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# Committee on Privilege and Tenure

## 2013 - 2014

Rodrigo Lazo, Chair (Fall/Winter)

Michael


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GRIEVANCE CASES
GENERAL INFORMATION AND PRE-HEARING PROCEDURES

GENERAL INFORMATION

- Grievance cases are governed by Senate Bylaw (SBL) 335
  (http://www.universityofcalifornia.edu/senate/manual/blpart3.html#bl335)
  and Appendix III, Section II of the Manual of the Irvine Division of the Academic Senate
- Grievance cases are initiated by Senate members (SBL 335.A.1)

DEFINITIONS

- Grievance: A complaint that a Senate member’s rights or privileges have been violated.
- *Prima Facie* Case: A *prima facie* case shall be deemed established if the P&T Committee concludes
  that the allegations as stated in the written grievance, if true, would constitute a violation of the
  faculty member’s rights and privileges. (SBL 335.B.2)

PERSONNEL REVIEW ISSUES

Note: In cases of personnel review involving tenure, promotions or reappointment, a grievance can only
be based on allegations that:
(a) the procedures were not in consonance with the applicable rules and requirements of the
University of any of its Divisions; or
(b) the challenged decision was reached on the basis of impermissible criteria, including, but not
limited to race, sex, or political conviction. (SBL 335.A.2)

PRELIMINARY PROCEDURES

EXHAUSTION OF ADMINISTRATIVE REMEDIES
Before considering the grievance, the P&T Committee can, at its discretion, require the grievant to
exhaust all appropriate administrative avenues of redress, including, but not limited to, presenting the
grievance along with a request for an administrative remedy to the department chair, dean or other
appropriate academic administrator who has authority to investigate or offer a remedy. (SBL 335.A.1)

EARLY RESOLUTION EFFORTS

INFORMAL NEGOTIATIONS
Any party may attempt to resolve the grievance informally through negotiations. These negotiations
may proceed with the assistance of impartial third parties, including one or more members of the
Committee. A negotiated resolution is permissible and appropriate at any stage of the grievance
procedures. If a negotiated resolution is reached after a written grievance is filed, the P&T Committee should be given notice that the matter has been resolved. (SBL 335.C.1)

**Mediation**

The grievance may also be resolved through mediation in cases where mediation is acceptable to the administration and the grievant. With the consent of the administration and the grievant, the P&T Committee may assist in the selection of an appropriate mediator. Other relevant parties, including members of the Committee, may participate in the mediation. (SBL 335.C.2)

**Time Limitations**

No grievance may be considered by the P&T Committee if more than three years have passed between the time the grievant knew or should have known about the violation of his/her rights and privileges and the resulting injury therefrom, and the filing of a grievance with the Committee (SBL 335.B.6)

**Pre-Hearing Procedures**

1. P&T receives the written grievance.

2. P&T reviews the grievance to see if more than 3 years have passed between the time the grievant knew or should have known about the violation of his/her rights and privileges and the resulting injury and the filing of the grievance. Note: If more than 3 years have passed, P&T cannot consider the grievance (SBL 335.B.6)

3. If the grievance was filed within the 3-year period, and either the grievant has already exhausted all available administrative remedies, or P&T does not deem this to be necessary, then P&T reviews the written grievance only and determines whether the grievant has made a *prima facie* case. (SBL 335.B.2)

   If the grievant has not made a *prima facie* case, P&T writes the grievant a letter stating the reasons for this conclusion. (SBL 335.B.4)

4. If the grievant has made a *prima facie* case, P&T may conduct a preliminary review of the evidence to determine if there is sufficient reason to believe that a right or privilege of the grievant may have been violated.

   During the preliminary review, P&T must give the grievant an opportunity to discuss his/her allegations with the Committee, either orally or in writing.

   If either party appropriately shows a need, or on its own initiative, P&T can request files and documents from the administration.

   At the preliminary review stage, P&T may give notice of the grievance to the administrator with authority to offer a remedy, and offer the administrator an opportunity to respond.

