

UNIVERSITY OF NEW MEXICO SCHOOL OF LAW
TENURE, REAPPOINTMENT AND PROMOTION POLICY

I. PREAMBLE

The purpose of this policy is (1) to help ensure that individuals who join the University of New Mexico Law School Faculty are treated fairly in their employment relationship with the Law School and the University, and (2) to describe the expectations of this school regarding the performance of its faculty members. To the first end, procedures are detailed to ensure that tenure, reappointment, retention and promotion decisions will be made fairly. To the second end, this document elaborates the University of New Mexico Faculty Handbook description of expectations in the context of the goals, missions and operation of the Law School.

The two traditional goals of a university, to transmit and to increase the store of human knowledge, are also goals of the Law School. However, the means by which these goals are accomplished at the Law School is affected, if not controlled, by the Law School's responsibility to educate students who will serve society as lawyers and by the characteristics of law as an academic discipline. The Law School, as does the University, recognizes its obligation to provide other services which foster the culture and welfare of the general population. Because ours is the only law school in the state, law faculty members have a special opportunity and responsibility to participate in the improvement of New Mexico's legal process.

II.
FACULTY ROLE IN ACHIEVING GOALS OF THE LAW SCHOOL

A. Teaching

The Law School trains students for a profession that has an immediate and profound impact on the lives of others. Because clients entrust their lives and well-being to our graduates, the margin for error in our teaching is small. We are obligated to offer an educational program that provides our students with technical information, analytical, advocacy and counseling skills, and a commitment to providing clients with the most excellent representation possible. Further, our program ought to instill in our graduates a determination to improve society's system of justice.

In teaching, there is the need to assist students in their quest for information essential to effective lawyering. There is, moreover, a need to help students develop the analytical thought process often referred to as "thinking like a lawyer." Although much is said in derision of this expression, the phrase has meaning for those within the profession, both academicians and practitioners, and the concept has been a long-standing goal of legal education in this country. The case and problem methods of instruction are evidence of the concern of legal educators that students develop skills and abilities independent of the

accumulation of facts. The more recently developed clinical law pedagogy adds an important new dimension, but has no different objective.

Because classroom instruction constitutes a substantial portion of a student's legal education, all faculty assigned to classroom courses must exhibit a high degree of competence in and fidelity to class presentation. In the teaching of some courses, such as those involving significant student projects, the traditional classroom component may be of less significance, substantially modified or even non-existent. In both traditional and non-traditional situations, of course, the expectations of faculty performance must be consistent with the objectives of the course or program.

Classes normally should be taught when scheduled, and rescheduling, when necessary, should accommodate the students. Careful preparation is essential. Demeanor in class is important. Faculty should develop clear objectives for courses taught by them. Because there are many successful pedagogical approaches to the teaching of law, diversification in teaching methods is desirable, and experimentation in methods and materials is encouraged. In all cases, faculty must be demanding of themselves and of students. Much should be expected by way of both preparation and performance.

The teaching goals of a law school cannot be achieved if reliance is placed solely on classroom instruction; time spent by the faculty in education outside of class is essential to the development of students into lawyers. These teaching activities take various forms, and no catalogue of them would be complete. Some examples, however, are illustrative.

Co-curricular programs at the Law School, such as law review and moot court, are integral parts of the Law School's education program. It is a responsibility of faculty to serve as judges in the moot court program, and this carries with it the obligations to read and criticize student briefs and to review critically student oral presentations. Faculty are also expected to work with students who are preparing law review articles for publication or who are editing the work of others. No faculty member can be expected to be an expert in every area of the law; hence, it is the responsibility of all faculty to assist students and colleagues who have cases or problems in the faculty member's area of interest.

Furthermore, it is the responsibility of the faculty to develop additional means for contact between the faculty and students in an intellectual and professional setting. For example, courses can be structured to require papers or projects that presuppose out-of-class meetings between student and teacher~ formal and informal arrangements can be established whereby students and teachers contribute to a research project~ and special group meetings with students may be held in conjunction with a course where special topics are discussed, or where other faculty or practicing lawyers participate.

The teaching of law is not just the imparting of knowledge or the honing of skills. Socialization of those who are unaware of the nature of the profession is essential. This involves, as a necessary and important component, the development of a sense of professionalism and a recognition of the important role the lawyer plays in society. It is expected that all faculty will teach and encourage these values as much by example, in

and out of the classroom, as by formal pedagogy.

