal vote is necessary, all tenured or tenure-track faculty, faculty holding or eligible for alternative security, and contract faculty (categories ~~A-E~~) may vote, except that:

1-3

- a. contract faculty are not eligible to vote on hiring, retention, tenure, or alternative security,

- b. only those with tenure or alternative security are eligible to vote on granting or removing conditions on such status; and
- c. only faculty with tenure or alternative security may vote on terminations of continuing appointments or appeals thereof.

2. Electronic Participation.

A faculty member who participates in a meeting by live telecommunication may vote.

3. Private voting.

Private voting shall occur for all faculty status matters and hiring recommendations. It shall also occur anytime at the private or public request to the moderator by a faculty member who has neither tenure nor alternative security or at the private or public request of three or more faculty members possessing either tenure or alternative security. The moderator shall receive all private requests in confidence and may not disclose the name(s) to any other person.

4. Modified Consensus Decision-Making.

- a. Individual Faculty Status Matters. On questions of hiring, retention, tenure, alternative security, removal of conditions, dismissal, or any related petitions or appeals involving individual faculty members, the decisions shall be by vote of the eligible faculty subject to any particular procedures or limitations otherwise provided in these rules.
- b. Individual Student Status Matters. On questions involving appeals, petitions, or requests for waivers involving individual students the decisions shall be by majority vote of the faculty subject to any particular procedures or limitations otherwise provided in these rules or in the Academic Rules. Unless suspension or dismissal is at issue or a substantial portion of the faculty calls for a meeting, the vote in such cases may be by e-mail or similar procedure without a formal meeting.
- c. Elections. When particular faculty members are to be elected to offices such as moderator or budget advisor or nominated by

the faculty as representatives to the Trustees, the decision shall be by majority vote of the faculty.

- d. Other Decisions. On all other questions the faculty should strive to proceed by consensus. This may be done informally by asking if there is opposition to a proposal, by straw polling, or, so long as any faculty member present wishing to do so has had a reasonable opportunity to speak at least once, by vote. A disagreement or a negative vote shall not be presumed to block consensus. However, if, either before or immediately after a vote is taken, at least two faculty members declare that they presently object to taking the proposed action and will not stand aside, and at least two faculty members continue to do so after any further discussion, the proposal will be carried over to another faculty meeting held no sooner than one week later, at which time the matter may be decided by majority vote of the faculty.

V. GENERAL RULES APPLICABLE TO FACULTY.

A. General Rights and Responsibilities.

Every faculty member has full academic freedom and, unless modified with the consent of the faculty, the following rights and responsibilities.

1. The title "Professor."
2. An individual office on site.
3. Receipt of all faculty mail, memos and notices.
4. Participation and vote in faculty meetings (except as otherwise herein limited in regard to retention, tenure, or alternative security).
5. Participation in any faculty retreat.
6. Proportional share of committee assignments.
7. Proportional share of advisees.
8. Availability to participate in orientation.

9. Equal discretionary fund.
10. Reasonable paid vacation when substantial duties (e.g. for full time clinicians) extend through the summer.
11. Eligibility under the sabbatical rules and, after achieving tenure or alternative security, reasonable unpaid leave.
12. Participation in Commencement and other academic ceremonies.
13. Pay and benefits set by the same rules or criteria (whatever those be at the time) as all other such faculty, provided that those paid from a outside sources may be paid less if, and only to the extent that, the outside source proves insufficient.
14. A full-time load (i.e. either four courses or 12 credit hours per year in two semesters or comparable clinical instruction).
15. Formal mentoring and review for continuation, tenure, or alternative security according to the rules and criteria in effect at the time of their hiring.
16. Adherence to the published policies of the Law School, including the Academic Rules and the Conduct Code.

B. Load Adjustments.

Proportional adjustments to the above are permitted and expected for those working full time in cases of substantial non-teaching duties or year-round clinical obligations and are automatic for librarians and Deans.

C. Appointments Subject to Special Conditions.

Any appointment other than as Dean or Library Director may be subject to one or more special conditions. Unless otherwise expressly provided at the time of hiring, continuation, or granting tenure or alternative security (as the case may be):

1. Appointments substantially funded by outside sources are conditioned on the continued adequacy of such sources.
2. Appointments to teach in or administer a designated, discrete program within the Law School are conditioned on the continuation of such program.

3. Appointments contemplating (in addition to teaching) the continuing performance of special administrative duties (other than as Dean or Director of the Library) are conditioned on performance of those duties.

D. Part Time Work.

Faculty having or eligible for tenure or alternative security may work substantially part time if (1) they have a serious personal or professional reason, (2) the Law School can financially and academically afford their absence or temporary replacement, and (3) they take a cut in pay. The Dean may consent to such a cutback for a single year, but part time work may continue thereafter only with the advance consent of the faculty, renewable at one year intervals.

VI. LIMITATIONS ON NON-TENURE TRACK APPOINTMENTS.

A. Alternative Security Faculty.

1. When an appointment on the alternative security track is made, the different responsibilities and expectations shall be specified and the criteria for review on retention and grant of security adjusted accordingly.
2. A faculty member having alternative security may be terminated:
 - a. at any time on the same grounds and according to the same procedures provided in §XVIII for tenured faculty; or
 - b. with one year's notice in case of termination or material modification of the entire program in which the faculty member teaches.
3. Faculty having alternative security have the right to vote on granting tenure or alternative security to others.

B. Contract Faculty.

The number of full time Contract Faculty for a discrete term (exclusive of any Senior Faculty on contract) may not exceed one-fifth the number of faculty having or eligible for tenure or alternative security.

C. Visiting Faculty.

Visiting Faculty may be hired by the Dean for a definite term not to exceed two years (with the express provision that the appointment may not extend beyond two years) to fill a vacancy, to facilitate consideration of a lateral hiring, or to take advantage of a special opportunity for which a regular appointment is not suitable.

D. Adjunct Faculty.

Adjunct faculty may not be hired for or assigned more than one course per semester or two sections of a single course. Persistent assignment of Adjunct faculty to teach substantive required courses should be avoided.

VII. APPOINTMENTS OF FACULTY NOT ELIGIBLE FOR TENURE OR ALTERNATIVE SECURITY.

A. Adjunct Faculty.

1. Hiring, Suspension, and Termination.

- (a.) Adjuncts are hired for a semester or academic year and rehired or dismissed by the Dean or Dean's designee.
- (b.) The Dean or Dean's designee should consult with and may rely on the recommendations of faculty members in the relevant subject area or program.
- (c.) Each adjunct appointment shall be subject to the condition of adequate student enrollment.
- (d.) Despite the absence of a material breach of contract, the Dean or Dean's designee, for the good of the Law School, may suspend such faculty (with pay) from some or all duties during a term.

2. Rights and Responsibilities of Outside Adjuncts. Adjuncts not otherwise substantially employed by the Law School shall have full academic freedom and the following other rights and responsibilities:

- a. The title "Adjunct Professor."
- b. Access to an office on site.

- c. Participation in graduation and other academic ceremonies.
- d. Adherence to the published policies of the Law School, including the Academic Rules and the Conduct Code.
- f. Their agreed teaching, professional, or administrative duties.

3. Rights and Responsibilities of Staff Adjuncts. Adjuncts who are otherwise substantially employed by the Law School have full academic freedom and the following rights and responsibilities:

- a. The title "Assistant Professor."
- b. An individual office on site.
- c. Receipt of all faculty mail, memos and notices.
- d. Participation in graduation and other academic ceremonies.
- e. Reasonable paid vacation when substantial duties extend through the summer.
- f. Adherence to the published policies of the Law School, including the Academic Rules and the Conduct Code.
- g. Their agreed teaching, professional, or administrative duties.
- h. Additional pay in respect of their teaching duties at least equal to that of comparable outside adjuncts.

B. Visiting Faculty.

- 1. Hiring.
 - a. Visitors are hired by the Dean for a term of no more than two academic years.
 - b. Despite the absence of a material breach of contract, and for the good of the Law School, the Dean may suspend a Visitor (with pay) from some or all duties during a term.