   During the preliminary review stage, P&T may also ask other persons involved in the events giving rise to the grievance to appear before P&T or to provide P&T with information. (SBL 335.B.3)
5. If P&T determines that after the preliminary review, there is not sufficient reason to believe that the grievant’s rights and privileges may have been violated; P&T writes the grievant a letter, stating the reasons for this conclusion. (SBL 335.B.4)

6. If P&T determines that after the grievant has made a *prima facie* case of a violation of a right or privilege and that there is sufficient reason to believe that the grievant’s rights and privileges may have been violated:

P&T must advise the Chancellor’s designee of the grievance and the *prima facie* determination.

P&T must also make an attempt to promote a resolution of the dispute. (SBL 335.B.5)

7. If no resolution can be reached, P&T must conduct a formal hearing. (SBL 335.B.5)

**FORMAL HEARING PROCEDURES**

**THE HEARING COMMITTEE**

The P&T Committee shall appoint a Hearing Committee for each grievance that is not resolved through a negotiation or mediation.

- The Hearing Committee should consist of at least 3 Division members, at least 2 of who must be P&T Committee members.
- One of the P&T Committee members on the Hearing Committee shall chair the Hearing Committee.
- No member of the department or equivalent administrative unit of any of the parties may be appointed to the Hearing Committee.
- Hearing Committee members must disclose to the Hearing Committee any circumstances that may interfere with their objective consideration of the case, and must recuse themselves as appropriate.
- A quorum for the conduct of the hearing shall be at least half but not less than 3 members of the hearing Committee, including at least 1 member of the P&T Committee. (SBL 335.D.1)

**PRE-HEARING CONFERENCE**

Before the hearing, the Hearing Committee chair shall schedule a conference with the parties and/or their representatives to:

- Determine facts about which there is no dispute. At the hearing, these facts may be established by stipulation.
- Define its issues to be decided by the Hearing Committee.
- Set time for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to hose witnesses whose names were disclosed to the other party before the hearing and to otherwise limit evidence to that which is relevant to the issues before the Hearing Committee.
- Specify whether pre-hearing and post-hearing briefs will be submitted by the parties, and the deadlines for those briefs.
- Attain agreement about whether any person other than the Chancellor, the Chancellor’s
designee, the grievant, and their representatives may be present during all or any part of the
hearing. To preserve confidentiality, persons whose presence is not essential to a
determination of the facts, as a general rule, be excluded from the hearing. (SBL 335.D.2.a-e)

**POST-HEARING PROCEDURES**

At the conclusion of the hearing, the Hearing Committee shall promptly make its finding of fact,
conclusions supported by a statement of reasons based on the evidence, and recommendation, and
forward these to the parties in the case, the Chancellor, the Chair of the Divisional Committee on
Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure.

The findings, conclusions, recommendation, and record of the proceedings shall be confidential to the
extent allowed by law and UC Policy. The Hearing Committee may, however, and with the consent of the
grievant, authorize release of the findings, conclusions, and recommendations to other individuals and
entities, to the extent allowed by law.

The Hearing Committee may reconsider a case if either party presents, within a reasonable time after the
decision, newly discovered facts or circumstances that might significantly affect the previous decision and
that were not reasonably discoverable at the time of the hearing. (SBL 335.D)
DISCIPLINARY CASES
GENERAL INFORMATION AND PRE-HEARING PROCEDURES

GENERAL INFORMATION

- Disciplinary cases are initiated by the appropriate Chancellor or Chancellor’s designee (usually the Executive Vice Chancellor and Provost) against a Senate member or other faculty members who have a right to a hearing before a Senate committee under Standing Order of the Regents (SOR) 103.9 or 103.10, once probable cause has been established. Procedures regarding the establishment of probable cause are determined by Academic Personnel Manual (APM) 015 and 016 and Divisional policies. (SBL 336.B.1)
- Charges shall be in writing. Charges shall contain notice of proposed disciplinary action and a full statement of the facts underlying the charges. (SBL 336.B.1)

EXTENSION PROCEDURES

Generally, extensions of the deadlines for various procedures may be granted, within the discretion of the Chair of the P&T Committee. Some procedures have specific requirements in order for extension to be granted, such as an extension for the member to submit his/her answer to the charges, which requires a written application. (See, e.g., SBL 336.B.2; 336.B.3)