Each faculty member is expected to stand as a role model for what he or she believes membership in the legal profession requires of an individual. The sense of professionalism must permeate the Law School's program, but there can be no formula for its achievement. Each faculty member must contribute in his or her own unique way. Clearly, all must exhibit dedication to their obligations, a respect for the goal of achieving a better society and a willingness to expend extraordinary effort in completing tasks in a professional manner. Some will demonstrate this through scholarly pursuits, others by participating in group efforts to improve the legal system or in the resolution of disputes. At times, faculty will, and should, challenge decisions made by those in authority both within and outside the University, sometimes to the displeasure of the majority.

B. Scholarship, Research, and Other Creative Work

Law faculty members are expected to have abilities and interests which lead directly to research and service as members of the faculty of a state law school. Research enhances the knowledge and understanding of the researcher, and must be continually a part of a faculty member's activities in order to prepare adequately for class and to stay current in his or her particular teaching fields.

The faculty member's responsibilities go beyond this, however, and include the obligation to do research that will aid in the understanding and development of the law. Indeed, one of the privileges of faculty membership is the opportunity it presents for reflection on significant problems, and this carries with it the obligation to share research with others. One engaged in teaching a subject for a significant length of time at the graduate-professional level normally should develop insights into problems warranting communication to others.

Law professors, like faculty members in other professional schools, have a variety of audiences who may benefit from their research. Present and future students may be the prime beneficiaries of legal research through the development of innovative teaching materials such as casebooks or student textbooks. Legal practitioners may be the target of the dissemination of faculty research, through the development of continuing legal education materials and lectures or the publication of articles in professional journals written with the goal of assisting the practicing lawyer to improve the quality of legal services provided to the public. Faculty research may also result in the direct improvement of the legal system, as where the research leads to the creation and passage of legislation or the creation of innovative legal arguments presented to courts in the context of actual litigation. Finally, research may culminate in the more traditional form of a publication in a scholarly journal the primary goal of which is the sharing of information with others engaged in similar academic research.

Although a faculty member may become involved in many research activities, normally he or she will engage in some scholarly research, more restrictively defined than the concept of research hereinabove discussed. The norm for scholarly research, or

scholarship, would be publication in one of the traditional media for legal scholarship, such as a law review article, treatise, monograph, or casebook. The traditional media by their nature and because of the traditions that have developed around them constrain an author to be more rigorous and thorough in scholarship and to be more thoroughly objective in his or her reasoning. Further, these media tend to guarantee generally wider circulation and thus potentially more objective review than do some other media.

Research in other forms is also appropriate additional evidence of scholarship. Such research should result in a written product which demonstrates care and thoroughness, observes and analyzes legal issue and processes, and organizes the results in a helpful way. Such research normally would be disseminated beyond the Law School in order to allow other interested parties an opportunity to share and evaluate the research.

C. Service

Research forms an essential component of much service performed by law faculty members, and it is frequently unprofitable to distinguish the two. There are, however, service obligations of a different nature.

Service on Law School committees is an example. Because of the strong belief that collegial judgments are usually better than those made solely by administrators, much of the Law School's governance is the responsibility of the faculty. This work must be shared by the faculty, and those assigned to committees are expected to participate actively in committee work. While all committee assignments require substantial commitments of faculty time and effort, three committees impose extraordinary burdens: Admissions, Faculty Appointments, and Curriculum. Admissions requires the review and disposition of applications from over 500 candidates for admission; Faculty Appointments involves attendance at the annual AALS recruitment meeting by members of the committee, scrutiny of a large number of applications for positions, and the recruitment of other applicants; Curriculum requires the determination of courses for the next year, the assignment of faculty to teach courses, and the ultimate determination of the Law School educational program.

Service to the American Bar Association and to state and local bar associations is important because it helps us as a faculty stay in touch with our profession and because it helps us introduce our students to the profession they have entered. To this extent, service to the legal community is a part of teaching. However, service to the legal community can and often does represent service to the larger community insofar as our bar association efforts may improve the delivery of legal services, the substance of the law, or the fairness of the legal process.

Service to legal education is also an important area of faculty effort. Participation in the activities of the Association of American Law Schools, the Law School Admission Council, the Council for Legal Education Opportunity, and the Special Scholarship Program in Law for American Indians, for example, should and do help improve the nature of legal education, the nature of the legal profession, and the contributions the Law

School makes to the University.

Service on University committees, membership in the faculty senate, and acting as an advisor to a faculty committee or to the administration also frequently are demanding. In this regard, it is worth noting that representation of other University faculty in academic freedom and tenure matters sometimes is a special obligation of the law faculty.