- d. In no case may a Visitor receive a tenure track appointment without having gone through the competitive search provided for such faculty either before or during their visitorship.
 2. Rights and Responsibilities.
 - a. Visitors shall have the title "Professor" and full academic freedom.
 - b. They may not vote.
 - c. Their other rights and responsibilities are subject to agreement, but unless otherwise agreed, they will be those of tenure-track faculty.
 - C. Contract Faculty.
 1. Hiring.
 - a. Subject to the numerical limit set in Section VI. B., and the provisions of this section regarding Senior Faculty, the Dean may hire Contract Faculty for an initial term of two years, renewable for terms of no more than five years each by the Dean with the acquiescence of the faculty.
 - b. Prior to making such an appointment, if feasible, the Dean shall give the faculty sufficient notice of the contemplated position and candidates to permit communication of pertinent information and suggestions.
 2. Rights and Responsibilities.
 - a. Contract Faculty have the title "Professor" and full academic freedom.
 - b. Their voting rights and the duration and renewal of their appointments are subject to the limits in these rules.
 - c. Their other rights and responsibilities are subject to agreement, but unless otherwise agreed, they will be those of tenure-track faculty.

D. Senior Faculty.

1. Eligibility. Any faculty member having tenure or alternative security (conditioned or not), in any year after attaining the age of 55 or after their age plus years of service at the law center equals or exceeds 72, may seek senior status.
2. Agreement and Notice Required. Conversion to senior status requires agreement of the faculty member and the Dean, with prior notice of the terms to the faculty.
3. Rights and Responsibilities. In addition to the pay and benefits agreed between the faculty member and dean, senior status has the following attributes:
 - a. Full academic freedom;
 - b. A reduced load (typically 1/2 or 1/4);
 - c. The right, but not the duty, to attend faculty meetings and to speak, but without vote;
 - d. Receipt of all faculty mail, memos and notices;
 - e. Participation in graduation and other academic ceremonies; and
 - f. Requirement of reasonable physical or mental exams in accord with criteria applied uniformly to all senior faculty.

VIII. NON-ADJUNCT APPOINTMENTS, DEAN'S DESIGNATION, AND NOTICE TO FACULTY AND TRUSTEES.

A. Preference for Tenure Track Appointments.

1. In the ordinary case, appointments of full time faculty to teach, research, or write in subjects traditionally considered part of the long-term content of most U.S. law school curricula, in Clinics, or in subjects central to the Law Center's mission should be on the tenure track.
2. Appointment as Dean or Library Director is always on the tenure track.

3. Additional limitations on hiring, retaining and granting tenure to tenure-track faculty are set forth in §§ IX-XIV.

B. Alternative Security Appropriate in Some Situations.

When the tenure track is not possible or in the best interests of the Law School for a full time faculty member, an appointment with eligibility for alternative security or a visiting or contract appointment for a discrete term may be made. (See §XV regarding faculty vote on alternative security.) In the case of Clinicians, reasons for using alternative security include immediate need to employ members of the New Hampshire Bar, unavailability of qualified applicants for a tenure-track appointment, or desirable applicants unable or unwilling to commit to meeting all the tenure criteria.

C. Notice to Faculty of Non-Adjunct Faculty Appointment.

Whenever an appointment of non-adjunct faculty is contemplated, the Dean shall indicate to the faculty and candidate(s) which type of appointment is to be made. If an appointment subject to special conditions is contemplated, it is the duty of the Dean to so indicate to the faculty and candidate(s), but failure to do so does not render the appointment unconditional.

D. Re-Designation of Type of Appointment.

If, during a search for a tenure-track position, it appears that it is in the interest of the school to do so, the Dean may shift to alternative security or a visiting or contract appointment for a discrete term if that type of appointment is otherwise consistent with these rules.

E. Notice to Trustees -- Tenure, Alternative Security, Removal of Conditions.

Whenever an appointment of faculty eligible for tenure or alternative security is contemplated, the Dean shall notify the Board of Trustees. Whenever a faculty member applies for tenure, alternative security, or removal of conditions on existing tenure or alternative security, the Dean shall notify the Board of Trustees.

IX. HIRING AND INITIAL APPOINTMENT OF FACULTY ELIGIBLE FOR TENURE OR ALTERNATIVE SECURITY.

- A. Initial Hiring by Dean. All initial hiring of faculty eligible for tenure or alternative security is by the Dean in consultation with the faculty.

- B. Advance Notice to Faculty. Prior to any such hiring, the Dean shall notify the faculty in writing in sufficient time to permit suggestions about either the process for filling the position or potential candidates.
- C. Tenure Track Search. For a tenure-track appointment, the Dean shall initiate a broad, competitive search for candidates to fill the position.
- D. Alternative Security Search. For an appointment contemplating alternative security, a competitive search is desirable, but not required.
- E. Specification of Conditions. At the time of hiring, the Dean shall indicate in writing to the professor and faculty which, if any, of the three special conditions listed at §V.C. will apply to the appointment.
- F. Two-year Maximum. Such initial appointment by the Dean may be for no more than two academic years (subject to the Faculty's power under § XI. A. below).

X. MENTORING POLICY AND PROCESS FOR FACULTY ELIGIBLE FOR TENURE OR ALTERNATIVE SECURITY.

A. Purpose.

We expect our faculty to become consistently good teachers, respectful of our students and respected by them. It is also necessary that they become independent, responsible colleagues and scholars who share in managing the school, planning its future, and assuring its success. This calls for attitudes, skills, habits, and judgment usually developed through experience, observation, reflection, and engagement with other teachers. While ultimate responsibility for professional growth is on each candidate for or tenure, the school has adopted the following policy to help with the task.

B. Appointment and Duties of Teaching Mentor.

For each new faculty member the Standing Committee on Mentoring, Retention, and Tenure shall appoint as mentor one experienced teacher who shall for at least two years:

1. Meet regularly with the faculty member to discuss course objectives and design, teaching techniques, engagement with students, and grading;
2. Observe classes and discuss the observations;

3. Arrange for the new faculty member to observe and discuss the mentor's classes or those of other experienced teachers;

4. Respond to requests for advice about teaching.

C. Change of Mentor.

If for any reason it appears that a different mentor would be more helpful, the Committee shall, at the request of either mentor or faculty member, appoint a different mentor.

D. Confidentiality of Relationship.

1. The mentor shall not be appointed to a candidate's retention or tenure review committee.

2. Except in extraordinary circumstances involving substantial risk of harm to the school, the mentor will not discuss matters arising from the relationship with such committees, other faculty, or Deans except at the request of the faculty member.

3. If otherwise eligible, the mentor may vote on retention, removal of conditions, tenure, or alternative security and any related appeals.

E. Observation by New Faculty Encouraged.

Experienced faculty shall encourage and freely permit observation of their classes by untenured faculty and be reasonably available for discussion of such observation or any other matter regarding teaching.

F. Mentoring and Counsel on other Matters of Professional Development.

New faculty members are expected to seek out experienced colleagues with whom to discuss aspects of their work and professional development and to acculturate themselves to the school. Governance, Community Contribution, and Scholarship confront the new faculty member with many choices and often unfamiliar tasks in a new community. The most common hazards include undertaking too much, avoiding engagement in policy debate, and reflexively acting in accord with pre-conceptions about how law schools should operate. Timing and prioritization of non-teaching activities are particularly important, and the advice and support of colleagues in setting reasonable goals and limits can be very beneficial. The information and advice on some matters may be ambivalent, conflicting, or controversial. We do not expect new faculty to surrender their own judgment to senior

colleagues — we do expect them to be informed, thoughtful, civil, engaged, and constructive.

XI. CONTINUING APPOINTMENTS AND TERMINATION OF CONTINUING APPOINTMENTS FOR FACULTY ELIGIBLE FOR TENURE OR ALTERNATIVE SECURITY.

