
PROCEDURES FOR UNCG HEARINGS IN “SERIOUS SANCTION” CASES
The University of North Carolina at Greensboro

<http://provost.uncg.edu/documents/personnel/sanctions.pdf>

Faculty Committee on Due Process
Adopted, Spring 2006
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1. Purpose and Nature of the Hearing

In accordance with Section 3.B and Section 7 of the Regulations on Academic Freedom, Tenure and Due Process of The University of North Carolina at Greensboro, a faculty member who holds permanent tenure or an appointment to a specified term of service may be discharged or suspended before that term expires only for incompetence, neglect of duty, or misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty. Because the imposition of serious sanctions against a tenured faculty member¹ (hereafter referred to as “the appellant”) may implicate protected constitutional liberty and property interests, the appellant is entitled to due process prior to the imposition of such a sanction.

Hearings in serious sanction cases serve several important purposes. The primary purpose of the hearing is to give the appellant notice and an opportunity to appeal the decision. The hearing is the venue wherein the appellant is able to confront witnesses and evidence presented by the University in support of the charges. The due process hearing also affords the appellant an opportunity to present evidence in his or her own behalf, either in refutation of the charges or in mitigation of the sanction. Another important purpose of the hearing is to create a record of testimony and documentary evidence for review by the parties, the Board of Trustees and the Board of Governors, should the appellant seek further review of the decision.

Faculty due process hearings are not “trials” subject to all of the formality and strict rules of evidence that are applied in civil and criminal courts. Rather, the process, although having some adversarial attributes, is designed to be as collegial as possible. All relevant evidence may be accepted, subject to the Committee’s discretion to disallow repetitive or cumulative evidence or evidence found to be irrelevant or beyond the scope of the charges, (whether testimonial or documentary). The Committee possesses sole discretion and authority to decide issues of credibility and to determine what weight it will give to any particular item of evidence submitted. For example, hearsay (third person) testimony, while admissible, may be given less weight than first person or eyewitness testimony.

Hearings are closed to the public. During the hearing the only persons permitted to be in the hearing room are the Committee, the Provost and/or Provost’s counsel², the appellant and his or her counsel, the court reporter, the University Counsel³ and any witness who is currently giving testimony.

¹ For the purposes of this document, the term “tenure” or “tenured faculty member” includes faculty members who either hold permanent tenure or who hold appointments for a specified term of service. This document does not cover the nonreappointment of tenure-track faculty.

² Hereafter, the term “Provost” means the Provost or the Provost’s counsel as provided in Section 7.G. of the Promotion, Tenure, Academic Freedom, and Due Process Regulations of The University of North Carolina at Greensboro.

³ University Counsel’s role is limited by the Board of Governors to that of providing advice to the Committee on procedural matters.

2. The Scope of Review and Authority

The scope of review by the Faculty Committee on Due Process in serious sanction cases is limited to determining whether the University has presented evidence to support its charge that the appellant is incompetent, or guilty of neglect of duty, or of misconduct of such a nature as to indicate that the individual is unfit to continue as a member of the faculty. The Committee may consider the opposing evidence and mitigating factors presented by appellant and his/her counsel in arriving at this determination. The Committee will present its findings and recommendations to the Chancellor. The Committee does not have authority to make a final decision regarding the imposition of serious sanctions against the appellant.

3. The Burden and Standard of Proof

The burden of proving incompetence, neglect of duty or misconduct rests with the University.

The standard of proof, i.e., the degree of proof required, is proof by clear and convincing evidence. This means that the University must prove that the allegations are substantially more likely true than not true. If one thinks of this burden of proof as a tipping of scales, the scales must be substantially tipped in favor of a finding of culpability.⁴ The Committee determines whether this burden of proof has been met by weighing all of the evidence and the demeanor and credibility of the witnesses in the light of experience and common sense judgments.

4. Pre-hearing procedures

a. Scheduling the hearing

Upon receiving notice that the appellant has requested a hearing before the Committee, the Committee chair shall schedule a hearing. The date for the hearing shall be set at a time that is not less than twenty business days from the date that the Committee received the appellant's request in order to give the appellant adequate time in which to prepare a defense. Notice of the hearing shall be given in writing to the Provost and to the appellant. Requests for a reasonable postponement of the hearing date may be granted for good cause shown at the Committee's sole discretion. The committee endeavors to complete the hearing within 90 calendar days.

b. Arrangements for court reporter and transcript

The Committee chair will arrange for the hiring and payment of a court reporter through the Office of the Provost. The court reporter will make a verbatim record of the hearing. Any party desiring a transcript may obtain one from the court reporter at his or her own cost.

c. Notification of attendance at hearing by a representative or attorney

⁴ As distinguished from criminal cases where the standard is "proof beyond a reasonable doubt" in which case the scales must be tipped nearly to the maximum extent of their travel.