Because of the special nature of New Mexico, unusual responsibilities and opportunities exist for service to the community. The inadequate staffing of legislative, executive and judicial branches of government; the unique diversity of the state's population; the great wealth of natural resources which contrasts with the poverty of many of its people; the relative youth of its legal system; and the need for development all provide the faculty of this university an opportunity for participation and a duty to do so. Much of the assistance given government is through institutional research provided by the Institute of Public Law, the American Indian Law Center, and the Natural Resources Center. Funded and unfunded research and service projects also contribute substantially. However, the faculty, as individuals, frequently are called upon to render assistance in many other ways. Service on committees of the courts, as advisors to executive and legislative committees and as advocates in important litigation are some examples.

This latter aspect of service, service to the development of law, involves goals and modes of presentation that may differ from those of traditional scholarship and is treated separately from such scholarship for descriptive purposes. However, service of this kind, reflected in legal briefs or other substantial professional activities, may require as much legal research and as much intellectual energy and skill as the preparation of research that falls within the category of traditional scholarship. To the extent that this is the case, the product of such service may be considered evidence of scholarship. Moreover, it is peculiarly important in a state like New Mexico, with a relatively young and small bar, that law school faculty members participate in such activities. Accordingly, it is appropriate to treat such service by law school faculty members as a significant aspect of their professional life.

D. Personal Characteristics

Both the Faculty Handbook and the practice at the Law School recognize that the personal characteristics of one being considered for tenure, reappointment, or promotion may have an effect upon his or her ability to teach, conduct research or engage in service activities. Professional cooperation among faculty is important. The fact that a person is a "good colleague" is relevant to the extent that this term refers to the person's helpfulness in assisting other faculty members and willingness to undertake responsibilities at the school. It is unimportant, however, to the extent that the term is used to refer to social intercourse that the person may have with other members of the faculty at or away from the school. Similarly, acceptance by students is important, but only to the extent that it reflects upon the faculty member's teaching responsibilities.

It is also important that the University and the Law School encourage diversity and

individuality among its faculty. Diversity of views, personality, demeanor and values help to prevent the natural collegiality of the faculty from leading to torpidity or self-satisfaction, and are important to help ensure that the educational program and research efforts of the school are varied. Therefore, diversity is itself an independent value to be sought, and the fact that the faculty member under consideration for tenure, reappointment or promotion manifests unique social or professional values or approaches will ordinarily be a positive factor.

E. Summary

The goals - teaching, scholarship and service - are neither antagonistic nor discrete; rather, they complement each other and overlap. For their attainment, they all require that a faculty member be learned in the law and capable of transmitting his or her learning to others.

Because the evaluative process involves consideration of the strengths and accomplishments of an individual in the context of his or her specific responsibilities at the Law School, no absolute or firm rules can be established, but it is possible to state general guidelines that will be followed when making recommendations. In determining whether a faculty member will be recommended for tenure, reappointment, or promotion, an evaluation shall be made of his or her total contribution to the Law School, and of his or her potential for future contributions. This evaluation shall be made in the context of the specific duties assigned to the individual while a member of this faculty. Of primary importance is the faculty member's teaching, including both in-class and out-of-class contact with students, and the faculty member's research efforts and other creative work.

Individuals hired as faculty members are presumptively capable of meeting the guidelines for tenure and promotion. Teaching involves constant trial and error, failure as well as success. Particularly in the first few years, the emphasis is, has been, and should be on finding one's own way to communicate one's learning and sense of lawyering to students. Publication, scholarship, and other creative activity come, ordinarily, as a natural consequence of the teacher's experiences in learning how to teach.

The learning ought, of course, never stop, as students and the law change and as the teacher develops. Consequently, the expectations of faculty described in this policy are applicable equally, if not more so, to those who have been granted tenure and promoted to the higher ranks. Experienced faculty ought to be better able to contribute, and to have more opportunity and capacity for research and innovative teaching. Senior faculty should provide junior faculty both example and assistance in the quest for excellence.

Finally, a full-time appointment to this law faculty must be accepted as full-time employment. Although some outside consulting and other professional activities are not only permitted but encouraged, these must never detract significantly from the faculty member's primary obligations to the school.

III.

APPLICABILITY OF POLICY

A. In General

This policy applies to initial appointments only to the extent that the appointment has tenure or rank implications. The policy does apply to all Law School decisions involving recommendations to the University on (1) granting of tenure, (2) promotion, (3) second three-year appointments where a faculty member is initially appointed to a three-year term, (4) mid-term reviews of faculty on probationary status, (5) annual reviews of those on three-year or probationary contracts, and (6) retention of faculty who have tenure.