- A. Faculty Vote Required. Continuation of faculty eligible for tenure or alternative security past an initial two years requires prior approval of the faculty.
- B. Continuation in the Ordinary Course.
 - 1. Prior to the end of an initial appointment, on request of the Dean or professor involved, the faculty shall engage in the process provided for in § XII and shall vote on whether to continue the appointment.
 - 2. If the Faculty votes for continuation, any of the special conditions imposed at initial hiring also continue.
 - 3. If the faculty votes for continuation, the professor may continue to serve for a maximum of four additional years with no further action unless their appointment is previously terminated in conformity with these rules.
 - 4. If the faculty has not previously voted for continuation, the professor's employment ends with the expiration of the term of initial hiring.
- C. Continuing Appointment for Former Visitors.
 - 1. If, after the search provided in § IX. C., someone who has been a Visitor for two years is hired by the Dean as a faculty member eligible for tenure, the faculty may waive the two year initial hiring period and grant a continuing appointment.
 - 2. If someone who has been a Visitor for two years is hired with eligibility for alternative security, the faculty may waive the initial two year period and grant a continuing appointment.
- D. Continuation Sought Without Conditions.
 - 1. Where an initial hiring has been subject to special conditions, the incumbent is free to request continuation without one or more of them, but must

submit to the possibility of competition for and loss of the position.

2. If continuation of a contract subject to one or more of the special conditions is sought without the same conditions, the faculty shall either:
 - a. Decline to consider dropping the conditions, leaving the faculty member the option to request continuation on the original terms according to § XI. B. above; or
 - b. Subject to subsection (c.) below, direct the Dean to open a search for other prospective faculty to be evaluated in conjunction with the incumbent in the same manner as in the case of a new hiring under § IX. above. At the conclusion of such search the faculty shall:
 - (1) continue the incumbent with the less restrictive appointment;
 - (2) hire someone in place of the incumbent for an initial hiring period of two years with all its usual rights and limitations under these rules; or
 - (3) continue the incumbent with the original conditions, subject to the up-or-out rule in § XI, F.
 - c. When the request to drop a condition will significantly affect budgetary decisions (e.g. by committing the school to maintain a faculty member without regard to outside funding, or to replace an administrator or librarian as a result of lateral migration into teaching), the faculty may not commence a search under subsection (b.) above without first securing approval from the President of the budgetary impact of a less-restrictive appointment.

E. Termination of Continuing Appointments; Notice Required, Cause Unnecessary.

1. A continuing appointment is not tenure or alternative security. It may be terminated by the Dean (subject to an appeal to the faculty) or by the faculty itself by giving written notice prior to

the first day of classes in the first semester of the final year of the appointment.

2. Such termination is a matter of discretion and policy, not a determination of cause or fault, and may be based on a failure of special conditions as well as any other reason.
3. An appeal does not suspend or toll the notice period.
4. In voting to terminate or in deciding any appeal from a Decanal termination the faculty may adopt any procedure it chooses.
5. In deciding an appeal,
 - a. to the extent the Dean states reasons for termination based on the failure of one or more of the special conditions or on budgetary considerations making continuation not in the best interests of the Law School, the termination shall be upheld unless it appears by clear evidence that the termination was
 - (1) in violation of § I. or §II.,
 - (2) in bad faith, or
 - (3) so unreasonable on the facts as to be arbitrary or capricious.
 - b. In other cases, the faculty, giving serious weight to the Dean's responsibilities for the overall academic program and opportunities to observe the incumbent's work, shall decide the appeal according to their judgment of the best interests of the Law School.
6. Only faculty with tenure or alternative security may vote on terminations or appeals thereof.

F. Automatic Limitation on Continuing Appointments, The "Up Or Out" Rule.

1. No faculty member eligible for tenure or alternative security may teach more than four years after the initial faculty vote for continuation without it being granted.

2. If the faculty has not previously granted tenure or alternative security, a professor's employment ends on June 30 following the fourth academic year after the vote to make a continuing appointment, without further notice.
3. This may be referred to as the "up-or-out" rule.
4. For the purposes of this rule a period as full time faculty on conditional appointment shall count toward the four years, but, unless otherwise expressly provided by vote of the faculty at time of hiring, a period as a Visitor shall not.

XII. RETENTION REVIEW OF FACULTY ELIGIBLE FOR TENURE OR ALTERNATIVE SECURITY: POLICY AND PROCESS.

- A. Purposes. Retention Review has two principal purposes.
 1. First, it affords the faculty the opportunity to decide whether to continue the tenure-track employment of a faculty member beyond the initial two-year period.
 2. Insofar as the faculty ordinarily will vote to continue the employment of the faculty member under review, a second purpose of retention review takes on fundamental importance. The retention review allows the faculty to communicate to the member under review its assessment of his/her progress toward tenure.
 3. Accordingly, retention review should focus on the tenure criteria and strive to provide a specific, constructive evaluation of the member under review.
- B. Organization and Schedule of the Retention Review Committee.
 1. Before the end of the eighth week of a faculty member's third semester at the school, the Standing Committee on Mentoring, Promotion, and Tenure shall appoint three tenured faculty members to a committee charged with conducting the retention review of that faculty member.
 2. By the end of the fourth week of the member's fourth semester, the faculty member shall submit to the Committee an initial memorandum, organized by reference to the Tenure Criteria. It is anticipated the Committee will begin work before receipt of the memorandum.

3. After the Committee completes its work, as described below, and no later than the end of the tenth week of the semester, it shall meet with the faculty member under review to describe its findings.
4. The faculty member shall then have the opportunity to revise her/his initial memorandum to incorporate responses to the Committee's findings.
5. The Committee's report, along with the faculty member's final memorandum, shall be distributed to the entire faculty.
6. By the end of the semester, the entire faculty shall meet to vote whether to continue the tenure-track employment of the faculty member.

C. Memoranda of Faculty Members under Review.

1. By the end of the fourth week of the faculty member's fourth semester, the member shall submit to the Committee an initial memorandum organized by reference to the tenure criteria. That memorandum should describe and reflect upon the faculty member's activities, future plans, challenges, and accomplishments during her/his time at the school, as relevant to the tenure criteria.
2. After meeting with the Committee upon completion of its work, the faculty member should revise and expand that initial memorandum, as appropriate, in response to the findings of the Committee.
3. The faculty member's memorandum should include, but not necessarily be limited to, the following:
 - a. In writing the teaching effectiveness section of his/her memorandum, the faculty member should include the objectives, techniques for implementing those objectives, and student assessment tools for each course the faculty member has taught, a self-assessment of performance, and plans for the future.
 - b. In writing the participation in governance section of the memorandum, the faculty member should include a list of all committees on which she/he has served, and any other significant governance activities in which she/he has engaged, a self-assessment of performance, and plans for the future.
 - c. In writing the contribution to the community section of the memorandum, the faculty member may describe any

achievements in that connection and may identify any persons in the community at large who can attest to those achievements. The faculty understands, however, that few faculty members will, during their first two years at the school, make substantial progress in this connection. Accordingly, in writing this section of the memorandum, the faculty member should describe her/his aspirations and plans with regard to contributions to the community.

- d. In writing the scholarship section of the memorandum, the faculty member should describe her/his interests and plans with respect to future publication of scholarly work and work in progress. The member should also provide the Committee with a copy of any published articles and any finished articles submitted for publication. The faculty member may, but need not, provide the names of scholars outside the school who have read the member's scholarship and are qualified to comment on its merit.

D. Procedures of the Retention Review Committee.

In evaluating the faculty member and preparing its report, the Committee should take the following steps:

1. Evaluation of Teaching Effectiveness.
 - a. Each member of the Committee should attend at least one full class taught by the faculty member. It is highly desirable that classes be observed in both semesters and that one of the three members, charged by the Committee with the responsibility of drafting the teaching effectiveness section of the Committee's report, should attend successive classes in the same course. It is also highly desirable that at least one member of the Committee attends a class in each course taught during that semester by the faculty member.
 - b. The Committee should review all student evaluations of the faculty member for all courses taught at the school. The Committee's analysis should take account both of student comments and of the numerical measures contained in student evaluations.
 - c. The Committee should solicit by e-mail comments from the entire student body, relating to the faculty member. The Committee should take care to maintain the confidentiality of students who provide comments, but should disregard any

comments offered anonymously except to the extent they describe an event capable of, and meriting, independent verification.

- d. The Committee should read the syllabi used by the faculty member, and should read the exam questions or other instruments created by the faculty member for the purpose of grading students. Teaching and evaluation methods should be scrutinized for rigor and results. It is expected that teachers will have a coherent and fair standard for grading.

2. Evaluation of Participation in School Governance.

- a. Preferably by face-to-face meetings, the Committee should solicit the views of all faculty members relating the faculty member under review, and also the views of all relevant staff.
- b. In writing its report on this aspect of the faculty member's service at the school, the Committee should note any reports of difficulties involving the faculty in interactions with faculty, students, or staff.