EARLY RESOLUTION EFFORTS

INFORMAL NEGOTIATIONS

The Chancellor or Chancellor’s designee and the accused faculty member may attempt to resolve the disciplinary charges informally through negotiations. Any party may attempt to resolve the disciplinary charges informally through negotiations. If desired, these negotiations may proceed with the assistance of impartial third parties, including one or more members of the Committee. If a negotiated resolution is reached after written charges are filed, the P&T Committee should be given notice that the matter has been resolved. (SBL 336.C.1)

MEDIATION

The disciplinary charges may be resolved through mediation in cases where mediation is acceptable to the administration and the accused member. With the consent of the administration and the accused, the P&T Committee may assist in the selection of an appropriate mediator. Other relevant parties, including members of the Committee, may participate in the mediation. (SBL 336.C.2)

CONSULTATION
Once charges have been filed with the P&T Committee, the Committee Chair should request that the Chancellor or Chancellor’s designee consult with the Committee or its chair before the completion of any early resolution. (SBL 336.C.3)

TIME LIMITATIONS

No disciplinary action may commence if more than 3 years have passed between the time when the Chancellor or Chancellor’s designee knew or should have known about all the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. (SBL 336.B.4)

PRE-HEARING PROCEDURES

1. P&T receives the written charges from the administration. Note: if more than 3 years has passed between the times the Chancellor or Chancellor’s designee knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of the proposed disciplinary action, no disciplinary action may commence. (33.B.4)

2. Upon receiving the charges, the P&T Chair must promptly deliver a copy of the charges to the accused faculty member or send it by registered mail to the accused’s last known place of residence. (SBL 336.B.1)

3. The accused member has 21 calendar days after receipt of the charges to file a written answer with P&T. P&T shall provide a copy of the answer to the Chancellor or Chancellor’s designee. If the accused submits a written request for an extension of time, the P&T Chair may grant a reasonable extension of time for filing an answer. (SBL 336.B.2)

4. P&T shall consider the matter within 21 days after receipt of an answer (or, if no answer is received, after the deadline for receipt of an answer). P&T shall evaluate the case and establish time frames for all subsequent procedures.

P&T may refer the case to mediation (SBL 336.C) or appoint a Hearing Committee (SBL 336.D.2)

Generally, a pre-hearing conference shall be scheduled within 30 calendar days of appointing the Hearing Committee.

Generally, the hearing shall be scheduled within 90 calendar days of appointing the Hearing Committee.

5. The Chancellor or Chancellor’s designee and the accused may attempt to resolve the disciplinary charges informally through negotiations. These negotiations may proceed with the assistance of impartial third parties, including one or more P&T members. A negotiated resolution is permissible and appropriate at any stage of these proceedings. Note: If a negotiated resolution is reached after written charges are filed, P&T should be given notice that the matter has been resolved. (SBL 336.C.1)

6. The disciplinary charges may also be resolved through mediation in cases where such mediation is acceptable to the administration and the accused. With the consent of the administration and the
accused, P&T may assist in selecting an appropriate mediator. Other relevant parties, including P&T members, may participate in the mediation. (SBL 336.C.2)

7. Once charges have been filed with P&T, the P&T Chair should request that the Chancellor or Chancellor’s designee consult with P&T or its Chair before completion of any early resolution. (SBL 336.C.3)

**FORMAL HEARING PROCEDURES**

**THE HEARING COMMITTEE**

The P&T Committee shall appoint a Hearing Committee for each disciplinary case that is not resolved through a negotiated resolution or mediation.

