

TENURE TRACK FACULTY NON-REAPPOINTMENT HEARING CHECKLIST

The following checklist is designed to provide guidance to the Hearing Committee Chair as well as other Committee members for a 604 Non-reappointment proceeding.

Pre-Hearing Procedure

- ___ Set and conduct Preliminary Meeting of the Hearing Committee.
- ___ Elect Committee Chair: _____ (*Chair convenes initial mtg, serves as presiding officer, facilitates the orderly process of the proceedings consistent with Sec. 604 B, compiles official record of the hearing*).
- ___ Check/identify potential or actual conflicts for all Committee members (*members should voluntarily recuse themselves if circumstances exist that would appear to render them incapable of reaching a fair and impartial decision*).
- ___ Set available times and dates enabling members to be present for and participate in hearing.
- ___ Communicate dates to the respective parties to set an agreed date and time for Hearing.
- ___ Evidence Exchange: Chair **must** inform the parties to exchange witness lists and documents that they each expect to introduce at the Hearing at least ___ days before the Hearing. The exchange is between the parties, NOT the Committee and the parties.
- ___ Instruct the parties to bring 10 copies of all documents to be introduced (*at least 1 copy for opposing party, 1 copy for Official Record, 1 copy for each of the Committee Members*).
- ___ Notify Office of General Counsel (OGC) of Hearing Date as well as any changes to the Date (*OGC will arrange for Court Reporter*).
- ___ Notify Vice Provost of Hearing Date (*Vice Provost's Ofc shall arrange for a room to conduct the Hearing*).

Procedure for the Conduct of the Hearing

- ___ A decision not to reappoint shall be in writing and must be timely pursuant to 604A (1)(a)-(c).
- ___ A decision not to reappoint cannot be based upon: a) the exercise of First Amd rights or Article I of the NC Constitution; b) the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran's status, or other discriminatory bases prohibited under UNC or BOT policies; or c) personal malice. 'Personal Malice' means dislike, animosity, ill-will, or hatred based upon personal characteristics, traits, or circumstances of an individual. See Policy 101.3.1 II.B for details.
- ___ A complete record of all evidence heard, considered, or received at the Hearing **must** be preserved for the Official Record. The Court Reporter shall collect any documentary evidence and submit it to the Chair along with the Transcript of the Hearing.
- ___ *The Official Record consists of an indexed record (table of contents) of all evidence, documents, correspondence, transcript of testimony, and/or other information considered by the Committee.*
- ___ Hearing is a personnel activity, therefore, a closed proceeding; only the Committee, parties, their non-atty representative, and Court Reporter are allowed in the Hearing Room during the Hearing.

- ___ Unless also a party to the proceedings, witnesses shall be sequestered and kept from the Hearing Rm until called to testify.
- ___ Hearings shall begin with Chair reading a brief summary of the non-reappointment and the faculty member's challenge and bases for the request for a hearing; the petitioner's letter requesting the hearing and the bases for the challenge shall be introduced into the record.
- ___ The petitioner must demonstrate by a preponderance of the evidence that the bases for the non-reappointment was based upon material deviations in the process or was based upon an impermissible reason for non-reappointment.
- ___ A quorum of the Committee is a simple majority of the total Committee number.
- ___ The petitioner has the burden of proving his/her contentions by a preponderance of the evidence presented (more likely than not). The faculty member shall begin, and present his/her contentions which shall be limited to those grounds specified in the request for a hearing and supported by such proof or evidence as he/she shall provide. If witness testimony is offered, the University or its representative may cross examine the petitioner's witnesses if they choose to. ***The Committee may also pose questions directly to witnesses and the parties.***
- ___ Following the presentation of the faculty member's contentions, the Committee excuse all others presence and shall consider whether the faculty member has established a prima facie case. If the contention(s) have not been so established, then the Committee shall notify the parties and terminate the proceedings (such a determination would result in a confirmation of the non-reappointment decision. If instead a prima facie case has been established the hearing shall proceed with the university's rebuttal or explanation.
- ___ The Dean or the Dean's designee, shall present testimony and evidence as is relevant to rebut or address the petitioner's allegations. The faculty member or their representative may then cross examine the university's witnesses. Redirect may be conducted; rebuttal and sur-rebuttal are also permitted. ***The Committee may also pose questions directly to witnesses and the parties.***
- ___ No Exparte Communications. Other than the Hearing itself, Committee members shall not communicate with the parties or prospective witnesses, directly or indirectly, concerning the merits or substance of the subject case.
- ___ The Chair shall have authority over the conduct of the Hearing – *(including but not limited to considering or admitting oral or written evidence, the relevance of particular testimony, immateriality, or unduly repetitious information or evidence)* – the Chair may consult with the attorney charged with advising the Committee on procedural issues or questions regarding the process. Only such evidence as the Chair believes fair and reliable shall be considered.
- ___ All documentary evidence must be marked and made part of the Record. Evidence excluded from consideration shall be marked as such, maintained and included in the Official Record.
- ___ Both parties are entitled to closing statements. The Chair may set a time limit.

_____ At the conclusion of the Hearing, the Committee shall meet in Executive Session and deliberate to reach their determination.

_____ If the Committee finds that the faculty member has not established his/her contentions by a preponderance of the evidence, the Chair shall prepare an unelaborated statement notifying the parties of the determination.

_____ If instead the Committee agrees the contentions have been established then the parties shall be notified along with a corrective recommendation to the administrator (Dean).

- A. Within five days of receiving the notification and recommendation, the administrator shall notify the parties and chair of the committee what modification, if any, he or she will make with respect to the original decision not to reappoint.
- B. If the administrator elects not to make the recommended modification, the committee shall submit a report to the chancellor containing the committee's findings and recommendations and what it considers to be appropriate action by the chancellor to resolve the matter.
- C. With the assistance of the committee, the chair shall write the report. If dissenting opinions exist, those should be noted in the report. The committee members shall sign the report.
- D. The transcript or tape of the hearing along with all documentary evidence shall be attached to the report as the official record of the hearing and submitted to the chancellor.

_____ After the Committee's recommendation is sent the Chancellor, the Chancellor can either concur with the Committee's recommendation or modify the recommendation. If the Chancellor modifies the recommendation in favor of the faculty member, that decision is final; if instead the Chancellor concurs with the Committee's recommendation sustaining non-reappointment, the faculty member has appeal rights to the Board of Governors by simple notice through the System President requesting review of the decision not to reappoint. [See, UNC Policy Manual 101.3.1 III et seq. for more detail on Appeal Rights to the Board of Governors].