3. Evaluation of Contribution to the Community at Large.

It is understood that few professors new to the New Hampshire legal community will have made any substantial contributions in this respect during their first two years at the school. During that period, the energy and attention of new teachers is ordinarily better focused on mastering other aspects of their role, and most especially, the skills of teaching. If the faculty member has made some progress in this regard, and has identified people in the community for the Committee to contact, the Committee may, if it chooses to do so in preparing its report, contact those people.

4. Evaluation of Scholarship.

The members of the Committee should read any works of scholarship provided to them by the faculty member under review. It is not necessary, however, for the purposes of Retention Review, for the faculty member to provide, or for the Committee to seek, outside peer review of such works of scholarship.

5. Growth Potential.

The Committee may assess the candidate's potential for growth either in the sections on particular criteria or in a separate section.

E. The Committee's Written Report.

The Committee's written report to the faculty should comprehensively describe its findings as to the strengths and weaknesses of the faculty member under review. The Committee should also include in its report a thorough description of its procedures and of the basis for its findings. The report should further include a statement describing any significant concerns about the applicant expressed by students, faculty, or staff, even if the Committee concludes that it does not, ultimately, share those concerns.

F. The Vote of the Faculty.

Before the end of the fourth semester, the tenured and tenure-track faculty shall meet to discuss and vote on the retention of the faculty member under review. Before that meeting, the Committee shall circulate to the faculty its report and the final memorandum of the faculty member under review. The vote of a majority of the faculty attending that meeting shall be sufficient to authorize the retention of the faculty member under review for a period of up to four years, pending consideration for tenure.

XIII. SHIFTING BETWEEN ALTERNATIVE SECURITY AND TENURE.

A. Tenure to Alternative Security Prohibited. Faculty hired with eligibility for tenure may not be considered for alternative security without submitting to a broad, competitive search with the possibility of competition for, and loss of, their position.

B. Proposals to Convert a Position Eligible for Alternative Security to one Eligible for Tenure.

1. At any time after retention faculty members eligible for alternative security may offer to undertake the additional obligations of those eligible for tenure and request that the faculty change their status. Such a change in status may, but need not be, granted if the applicant has

a. consistently and substantially contributed to governance on committees and other projects; and

b. demonstrated ability to develop a significant body of scholarship in an area of law useful to the school's mission.

2. If such an offer and request is made, and after such investigation and committee reports as the faculty may direct

(which may include a review following the retention process for tenure), the faculty shall:

- a. decline the request or take no further action, leaving the faculty member eligible for alternative security subject to the up-or-out rule;
 - b. change the applicant's status, making him or her eligible for tenure and subject to the full tenure requirements; or
 - c. offer to consider the faculty member for a position eligible for tenure after a search. If the faculty member agrees to participate in a competitive search, giving up his or her right to continue automatically, then, in consultation with the Dean, the faculty shall direct a broad, competitive search for candidates for the modified position. At the conclusion of such a search the incumbent will become eligible for tenure unless the faculty and Dean concur in hiring a different candidate to commence in the following academic year.
3. If the applicant becomes eligible for tenure under either b. or c. above, the faculty shall consider extending the up-or-out period for tenure to permit a reasonable time to accomplish the additional undertakings and may extend it, but for no more than five additional years.

[XIII. B. Adopted by vote of the Faculty, Thursday, November 4, 2010.]

XIV. REVIEW FOR AND GRANTS OF TENURE OR ALTERNATIVE SECURITY

A. Required Vote and Timing of Grant.

1. Required Vote.

Tenure or alternative security may be granted only by a three-fourths vote of the members of the faculty with tenure or alternative security who are present at a meeting called for that purpose with reasonable written notice.

2. Time of Grant.

- Tenure or alternative security may be granted at any time on request of the Dean or the professor involved,

or on the faculty's own motion, but in the ordinary case of junior faculty it will be appropriate three years after the faculty's initial vote to continue an appointment.

- Denial of such a request is not a termination, nor does it preclude a subsequent request.

B. Criteria

Five broad considerations apply to the decision to grant tenure as a faculty member at the Law School. These are teaching effectiveness, constructive participation in the governance of the academic programs, contribution to the community and to the profession, the potential for personal and professional growth, and scholarship and publication. The candidate for tenure must meet at least minimum standards in each of the five categories. Unless otherwise agreed under §VII, A, alternative security candidates must meet all the tenure criteria except scholarship and publication.

1. Teaching Effectiveness.

Effectiveness can be measured by reference to a number of indicia which in themselves will not guarantee effectiveness but whose absence will most likely produce ineffectiveness. Those indicia include (1) organization and preparation, (2) mastery of the subject matter including knowledge of recent developments in the field, (3) clarity of communication, (4) enthusiasm for the material, (5) the ability to motivate and inspire students, (6) ability to establish the perspective of the material taught to the larger scheme of the law, (7) ability to constructively respond to questions in the classroom and in informal settings, (8) accessibility to students for purposes of supplementing the classroom teaching, and (9) fair and professional treatment of students in all matters including especially classroom demeanor and grading.

2. Participation in Governance of the Academic Programs.

A necessary component of faculty work not encompassed by the teaching effectiveness considerations is the "administration" of the academic program. Constructive participation in the work of the faculty requires the ability to work cooperatively with colleagues in committee work. Further, faculty should be able to provide effective counseling services. Cooperative and effective efforts require that faculty meet their obligations in a reliable and timely fashion.

3. Contribution to the Community.

Faculty having or eligible for tenure or alternative security have an obligation to make a contribution to the professional community. The precise nature of that contribution should be the responsibility of each faculty member; but it is important that each faculty member engage in some activity outside the academic program which relates to the Law School in a significant manner. The list of activities that qualify for such service to the profession and to the Law School includes but is not limited to (a) law reform activities, (b) continuing legal education, ((c) scholarship), (c) service to professional associations including but not limited to the ABA, the state bar associations and specialized bar associations, (d) organizational work on Law School lecture series, (e) public relations work for the Law School, (f) competitive moot court programs and (g) provision of legal services through public interest organizations.

4. Scholarship and Publication.

To receive tenure, a faculty member must have demonstrated engagement in scholarship and publication.

- a. A faculty member must have completed at least two substantial full-length heavily sourced law review articles; or one such article and a book or book chapter of comparable rigor.
- b. “Completed” means that the article has been substantially written while the faculty member was employed full-time at an accredited law school and that the article has been either :
 - (1.) published; or
 - (2.) accepted for publication and the candidate has received a binding, written commitment to publication from a publisher.
- c. In addition to completing the scholarship work described above, for tenure, a faculty member must show a commitment to scholarship. Evidence of this commitment includes but is not limited to previous publication of work or substantial work on another work meeting the Law School’s definition of scholarship.

- d. The scholarship requirements apply for tenure-track applicants employed full-time as of May 1, 2007.
[a.- d. adopted 2007]

5. Potential for Personal and Professional Growth.

Tenure should not be based exclusively on past performance. Perhaps the most important aspect of the tenure decision is the prospect for future performance. In that spirit, tenure decisions should be forward looking. Accordingly, the tenure candidate should have a demonstrated ability and willingness to adapt to changing circumstances, a willingness to grow professionally, and a desire to seek new challenges.

- C. Review of Faculty Already Retained by the Law School on Continuing Appointments.

1. Policy and Purpose.

The review affords the tenured and secured faculty the opportunity to review the performance of retained faculty to determine whether the faculty member currently meets the tenure or alternative security criteria and, whether once granted tenure or alternative security, the faculty member is likely to continue to meet those criteria and contribute positively to the institution as a member of the faculty. Thus a principle purpose of the review is to determine whether tenure or alternative security will be justified by continuing professional growth.

2. Organization and Schedule of the Review Committee.

- a. In the ordinary course, a faculty member will make the request for tenure at the beginning of the fifth academic year and no later than the beginning of the sixth year.
- b. The process will be commenced by the faculty member submitting a memorandum to the Dean and the Standing Committee, describing what the faculty member has done to meet the tenure standards and attaching the member's scholarship.
- c. The memorandum should be submitted by October 1st in the year that the faculty member requests review for tenure.
- d. The process may also be commenced by the Dean in the fourth or subsequent years by written notice to the faculty member

and Standing Committee by October 1st. In such cases, the faculty member's memorandum shall be due by November 1st.