- The Hearing Committee should consist of at least 3 Division members, at least 2 of who must be P&T Committee members.
- One of the P&T Committee members on the Hearing Committee shall chair the Hearing Committee.
- No member of the department or equivalent administrative unit of any of the parties may be appointed to the Hearing Committee.
- Hearing Committee members must disclose to the Hearing Committee any circumstances that may interfere with their objective consideration of the case, and must recuse themselves as appropriate.
- A quorum for the conduct of the hearing shall be at least half but not less than 3 members of the hearing Committee, including at least 1 member of the P&T Committee. (SBL 335.D.1)

**PRE-HEARING CONFERENCE**

Before the hearing, the Hearing Committee chair shall schedule a conference with the parties and/or their representatives to:

- Determine facts about which there is no dispute. At the hearing, these facts may be established by stipulation.
- Define its issues to be decided by the Hearing Committee.
- Set time for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to those witnesses whose names were disclosed to the other party before the hearing and to otherwise limit evidence to that which is relevant to the issues before the Hearing Committee.
- Specify whether pre-hearing and post-hearing briefs will be submitted by the parties, and the deadlines for those briefs.
- Attain agreement about whether any person other than the Chancellor, the Chancellor’s designee, the grievant, and their representatives may be present during all or any part of the hearing. To preserve confidentiality, persons whose presence is not essential to a determination of the facts, as a general rule, be excluded from the hearing. (SBL 335.D.2.a-e)

**POST-HEARING PROCEDURES**

At the conclusion of the hearing, the Hearing Committee shall promptly make its finding of fact, conclusions supported by a statement of reasons based on the evidence, and recommendation, and forward these to the parties in the case, the Chancellor, the Chair of the Divisional Committee on Privilege and Tenure, and the Chair of the University Committee on Privilege and Tenure.
The findings, conclusions, recommendation, and record of the proceedings shall be confidential to the extent allowed by law and UC Policy. The Hearing Committee may, however, and with the consent of the grievant, authorize release of the findings, conclusions, and recommendations to other individuals and entities, to the extent allowed by law.

The Hearing Committee may reconsider a case if either party presents, within a reasonable time after the decision, newly discovered facts or circumstances that might significantly affect the previous decision and that were not reasonably discoverable at the time of the hearing. (SBL 335.D)

### CHART: TIMELINE IN DISCIPLINARY CASES

<table>
<thead>
<tr>
<th>TIMELINE</th>
<th>EVENT</th>
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</thead>
<tbody>
<tr>
<td>P&amp;T Committee receives written charges from the administration</td>
<td></td>
</tr>
<tr>
<td>Promptly after P&amp;T receives charges</td>
<td>P&amp;T Committee Chair promptly delivers a copy of the charges to the accused faculty member.</td>
</tr>
<tr>
<td>21 calendar days after accused’s receipt of charges (or later if extension granted)</td>
<td>Accused member has 21 calendar days after receipt of the charges to provide a written answer to P&amp;T Committee. The Committee must provide a copy of the answer to the Chancellor or Chancellor’s designee. Upon receipt of written charges, the P&amp;T Committee Chair may grant a reasonable extension of time for the member to file an answer to the charges.</td>
</tr>
</tbody>
</table>
| Within 21 calendar days after receipt of an answer (or after the due date if no answer received) | P&T Committee shall consider the matter within 21 calendar days after receipt of an answer, or if no written answer is received, after the deadline for receipt of an answer.  
- The Committee shall evaluate the case and establish time frames for all subsequent procedures.  
- The Committee may refer the case to mediation (SBL 336.C), or it may appoint a Hearing Committee (SBL336.D)  
- The Chancellor, Chancellor’s designee or P&T Committee Chair may for good reason grant an extension of this time limit. |
| Generally, within 30 calendar days after the appointment of a Hearing Committee (or later, if extension is granted) | Generally, a pre-hearing conference shall be scheduled within 30 calendar days of the appointment of a Hearing Committee (SBL 336.D.2)  
- The Chancellor, Chancellor’s designee or P&T Committee Chair may for good reason grant an extension of this time limit. |
| At least 10 calendar days before the hearing                            | The accused member shall be given, either personally or by registered mail, at least 10 calendar days’ notice of the time and place of the hearing. |
| Prior to the hearing                                                    | Prior to the formal hearing, the Chair of the Hearing Committee shall schedule a conference with the accused, the Chancellor or Chancellor’s designee, and/or their representatives to narrow the issues and set a schedule for exchanging witness lists, copies of |
exhibits, any pre- or post-hearing briefing, and attain agreements about who may be present at the hearing.

| Promptly after the conclusion of the hearing | At the conclusion of the hearing, the Hearing Committee shall promptly make its findings of fact; conclusions supported by a statement of reasons based on the evidence, and recommendation, and forward these to the parties in the case. |

**RELATED GRIEVANCE AND DISCIPLINARY CASES**

**GENERAL INFORMATION**

- Related Grievance and Disciplinary cases are governed by Senate Bylaw (SBL) 335 and 336.