No later than five business days prior to the hearing, the appellant will notify the Committee chair, the Provost and University Council if he or she intends to be accompanied to the hearing by an attorney. The University may elect to obtain counsel to represent the Provost at the hearing and may request a postponement of the hearing date for that purpose, which may be granted for good cause, at the Committee's sole discretion.⁵

d. Witnesses and exhibits

In the spirit of avoiding unfair surprise, and to facilitate the hearing process, the parties must provide a list of witnesses and copies of exhibits they intend to introduce at the hearing, to each other, and to the Committee chair, at least two business days prior to the date set for the hearing. Unless voluminous, copies of exhibits should also be made for each Committee member. The failure to list a witness, or to provide advance copies of all exhibits, will not preclude a party from calling the witness or from introducing a document. However, the opposing party may be granted a temporary adjournment of the hearing if the Committee deems a delay necessary in order for that party to adequately respond to the new evidence. It is important to note that the Committee has no authority to compel the attendance of witnesses. However, the chair may request that the Chancellor ensure that all witnesses who are employees of the University are given permission to attend the hearing.

5. The Hearing

a. Call to order-Quorum

The chair will call the hearing to order, determine whether a quorum exists, and explain procedures. A quorum consists of a simple majority of the total Committee membership.

b. Challenge to Committee membership

Committee members who hold an appointment in the appellant's department or school (in schools which have no departments), who will testify as witnesses, or who have any other conflict of interest, are disqualified from participating in that hearing. Following the call to order, each party will be given an opportunity to challenge any Committee member's qualifications to serve. The Committee (excluding the Committee member under challenge) will decide whether to grant or deny that challenge based on a majority vote. If a quorum is lost through disqualification or the granting of challenges, the hearing will be adjourned until replacement members can be appointed.

c. Opening remarks

Starting with the Provost, each party will be given the opportunity to make opening remarks limited to five minutes each. The purpose of opening remarks is to orient the Committee to the nature of the case and to the facts the party intends to establish. Opening remarks are not evidence.

d. The Provost's case in chief

⁵ An attorney on the University Council's staff may be appointed by the University Council to represent the Provost. In such case, the University Council and staff attorney shall have no communications concerning the merits of the case, but may discuss matters of procedure. In the alternative, outside counsel may be provided by the Attorney General's Office or private counsel may be retained if approved by the Attorney General.

At the conclusion of opening remarks, the Provost may present evidence (witnesses, documents, his or her own testimony, etc.) in support of the charges against the appellant. All witnesses may be questioned by the Provost and by the appellant or by the representatives of the provost and appellant, and then by members of the Committee. Under ordinary circumstances, the Provost will be limited to a total of two hours to present his or her case.⁶ The Provost may reserve a portion of those two hours for rebuttal at the conclusion of the appellant's evidence. If the Provost wishes to reserve rebuttal time, the Provost must notify the Committee chair of that fact at the beginning of the hearing.

e. The appellant's case in defense

The appellant may present evidence (witnesses, documents, his or her own testimony, etc.) in his or her defense. All witnesses may be questioned by the appellant and by the Provost or by the representatives of the appellant and Provost, and then by members of the Committee. Under ordinary circumstances, the appellant will be limited to a total of two hours to present his or her case.⁷

f. The Provost's case in rebuttal

At the close of the appellant's case, the Provost may submit evidence limited to rebuttal of the appellant's evidence.

g. Closing remarks

At the conclusion of all the evidence, the Provost may make closing remarks to the Committee, followed by the closing remarks of the appellant. Since the University bears the burden proof, the Provost may also make brief final remarks in response to the appellant's closing. Closing remarks shall not exceed fifteen minutes per side, including any response by the Provost.

h. Committee deliberations and decision

After closing remarks are concluded, the chair will close the hearing and the Committee will withdraw into closed session. If the Committee wants to see the transcript, the chair will adjourn the hearing and reconvene the Committee after the transcript is available, otherwise, the Committee may begin its deliberations immediately. The Committee's decision will be by majority vote. As discussed earlier, the University bears the burden of proving, by clear and convincing evidence that the appellant is guilty of incompetence, neglect of duty or misconduct of such a nature as to indicate the individual is unfit to continue as a member of the faculty. In reaching decisions on which its written recommendations to the Chancellor shall be based, the Committee shall consider only the evidence presented at the hearing and such written or oral arguments as the Committee, in its discretion, may allow.

6. Post-Hearing Procedures

⁶ There is no obligation to use the full two hours and the parties are both encouraged to be parsimonious in their presentations. Conversely, the Committee has discretion to extend the time limit in extraordinary circumstances such as where the factual background of the charge or charges is complex.

⁷ The Committee has the same discretion as it has for the Provost's case to extend this time in extraordinary circumstances. In either event, both parties should be given equal time to present their case.

The Committee shall make its written recommendations to the Chancellor within ten days after the hearing concludes. A copy will be provided to the Provost and to the appellant. Further proceedings and appeals shall be conducted as set forth in Section 7 of the Regulations on Academic Freedom, Tenure and Due Process of The University of North Carolina at Greensboro.