- e. When a request for tenure has been made, the Standing Committee on Mentoring, Promotion and Tenure shall appoint a Review Committee composed of three members of the faculty having tenure or alternative security. It is expected that the Standing Committee will discuss the composition of the Review Committee with the faculty member being reviewed.
- f. The faculty member being reviewed may pick one member of the Review Committee, and may note any concerns about others who might be appointed.
- g. It is expected that Review Committees will comprise a range of faculty interests and expertise.
- h. The Review Committee will review the candidate based on the criteria applicable under §XIV. B. above.

3. Memoranda of Faculty Member under Review.

- a. The faculty member's memorandum initiating the tenure review shall be organized by reference to the criteria for tenure or alternative security.
- b. The memorandum should describe and reflect upon the faculty member's activities, future plans, challenges, and accomplishments during her/his time at the school, as relevant to the criteria for tenure or alternative security.
- c. The faculty member's memorandum should include, but not necessarily be limited to, the following:
 - (1) In writing the teaching effectiveness section of the memorandum, the faculty member should include the objectives, techniques for implementing those objectives, and student assessment tools for each course the faculty member has taught, a self-assessment of performance, and plans for the future.
 - (2) In writing the participation in governance section of the memorandum, the faculty member should include a list of all committees on which she/he has served, and any other significant governance activities in which she/he

has engaged, a self-assessment of performance, and plans for the future.

- (3) In writing the contribution to the community section of the memorandum, the faculty member may describe achievements in that connection and may identify any persons in the community at large who can attest to those achievements.
 - (4) In writing the scholarship section of the memorandum, the faculty member should describe completed works and an agenda for future scholarship. The faculty member also should provide the Committee with a copy of any published articles and any finished articles submitted for publication. The memorandum shall also include the names of faculty from other schools who may be appropriate for review of scholarship, as well as the specialties of faculty who would be knowledgeable and appropriate for such review.
 - (5) In writing the potential for growth section of the memorandum, the faculty member should describe plans for professional growth and view of her/his role in the future of the institution.
4. Revision in Response to Committee. After meeting with the Committee upon completion of its work, the faculty member should revise and expand the initial memorandum, as appropriate, in response to the findings of the Committee.
 5. Procedures of the Tenure Review Committee.

In evaluating the faculty member and preparing its report, the Committee should take the following steps:

- a. Evaluation of Teaching Effectiveness.
 - (1) In the fall and spring semesters, each member of the Committee should attend at least one full class taught by the faculty member. It is highly desirable that one of the three members should attend successive classes in the same course. It is also highly desirable that at least one member of the Committee should attend a class in each course taught during that semester by the faculty member.

- (2) The Committee should review all student evaluations of the faculty member for all courses taught at the school. The Committee's analysis should take account both of student comments and of the numerical measures contained in student evaluations.
- (3) The Committee should solicit by e-mail comments from the entire student body relating to the faculty member. The Committee should take care to maintain the confidentiality of students who provide comments, but should disregard any comments offered anonymously except to the extent they describe an event capable of, and meriting, independent verification.
- (4) The Committee should read the syllabi used by the faculty member, and should read the exam questions or other instruments created by the faculty member for the purpose of grading students. Teaching and evaluation methods should be scrutinized for rigor and results. It is expected that teachers will have a coherent and fair standard for grading.

b. Evaluation of Participation in Governance.

- (1) In reviewing participation in Governance of the Academic Programs, the Committee will review what the applicant has done. For tenure, it is expected that a faculty member will carry a proportional share of the workload, and be reliable and productive in relation to their responsibilities of governance.
- (2) The Committee will review the applicant's work with an eye towards whether the applicant was informed, thoughtful, civil, engaged, and constructive in the committee work and with the faculty generally.

c. Evaluation of Contribution to the Community.

Contribution to the community should be viewed broadly and should involve work above and beyond the assigned tasks for the benefit of the school or work in the larger community. It is assumed that the faculty member's contribution will relate to something of the faculty member's own initiative which relates to the profession, public interest or the institution. If the work has been done in the larger community, the candidate shall provide the names of people the Committee might talk to about the faculty member's community work.

d. Evaluation of Scholarship.

- (1) It is desirable for the Committee to seek assistance from three outside reviewers in connection with its review of the faculty member's scholarship. As noted, the candidate should include names of possible reviewers and appropriate fields of expertise in the memorandum to the Committee. In the ordinary course, it is anticipated that if possible, some of the outside reviews will be provided by faculty suggested by the candidate. It is appropriate for the Committee to use outside reviewers who reviewed and commented on the faculty member's work prior to acceptance for publication.
- (2) Generally after receiving the names of potential reviewers, it is expected that a member of the tenure Committee will contact the selected reviewers and ask if they are willing to assist. The Standing Committee will maintain a small budget for honoraria to be paid to outside faculty reviewers at the time the Committee writes to thank them for their completed review.
- (3) The reviewers will be asked to give their impressions about the article in regards to whether it is legally sound, whether appropriate sources were taken into account and properly identified, and whether the article is useful and/or interesting. The reviewer's impressions shall be shared with the candidate. While further review shall not be part of the ordinary process, the Committee may ask for further review if there are questions about the scholarship raised by the first set of reviewers.
- (4) Because review of scholarship will take time, it is expected that the tenure committee will undertake steps to begin the process of contacting potential reviewers as soon as possible after October 1st, and should strive to have completed the process by the beginning of the spring semester.

e. Evaluation of Potential for Growth.

In reviewing potential for growth, the Committee is charged with evaluating whether the faculty member is committed to ongoing professional improvement and will continue to strive

for success for the institution and its graduates. Tenure should be a milestone for a successful career as a professor, not an end point.

6. The Committee's Written Report.

- a. After completing the investigation, the Committee will draft a report which will be shared with the applicant. The Committee's written report to the faculty should comprehensively describe its findings as to the strengths and weaknesses of the faculty member under review.
- b. The Committee should also include in its report a thorough description of its procedures and of the basis for its findings.
- c. The report should further include a statement describing any significant concerns about the applicant expressed by students, faculty, or staff, even if the Committee concludes that it does not, ultimately, share those concerns.
- d. The applicant will have an opportunity to comment on the draft before it is final and may revise his or her tenure memorandum to respond to issues raised.
- e. It is anticipated that the report of the Committee and the faculty member's final tenure memorandum will ordinarily be submitted to the faculty by the beginning of the month of April in the academic year in which the request was made.

7. Meeting and Vote of the Faculty Having Tenure or Alternative Security.

- a. Before the end of the spring semester of the academic year in which the request was made, the tenured faculty shall meet to discuss and vote on the tenure of the faculty member under review.
- b. Before that meeting, the Committee shall circulate to the faculty its report and the final memorandum of the faculty member under review.
- c. The vote of three-fourths of the faculty participating in that meeting shall be sufficient to grant tenure of the faculty member under review.

D. Appeal from Denial of Tenure or Alternative Security.

1. A faculty member who has applied for tenure or alternative security and has been denied during the last year in which they are eligible may appeal to the Board of Trustees.
2. To do so, the faculty member shall within thirty days of the final faculty decision deliver to the Dean in writing a request that the Trustees reverse the faculty decision, a statement of the reasons for reversal, and any supporting documentation.
3. The Dean shall convey this to the Trustees along with all written committee reports or other materials submitted to the faculty regarding the application, the minutes of meetings at which the faculty deliberated or voted, and the Dean's recommendation, if any, to the Trustees.
4. If there is a Dean's recommendation, it must be delivered to the appellant, who may address a written response to the Board.
5. The Trustees may decide the appeal on the written record, may refer the matter to a committee for investigation, or proceed in any other manner which assures notice and opportunity for the faculty member to be heard regarding any facts or charges not previously disclosed. The appeal shall be finally decided by vote of the Trustees according to their best judgment of the interests of the Law School and the justice of the case.

E. Appointments Subject to Special Conditions: Carryover and Removal.

1. Specifying of Conditions.

At the time of granting tenure or alternative security, the faculty shall specify which, if any, of the three special conditions apply to the appointment (See §VII, E). In case of failure to specify, all conditions attached to the prior contract are attached to the faculty member's tenure or alternative security.