**RULES FOR GRIEVANCE CASES RELATED TO DISCIPLINARY CASES**

- There are circumstances in which the same set of facts and allegations lead to both a disciplinary matter and a grievance before P&T. (SBL 335.E) When a grievance involves the same facts that are the subject of a disciplinary matter, P&T may, at its discretion, hold either matter in abeyance while it proceeds with the other. Alternatively, with the consent of the grievant, the accused in the disciplinary matter, and the Chancellor’s designee, consider both matter within a single hearing. (SBL 335.E.1.a)
- Under these circumstances, when a single hearing is held, the Committee shall make separate reports of findings, conclusions and recommendations for the grievance and the disciplinary matter. (SBL 335.E.1)
- When a Senate member files a grievance which is based on the same facts and incidents involved in a prior disciplinary hearing at which the same Senate members was accused of violating the Code of Conduct, the findings and conclusions of the prior disciplinary hearing shall be conclusive. (SBL 335.E.2)

**RULES FOR DISCIPLINARY CASES RELATED TO PRIOR GRIEVANCES CASES**

- A disciplinary Hearing Committee shall not be bound by the recommendation of another hearing body, including the findings of P&T in a grievance case involving the same set of incidents. (SBL 336.E)
- However, the Hearing Committee may accept into evidence the findings of another hearing body or investigative agency. The weight to be accorded evidence of this nature is at the discretion of the Hearing Committee and should take account of the nature of the other forum. (SBL 336.E)
- In any case, the accused faculty member must be given full opportunity to challenge the finding of the other body. (SBL 336.E.)
EARLY TERMINATION CASES
GENERAL INFORMATION AND PRE-HEARING PROCEDURES

GENERAL INFORMATION

- Early termination cases are governed by Senate Bylaw (SBL) 337 (http://www.universityofcalifornia.edu/senate/manual/blpart3.html#bl337) and Appendix III, Section III of the Manual of the Irvine Division of the Academic Senate (http://www.senate.uci.edu/senateweb/default2.asp?active_page_id=748).
- Early termination cases include the following situations:
  1) Termination is proposed before the expiration of the Senate or non-Senate faculty member’s appointment
  2) A tenure faculty member faces termination for incompetent performance, or
  3) For other faculty members whose right to a hearing before a Senate committee is given under SOR 103.9 or 103.10 (SBL 337.A)
- Early termination cases are initiated by the faculty member’s request for a hearing. (SBL 337.A)
- Upon request, P&T Committee shall conduct a hearing to determine whether, in its judgment, the proposed early termination is:
  (a) for good cause, and
  (b) has been recommended in accordance with a procedure that does not violate the privileges of the faculty member. (SBL 337.A)

EARLY RESOLUTION EFFORTS

Resolution of the dispute, either through negotiation or mediation, is permissible and appropriate at any stage of these proceedings. (SBL 337.A)

TIME LIMITATIONS

No Senate or non-Senate faculty member may be terminated prior to the expiration of an appointment without having an opportunity for a hearing before the P&T Committee. If the hearing has not begun by the end of the faculty member’s term of appointment, the faculty member no longer has a right to an early termination hearing pursuant to SBL 337. Instead, the faculty member may seek a grievance hearing by grieving the non-reappointment pursuant to SBL 335 in the case of Senate faculty, or the Academic Personnel Manual in the case of non-Senate faculty. (SBL 337.A)

PRE-HEARING, HEARING, AND POST-HEARING PROCEDURES

1. P&T receives a request for a hearing from a faculty member who claims that:
- He/she is being terminated before the expiration of his/her appointment (Senate or non-Senate faculty), or
- He/she is tenured and faces termination for incompetence performance, or
- He/she is entitled to a hearing pursuant to Standing Orders of the Regents (SOR) 103.9 or 103.10 (SBL 337.A) (These situations are referred to as “Early Termination”)