To some extent this policy codifies existing practices. To that extent it is effective immediately. In other respects, this policy reflects changes in policy or procedure. With respect to changes, this policy is applicable only to contracts, new or renewed, entered after its enactment.

B. Initial Appointments

At the time an individual is offered an appointment at the Law School, a copy of this policy and the Faculty Handbook will be made available to the person. The offer of employment must contain a clear statement of the status that the individual will have and must refer both to this policy and to the Faculty Handbook.

If an individual is offered an appointment other than an initial three-year term appointment or a visitorship, or is to be offered appointment other than at the Assistant Professor rank, the Committee on Tenure, Reappointment and Promotion must approve the appointment, the rank offered and the tenure conditions.

C. Three-Year Term Appointments and Reappointment

Normally a person joining the faculty as an Assistant Professor will be offered an initial three-year term appointment. This is not a "probationary contract," but it is anticipated that the initial appointment will lead to a second three-year appointment, which is a probationary appointment, and ultimately to tenure if (1) the individual's performance satisfactorily meets the standards and (2) the University's and Law School's need for flexibility can be maintained.

During the appointee's first and second year, the Dean shall appoint an ad hoc advisory committee of at least three faculty members to review the person's performance during the year. The purpose of this committee will be to assist the Dean in making the annual review required by the Faculty Handbook, and to assist the faculty member in his or her efforts to progress toward reappointment and tenure. Each committee shall adopt procedures that are similar to, but less formal than, those governing the Committee on Tenure, Reappointment and Promotion stated in this policy. After consultation with the Committee, the Dean shall evaluate the individual's performance in teaching, research, and service. A copy of this evaluation will be given to the individual, and another placed

in his or her file. In the event that the faculty member objects to the evaluation, the Committee on Tenure, Reappointment and Promotion will review it upon request for fairness.

The faculty member is encouraged to respond to the Dean's annual report whether or not he or she seeks review of it by the Committee. The response to the Dean may take any form. A written response will form a part of the faculty member's file. Successful completion of a plan, formulated in consultation with the Dean, will be evidence of satisfactory progress toward reappointment and tenure during the coming year.

At the beginning of the faculty member's third year under the three-year contract, the Committee on Tenure, Reappointment and Promotion will conduct a full review of the individual's performance and promise under the procedures established by this policy, and will make a recommendation as to whether the individual's performance and promise warrant the offer of a second three-year appointment. This recommendation shall be based solely on the faculty member's performance and promise as stated in this policy, and shall not take into consideration the University or Law School's need for flexibility.

If the Committee recommends that the faculty member's performance and promise warrant reappointment, a second three-year contract, which is a probationary appointment, will be recommended unless the Law School's need for flexibility dictates that it is inadvisable to reappoint the individual. Where a question of the Law School's flexibility is raised, the Dean, as chair of the Committee, shall call a special meeting of the Committee. This meeting shall not be held until after a decision has been made that the faculty member's performance has warranted reappointment. At the meeting, the Dean shall present the issue of flexibility. The Committee shall make a recommendation regarding the reappointment in light of the need for flexibility, and shall forward its recommendation, through the Dean, to the Provost.

If a second three-year appointment is offered and accepted, reviews shall be conducted annually by the Dean in the same manner as during the first and second year. At the beginning of the faculty member's sixth year, the Committee on Tenure, Reappointment and Promotion shall prepare its recommendation as to whether tenure should be granted, and whether the faculty member should be promoted.

D. Probationary Appointments

Where the initial appointment is on a probationary contract, the expectation is that the faculty member will be granted tenure at the end of the probationary period. The sole question in the granting of tenure is whether the faculty member's performance is such as to warrant the granting of tenure. The Law School's need for flexibility is not an issue at this point in the process.

An annual review of the faculty member's progress toward tenure will be conducted by the Dean in consultation with an advisory committee of at least three faculty members appointed by the Dean. The purpose of this committee will be to assist the Dean in

making the annual review required by the Faculty Handbook, and to assist the faculty member in his or her efforts to progress toward tenure. Each committee shall adopt procedures that are similar to, but less formal than, those governing the Committee on Tenure, Reappointment and Promotion. The review will be reduced to writing and given to the faculty member. Another copy will be placed in his or her file. If the faculty member objects to the report, it will be reviewed by the Committee for accuracy.