2. Removal of Special Conditions at Time of Granting Tenure or Alternative Security.
 - a. When a continuing appointment has been subject to special conditions, the incumbent is free to request tenure or alternative security without one or more such conditions, but must submit to the possibility of competition for and loss of the position.
 - b. If a faculty member with a continuing appointment subject to special conditions requests tenure or alternative security without one or more of those conditions, then the faculty shall either
 - (1) decline to consider dropping conditions leaving the professor with the option of requesting tenure with the conditions, or
 - (2) subject to subsection (3) below and in consultation with the Dean, direct a broad, competitive search for candidates for the potentially modified position. At the conclusion of such a search the faculty shall:
 - (a) grant the less restrictive tenure or alternative security to the incumbent pursuant to XIV. C.,
 - (b) recommend that the Dean hire someone in place of the incumbent for an initial hiring period of two years with all its usual rights and limitations under these rules, or
 - (c) leave the incumbent in a continuing appointment (subject to the up or out rule) with the option of applying for tenure or alternative security with the original conditions.

- (3) When the request to drop a condition will significantly affect budgetary decisions (e.g. by committing the school to maintain a faculty member without regard to outside funding, or to replace an administrator or librarian as a result of lateral migration into teaching) the faculty may not commence a search under subsection b. above without first securing approval from the President of the budgetary impact of a less restrictive appointment.

3. Removal of Special Conditions After Grant of Tenure or Alternative Security.

- a. A faculty member with tenure or alternative security subject to special conditions may apply for removal of such conditions.
- b. The faculty shall, by a simple majority of the faculty with tenure or alternative security; take one of the following actions
 - (1) decline to take any action on the request, or,
 - (2) subject to subsection (4) below and in consultation with the Dean, cancel the condition(s), or
 - (3) offer to consider the faculty member for a position without the condition(s) after a search. If the faculty member agrees to give up the current tenure and participate in such consideration, then, subject to subsection D. below, and in consultation with the Dean, the faculty shall direct a broad, competitive search for candidates for the modified position. At the conclusion of such a search the faculty shall:
 - (a) grant the less restrictive tenure or Alternative Security to the incumbent, or
 - (b) hire someone in place of the incumbent.

4. Budgetary Impact.

When the request to drop a condition will significantly affect budgetary decisions (e.g. by committing the school to maintain a faculty member without regard to outside funding, or to replace an administrator or librarian as a result of lateral migration into teaching) the faculty may neither cancel the conditions nor commence a search under subsections B. or C. above without first securing approval from the President of the budgetary impact of a less restrictive appointment.

XV. [Reserved for Post-Tenure Review]

XVI. SABBATICALS.

A. Purpose of Sabbatical Leave.

1. Sabbatical leave (release from teaching and service responsibilities) for qualified faculty is one of several avenues (scholarship grants, funded research and other forms of institutional support) to enhance professional development and to benefit the institution.
2. The sabbatical leave serves stimulates faculty to enrich personal and institutional professional resources through individual study, research, professional travel, professional writing or other endeavor that enhances a field of legal or related study or enhances the faculty member's participation in and contribution to development of the law and legal education.

B. Definition of Sabbatical Leave With Illustrations.

1. Sabbatical leaves are to be differentiated from “leaves without pay.” While the term sabbatical leave is typically defined as “a leave often with pay granted usually every seventh year (as to a college professor) for rest, travel, or research”, the Law School’s sabbatical leave policy is to be more narrowly construed.¹
2. As noted elsewhere in this Sabbatical Leave Policy, sabbatical leaves will only be granted if the requesting faculty member is able to demonstrate a sufficient benefit to the Law School. Sabbatical leaves should not be requested or approved for if they are primarily for the professor’s economic purposes.
3. Sabbatical leaves that are primarily for economic purposes will be presumed not to sufficiently benefit the Law School, although such

¹ Merriam Webster’s Collegiate Dictionary, 10th Ed.(1994).

presumption may be overcome by the requesting faculty member. Such an economically motivated leave shall be presumed to be more appropriately granted as either a leave without pay or a hybrid sabbatical leave/leave without pay.

4. The faculty recognizes that not all requested leaves can be cleanly divided between sabbatical leaves and leaves without pay. As a result, the Dean shall be empowered to grant hybrid leaves that involve a partial sabbatical leave (i.e., partial compensation and benefits) and a partial leave without pay.
5. The following illustrations are meant to provide guidance with this admittedly delicate topic:
 - a. Faculty member A receives a Fulbright grant to lecture or conduct research in a foreign country. Faculty member A shall be presumed not to be requesting a sabbatical leave primarily for the faculty member's economic purposes.
 - b. Faculty member A requests a sabbatical leave for the purpose of writing a law-related, non-fiction book (e.g., a casebook, a treatise, a practitioner's guidebook, a scholarly book) and Faculty member A expects to generate income from sales of the book. Faculty member A shall be presumed not to be requesting a sabbatical leave primarily for the faculty member's economic purposes.
 - c. Faculty member A requests a sabbatical leave for the purpose of working in-house at a private company on a project that is of substantial professional interest to the faculty member. It is presumed that faculty member A will be compensated by the private company and that a leave without pay would be the appropriate leave for faculty member A.
 - d. Faculty member A requests a sabbatical leave for the purpose of working at a law firm on a non-pro bono project that is of substantial professional interest to the faculty member. It is presumed that faculty member A will be compensated by the law firm and that a leave without pay would be the appropriate leave for faculty member A.
 - e. Faculty member A requests a sabbatical to write a law review article. Faculty member A envisions writing a substantial article that will require her full-time efforts for the semester, which might include time developing classroom materials related to the article or preparing materials for conference presentations on the article ("Related Ancillary

Efforts”). Faculty member A shall be presumed not to be requesting a sabbatical leave primarily for economic purposes.

- f. Faculty member A requests a sabbatical to write a law review article. Faculty member A envisions writing a law review article that will require less than full-time efforts for the semester, including the time spent on Related Ancillary Efforts. Increasing the number of hours worked at an outside employment activity (e.g., increasing hours worked at a law firm for which the faculty member is serving as counsel) would be considered an indication that the faculty member considers the writing of the law review article to be a less than a full-time activity. In such a situation, it is presumed that either a hybrid sabbatical leave/leave without pay or simply a leave without pay would be the appropriate leave for faculty member A.

C. Eligibility.

1. All tenured faculty members are eligible for sabbatical leave after serving at the Law School for a period of not less than seven academic years, during which time he or she provided full-time service, and during which time he or she did not take a sabbatical leave.
2. In exceptional circumstances, the Professional Development Committee may grant a waiver of this restriction.

D. Application Procedures.

1. Except under extraordinary circumstances, written application for sabbatical leave shall be submitted to the Professional Development Committee not later than October 1st of the academic year preceding the year in which the faculty member expects to take sabbatical leave.
2. In all circumstances, the Professional Development Committee shall promptly circulate the submitted sabbatical leave application to the Law School’s faculty for their reference.
3. The application shall set forth:
 - a. the effective date and duration of the leave;
 - b. the purpose for the leave and a description of the means by which that purpose will be served;

- c. the date by which the faculty members expects to submit a written report of professional activities conducted during the period of the leave;
- d. the date of any prior sabbatical leave taken while at the Law School and a copy of the Report, if any, submitted to the Faculty for that leave; and
- e. any employment activities, other than the purpose of the leave, that the faculty member expects to undertake during the sabbatical leave.