2. P&T must conduct a hearing to determine whether, in its judgment, the proposed early termination is (a) for good cause, and (b) has been recommended in accordance with a procedure that does not violate the privileges of the faculty member. (SBL 337.A)

3. Resolution of the dispute, through negotiation or mediation, is permissible and appropriate at any stage of these proceedings. (SBL 337.A)

4. P&T shall appoint a Hearing Committee consisting of at least 3 Division members

   At least 2 Hearing Committee members shall be members of P&T, and one of these shall chair the Hearing Committee.

   P&T may not appoint a member of the department or equivalent administrative unit of the faculty member facing early termination to the Hearing Committee.

   Hearing Committee members must disclose to the Hearing Committee any circumstances that may interfere with their objective consideration of the case and recuse themselves as appropriate.

   A quorum for the conduct of the hearing shall consist of at least half but not less that 3 members of the Hearing Committee, including at least on member of P&T. (SBL 337.B.1)

5. Before the formal hearing, the Hearing Committee chair must schedule a conference with both the faculty member and the Chancellor’s designee and/or other representatives. This conference should attempt to:

   Determine the facts about which there is no dispute. At the hearing, these facts may be established by stipulation.

   Define the issues to be decided by the Hearing Committee.

   Set a time for both sides to exchange a list of witnesses and copies of exhibits to be presented at the hearing. The Hearing Committee has the discretion to limit each party to those witnesses whose names were disclosed to the other party before the hearing and to otherwise limit evidence to that which is relevant to the issues before the Hearing Committee.

   Specify whether pre-hearing and post-hearing briefs will be submitted by the parties as well as the deadlines for those briefs.

   Attain agreement about whether any person other than the Chancellor, the Chancellor’s designee, the faculty member, and their representatives may be present during all or part of the hearing. In order to preserve the confidentiality of the hearing, persons whose presence is not essential to a determination of the facts shall, as a general rule, be excluded from the hearing. (SBL 337.2a-e)
LINKS TO UNIVERSITYWIDE AND DIVISIONAL POLICIES

UNIVERSITYWIDE POLICIES

SENATE BYLAWS (SBL)

SBL 334. Privilege and Tenure: Divisional Committees – Jurisdiction
http://www.universityofcalifornia.edu/senate/manual/blpart3.html#bl334

SBL 335. Privilege and Tenure: Divisional Committees – Grievance Cases
http://www.universityofcalifornia.edu/senate/manual/blpart3.html#bl335

SBL 336. Privilege and Tenure: Divisional Committees – Disciplinary Cases
http://www.universityofcalifornia.edu/senate/manual/blpart3.html#bl336

SBL 337. Privilege and Tenure: Divisional Committees – Early Termination Cases
http://www.universityofcalifornia.edu/senate/manual/blpart3.html#bl337

ACADEMIC PERSONNEL MANUAL (APM)

APM 015. The Faculty Code of Conduct
http://www.ucop.edu/acadadv/acadpers/apm/apm-015.pdf

APM 016. University Policy on Faculty Conduct and the Administration of Discipline
http://www.ucop.edu/acadadv/acadpers/apm/apm-016.pdf

DIVISIONAL POLICIES

THE MANUAL OF THE IRVINE DIVISION OF THE ACADEMIC SENATE
http://www.senate.uci.edu/manual/index.asp#append

Appendix III: Policies on Faculty Conduct and the Administration of Discipline

Section I: University Policy on Faculty Conduct and the Administration of Discipline
http://www.senate.uci.edu/senateweb/default2.asp?active_page_id=746

Section II: UCI Procedures for Hearing complaints of Faculty Code Violations and Grievances by the Senate Committee on Privilege and Tenure (CPT)
http://www.senate.uci.edu/senateweb/default2.asp?active_page_id=748

Appendix A: Due Process Requirements in Privilege and Tenure Hearings
http://www.senate.uci.edu/senateweb/default2.asp?active_page_id=749