E. Criteria and Decision.

1. The decision to grant sabbatical leave shall be made by the Dean acting on recommendation made by the Professional Development Committee, provided that, in the event the Dean declines to follow the recommendation of the Professional Development Committee, the Dean shall inform the applicant and the Committee, in writing, of the reasons for the decision.
2. Where possible, the final decision to grant or deny the request for sabbatical leave shall be made not later than December 15 of the academic year preceding the year in which the leave is expected to be taken.
3. In making its recommendation to the Dean, the Professional Development Committee shall apply the following criteria:
 - a. the perceived benefit to the Law School and to the applicant resulting from the activities proposed during the sabbatical period;
 - b. the feasibility of the plan submitted and the likelihood that the applicant will complete the plan;
 - c. the number of sabbatical leaves previously granted to the applicant and the duration of time since the last sabbatical leave or other leave was taken; and
 - d. the achievement of stated objectives of previous sabbatical leaves.
4. In acting on the recommendation of the Professional Development Committee, the Dean shall apply the following criteria:

- a. the effect of the leave on the academic program, including the necessity to reduce course offerings regarded as vital and the availability of other alternatives to maintain the curriculum;
 - b. equalization of opportunity for professional development among faculty; and
 - c. the specific burden imposed on other faculty by the absence of the applicant.
5. General policy considerations which should guide the Dean in acting on recommendations of the Professional Development Committee include:
- a. no more than two sabbatical leaves should be granted in any given academic year; and
 - b. other factors being relatively equal, the applicant who has waited the longest period of time since the last sabbatical leave should be given preference when there are more than two qualifying applications in any given academic year.
6. Any member of the faculty that is concerned about a particular request for a sabbatical leave shall have the right to agenda that concern at a faculty meeting for discussion. Such discussion at a faculty meeting shall solely be for the purpose of providing input to the Dean.
7. The final decision on whether or not to grant a sabbatical leave remains with the Dean.
- F. Duration of Sabbatical Leave.
1. The duration of a sabbatical leave may be for one semester in the ordinary case and two semesters in the exceptional case.
 2. Exceptional circumstances justifying a two semester leave must involve an opportunity which requires more than a single semester to complete and which has the prospect of a high return for the faculty member and the Law School.
- G. Compensation During Sabbatical Leave.
1. Faculty members on a one semester, full sabbatical leave will receive salary and benefits, including access to a faculty expense account, on the same basis as that faculty member would receive salary and benefits while engaged in full-time service at the Law School.

2. Faculty members on a two semester, full sabbatical leave will receive full salary and benefits as provided in subsection 1. Herein for the first semester of the leave and 50% of the salary that person would receive while engaged in full-time service for the second semester of the leave. In the second semester of sabbatical leave, benefits will be extended on the same basis that such benefits are available to persons on unpaid leave.

H. Reporting and Return Requirements.

1. Upon approving the application for sabbatical leave, the Dean shall negotiate a time certain by which the faculty member agrees to submit a written report to the faculty setting out the activities conducted during the sabbatical leave and the benefits realized from the leave.
2. The faculty member taking a sabbatical leave undertakes an obligation to make a good faith effort to share the benefits of the professional development activities with colleagues. At a minimum, those efforts include a written report to the faculty. Failure to make a written report may be taken into account in the evaluation of the faculty member's performance for purposes of compensation and related matters.
3. As a condition of each sabbatical leave, the faculty member shall agree, in writing, to return to the Law School for at least one year of service in the year following the conclusion of the leave or in the alternative, to compensate the Law School for its actual costs in providing services normally provided by the faculty member on leave. In exceptional circumstances involving hardship or illness, the Dean may waive obligation to repay the Law School.
4. The Dean's Office shall maintain and make available for faculty inspection and guidance all sabbatical application materials, Professional Development Committee recommendations, decanal sabbatical decisions (including the terms of each sabbatical leave arrangement), and post-application reports by the faculty member.

I. Applicability of the Sabbatical Leave Policy.

1. The Sabbatical Leave Policy described above shall apply to all requests for leave (including a partial sabbatical leave pursuant to a hybrid sabbatical leave/leave without pay), with the exceptions listed below which are governed by policies elsewhere described. The exceptions not covered by the sabbatical policy include:

- a. leave without pay;
 - b. leave occasioned by family or medical circumstances; and
 - c. leave for faculty working under full-year contracts who seek a leave under terms other than those set forth herein.
2. Faculty members are expected to assist the Dean in the effort to find coverage for the courses normally offered and the duties usually performed by that faculty for the period of the sabbatical leave. In the ordinary course, faculty members should avoid asking for leave during periods in which they would ordinarily be teaching high enrollment or specialized courses.
 3. However, professional development opportunities may arise at a time which requires a departure from the ordinary expectations. The Dean, the Professional Development Committee and the faculty member should have the flexibility to search for an accommodation of the competing interests.

XVII. SEXUAL, ROMANTIC AND FAMILIAL RELATIONSHIPS.

- A. New Relationships Discouraged or Prohibited; Disclosure and Supervision Requirements.
 1. This section does not apply to sexual, romantic, familial relationships in existence before one or both individuals joined the Law School community. (See Pre-Existing Relationships, Section B herein.)
 2. In General.
 - a. A romantic relationship is defined as an interaction between a faculty member or staff member and a student which is characterized by physical or verbal intimacy or familiarity manifesting the existence of a sexual attraction between the two individuals.
 - b. There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions. Such positions include (but are not limited to) faculty and student, supervisor and employee, senior faculty and junior faculty, adviser and advisee, teaching assistant and student, and the individuals who supervise the day-to-day student environment.
 - c. Because of the potential for conflict of interest, abuse of power, exploitation, the appearance of favoritism, and bias, such

relationships may undermine the real or perceived integrity of the supervision and evaluation provided, and the trust inherent particularly in the faculty-student context. They may, moreover, be less consensual than the individual whose position confers power or authority believes.

- d. The relationship is likely to be perceived in different ways by each of the parties to it, especially in retrospect.
- e. Moreover, such relationships may harm or injure others in their academic or work environment. Relationships in which one party is in a position to review the work or influence the career of the other may provide grounds for complaint by third parties when that relationship gives undue access or advantage, restricts opportunities, or creates a perception of these problems.
- f. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic involvement, this past consent does not remove grounds for a charge based upon subsequent unwelcome conduct.

3. Relationships Between Employees and Students.

- a. Sexual or romantic relationships between employees are strongly discouraged where one employee has greater authority at the Law School than does the other.
- b. Equally, such relationships between a non-faculty employee and a student are discouraged where the employee is in a position to exercise power or authority over the student.
- c. For this purpose Teaching or Research Assistants are considered employees.

4. Notice and Recusal.

- a. If a consensual sexual or romantic relationship involving an employee does develop, the person in the position of greater authority or power will bear the primary burden of accountability, and must ensure that he or she does not exercise any supervisory or evaluative function over the other person in the relationship.

- b. Where such recusal is required, the recusing party must also notify his or her supervisor so that the supervisor can exercise responsibility to evaluate the adequacy of the alternative supervisory or evaluative arrangements to be put in place.
 - c. To reiterate, the responsibility for recusal and notification rests with the person in the position of greater authority or power.
 - d. Failure to comply with these recusal and notification requirements is a violation of this policy, and therefore grounds for discipline.
 - e. The Law School has the option to take any action necessary to insure compliance with the spirit of this recusal policy, including transferring an employee in order to minimize disruption of the work group.
 - f. In those rare situations where it is programmatically infeasible to provide alternative supervision or evaluation, the Associate Dean or Vice President for Finance must approve all evaluative actions and the Dean will take appropriate compensation actions.
5. Relationships Between Faculty and Students.
- a. The role of faculty is multifaceted, including serving as intellectual guide, counselor, mentor and advisor; the faculty's influence and authority extend far beyond the classroom.
 - b. Consequently and as a general proposition, a sexual or romantic relationship between a faculty member and a student, even where consensual and whether or not the student would otherwise be subject to supervision or evaluation by the faculty member, is inconsistent with the proper role of the instructor.
 - c. The Law School therefore prohibits such relationships.
 - d. This policy extends to adjunct faculty and to visiting faculty.
 - e. Failure to comply with this policy is grounds for discipline.
 - f. Enforcement of the policy with regard to faculty will be accomplished in accordance with FARR.

- g. Nothing in this policy is intended to prohibit, proscribe, or otherwise limit social relationships between faculty and students which do not involve romantic or sexual relationships. Such friendly interaction outside the classroom and even outside the school itself provides an opportunity for students to gain a better understanding of the role of lawyers as well as opportunities to teach and learn.

6. Relationships Among Students.

Relationships among students which do not involve actions violating the Conduct Code or Sexual Harassment Policy are left to the judgment and discretion of the parties.

B. Pre-Existing Relationships; Disclosure and Supervision Requirements.

1. Disclosure. When an employee or faculty member has a pre-existing spousal, familial, sexual, or romantic relationship with another employee or student, it is his or her duty to disclose it to his or her supervisor or, in the case of faculty, to the Dean or Associate Dean.
2. Relationships Between Employees and Between Employees and Students. Such pre-existing relationships are subject to the rules in A. 3. And 4. above.
3. Between Faculty and Students.
 - a. The potential for actual or apparent conflicts should be minimized to the extent it does not significantly impair the student's educational opportunities.
 - b. The Associate Dean shall do so by such means as requiring enrollment in sections taught by unrelated faculty or providing for evaluation by unrelated faculty in situations of close supervision (e.g. clinics, law review, moot court).
 - c. In situations where alternative sections or supervision are not available or practical, the Associate Dean may permit enrollment in courses which are graded anonymously or on a non-letter basis.

C. Enforcement.

1. Penalties. Disciplinary sanctions for violations of this policy may range from private reprimand to dismissal depending on all relevant factors, including (but not limited to) actual or potential for harm, prior

conduct, state of mind, and the relative authority or status of the parties.

2. Due Process. No one who denies a charge shall be subject to discipline without having disclosure of, and full opportunity to respond to, all relevant evidence against them, including the names of witnesses or accusers.
3. Employees and Adjunct Faculty. Subject to the Due Process provision, alleged violations by employees and adjunct faculty may be dealt with as with other complaints under the authority of the Vice-President or Associate Dean, respectively.
4. Full Time Faculty.
 - a. Dismissal of full time faculty prior to the end of their current term, contract, or tenure cannot be imposed without following the procedures in Articles XI or XVIII.
 - b. Subject to the Due Process provision above, lesser sanctions are in the discretion of the Dean, or, if the Dean is accused, in the Executive Committee of the Trustees.
5. Agreed Disposition. Notwithstanding the above, the President may enter into an agreed disposition of any charges which will be reduced to writing and included in the employee or faculty member's personnel file.

D. Policy Review and Evaluation.

This policy went into effect on March 6, 2008 by joint action of the President/Dean and the Faculty. It is subject to periodic review, and any comments or suggestions should be forwarded to the Associate Dean.

XVIII. DISMISSAL OF TENURED FACULTY.

A. General Financial Exigency.

1. Requirement of Faculty Retrenchment Plan and Priorities.

Terminations based on financial exigency may be made by the Dean or Dean's designee only after and in accordance with (a) the adoption by the faculty of a policy of retrenchment, and (b) the decision by the faculty on specific priorities for implementing retrenchment. The general policy and specific

priorities shall be independent of terminations, if any, of particular faculty positions.

2. Notice to Affected Faculty.

- a. The Dean or Dean's designee shall give all regular faculty members written notice of decisions to eliminate programs or positions and the manner in which those decisions affect the relationship of each to the Law School.
- b. Every tenured faculty member whose position is terminated shall receive full salary and benefits for a minimum of 12 months following receipt of written notice of termination, whether or not the faculty member's instructional and other assignments are continued during the 12 months.

3. Faculty Review of Termination Decisions.

- a. A faculty member wishing to challenge a termination due to financial exigency may seek a review of the decision by a committee comprising five regular faculty members, three of whom shall be tenured and at least one of whom shall be chosen by the faculty member challenging the decision.
- b. The committee shall be chosen by the faculty and shall follow such procedures as the faculty shall direct, provided that such procedures comport with fundamental fairness and procedural due process.
- c. At a minimum, the faculty member must have a right to fully contest factual disputes. In furtherance of that end, the faculty member must be permitted to have representation by counsel and an opportunity to be heard, including the opportunity to present evidence relevant to the case.
- d. The committee shall maintain a complete record of its proceedings and shall issue a decision, in writing, stating its findings on all matters in controversy, and spelling out the basis for its decision.

4. Hiring Preference for Terminated Faculty.

Regular faculty subject to termination under this subdivision A. shall have written notice of any faculty position which becomes available

following termination notice and hiring preference over comparably qualified outsiders considered to fill such position.

B. Failure of Condition in Tenure Contracts Subject to Special Conditions.

1. Determining Failure of Condition.

Subject to an appeal to the faculty, terminations for failure of special conditions may be made by the Dean for:

- a. Insufficiency of the outside funding source;
- b. Termination or major, relevant modification of the designated program or administrative position;
- c. Continuing inability or unwillingness to perform the specified administrative duties; or
- d. Continuing inability or unwillingness to perform the duties of the Director or Assistant Director of the Library.

2. Notice Required.

Such termination shall be effective on the first day of July following the third entire semester (not counting any summer term) after notice of termination is received. Such notice shall be communicated confidentially in writing and may be revoked in like manner anytime prior to a formal appeal to the faculty. An appeal will not toll or stay the running of the notice period.

3. Meeting Required.

Either before or, as soon as practicable, after the notice required above, the Dean shall present the reasons for termination and hear the incumbent's response in a face-to-face meeting arranged specially for this purpose. The incumbent may appeal termination to the faculty at any time after the notice or the face-to-face meeting, whichever is later.

4. Appeal.

Because a failure of special conditions involves financial policy and/or administrative duties, a termination by the Dean on that ground shall be upheld on appeal unless it appears by clear evidence that the termination was:

- a. in violation of §§ I and II;
- b. in bad faith, e.g. for sham or trivial reasons to circumvent tenure; or
- c. so unreasonable on the facts as to be arbitrary or capricious.

The appeal shall be heard by a committee comprising five regular faculty members, at least three of whom shall be tenured and at least one of whom shall be chosen by the faculty member challenging the decision. The committee shall be chosen by the faculty and shall follow such procedures as the faculty shall direct, provided that such procedures comport with fundamental fairness and procedural due process.

C. Dismissal for Cause.

1. Grounds.

The only grounds for dismissal of tenured professors other than stated in subdivisions A. and B. above are:

- a. Continuing failure or inability substantially to carry out the duties of a faculty member; or
- b. Such gross misconduct (such as unjustified violence, dishonesty, or abuse of power) as to make continued collegial association with the actor intolerable.

2. Procedure.

- a. Dismissal shall be preceded, if practicable, by formal discussions involving the Dean or Dean's designee and the faculty member. Such discussion shall include a list of perceived deficiencies in the faculty member's performance, any steps the faculty member is expected to take to cure the deficiencies in the performance, and the time by which such steps are expected to be taken.
- b. As soon as is feasible after the discussion, not to exceed a period of five (5) business days, the Dean or Dean's designee shall provide the faculty member with written notice of the alleged deficiencies, the steps the faculty member is expected to take to cure the alleged deficiencies, and the time by which such steps are to be taken.

- c. If, after the expiration of the time period specified in the notice required by (b.), the faculty member has not cured the alleged deficiencies, the Dean or Dean's designee may take such action as is appropriate to the situation.
- d. If the Dean or Dean's designee determines that the faculty member should be dismissed, the faculty member shall be notified in writing of that determination and the precise basis upon which it is made. The written notice should be provided to the faculty member as soon as possible after the determination has been made, and where termination is involved, not later than December 1st of the academic year preceding the academic year of termination.

3. Review.

- a. A faculty member wishing to challenge dismissal for cause may seek a review of the decision by a committee comprising five regular faculty members, three of whom shall be tenured and at least one of whom shall be chosen by the faculty member challenging the decision.
- b. The committee shall be chosen by the faculty and shall follow such procedures as the faculty shall direct, provided that such procedures comport with fundamental fairness and procedural due process.
- c. At a minimum, the faculty member must have a right to fully contest factual disputes.
- d. In furtherance of that end, the faculty member must be permitted to have representation by counsel and an opportunity to be heard, including the opportunity to present evidence relevant to the case.
- e. The committee shall maintain a complete record of its proceedings and shall issue a written decision, stating its findings on all matters in controversy, and spelling out the basis for its decision.
- f. The Law School shall have the burden of showing, by a preponderance of the evidence, the grounds for dismissal, but the individual shall have the burden of proving by the preponderance of the evidence any defense that the dismissal violates the prohibitions of §I and II.

- g. A tenured faculty member dismissed under this section for reasons not involving moral turpitude shall receive full salary and benefits for a minimum of 12 months following receipt of written notice of termination, whether or not the faculty member's instructional and other assignments are continued during the 12 month period.