The faculty member shall be encouraged to respond to this annual report whether or not he or she seeks review of it by the Committee. The response may take any form. Successful completion of a plan, formulated in consultation with the Dean, will be evidence of satisfactory progress toward reappointment and tenure during that year. A written response will form a part of the faculty member's file.

At the midpoint of the faculty member's probationary period the Committee on Tenure, Reappointment and Promotion will conduct a full review of the individual's performance and promise in accordance with the procedures established in this document and will report to the Dean its opinion as to whether the person is making satisfactory progress toward a favorable tenure recommendation. This mid-probationary report will contain specific recommendations regarding teaching, research and service. The Dean shall encourage the faculty member to respond to the mid-term review in the same manner that responses are sought to annual reviews.

At the beginning of the faculty member's last year under a probationary contract, the Committee on Tenure, Reappointment and Promotion will conduct a full review of the individual's performance and promise under the procedures established by this policy, and will make a recommendation as to whether tenure should be granted. The Committee will also recommend as to whether the individual ought to be promoted to the next higher rank.

E. Promotions

Whenever the Committee on Tenure, Reappointment and Promotion makes a recommendation that a second three-year appointment be offered to a faculty member or that tenure be granted, it shall also make a recommendation as to whether the individual ought to be promoted. If the Committee recommends promotion, but the promotion is not granted by the University, the Committee will reconsider recommending promotion annually until either the promotion is granted or the Committee recommends against promotion. Whenever the Committee recommends against promotion of an individual, it will reconsider its recommendation every two years until a favorable recommendation is made.

A faculty member may, however, elect not to be considered for promotion even though he or she would normally be considered under this policy. Also, nothing in this policy is to be construed as inhibiting the Committee from considering a faculty member for promotion at an earlier time than he or she would be considered under the policy.

F. Review of Tenured Faculty

The performance of tenured faculty will be reviewed in a manner and on a schedule determined by the Dean consistent with the requirements of the University Faculty Handbook.

IV. MEMBERSHIP OF THE COMMITTEE ON TENURE, REAPPOINTMENT AND PROMOTION

The Committee on Tenure, Reappointment and Promotion shall consist of the Dean of the School of Law as chair, without vote, and all individuals who hold a full-time tenured faculty or decanal appointment at the Law School, other than the individual being considered for tenure, reappointment or promotion.¹

V. PROCEDURE OF THE COMMITTEE ON TENURE, REAPPOINTMENT AND PROMOTION

1. During the first three weeks of the fall semester, the Dean, as chair of the Committee on Tenure, Reappointment and Promotion, shall appoint a subcommittee of the Committee for the purpose of preparing a recommendation and evaluative report on each faculty member who will be considered for tenure, reappointment or promotion during the academic year. The subcommittee shall have at least three members. If warranted by the number of decisions, the subcommittee may be divided into panels by the chair of the subcommittee with each panel having at least three members. Where panels are used, all provisions of this policy governing the subcommittee shall apply to each panel. The Dean shall consult with each faculty member who will be under consideration for tenure, reappointment or promotion in selecting the subcommittee; if panels are used, the

¹ This paragraph applies to faculty members initially hired to start in the Fall semester of 2014 or later. For faculty members hired prior to that date, this paragraph reads:

“The Committee on Tenure, Reappointment and Promotion shall consist of the Dean of the School of Law as chair, without vote, and all individuals who hold a full-time faculty or decanal appointment, other than a temporary appointment, at the Law School, other than the individual being considered for tenure, reappointment or promotion. Notwithstanding the foregoing, however, membership of the Committee on Tenure, Reappointment and Promotion requires that an individual have served as a full-time faculty member at this school for at least one full academic year.”

- chair of the subcommittee will consult with the faculty member concerning membership on the panel that will prepare the report on him or her.
2. The Dean shall provide the chair of the subcommittee with the names of all individuals who are to be considered for tenure, reappointment or promotion under this policy during the year. The chair of the subcommittee will determine whether this list is complete. The chair of the subcommittee will add to the list any faculty member requesting consideration or a faculty member whose name is suggested by another faculty member. The chair shall also determine whether the person to be considered wishes to withdraw his or her name from the list.
 3. The subcommittee shall conduct a thorough review of the faculty member's fitness for tenure, reappointment or promotion, and shall prepare a full written evaluative report and a suggested recommendation on the advisability of tenure, reappointment or promotion for the full committee.
 4. The criteria to be used in the suggested recommendation and report shall be (1) teaching, (2) scholarship, research and other creative work, (3) service, and (4) personal characteristics. Emphasis shall be placed upon teaching and upon scholarship, research and other creative work.
 5. The relationship between the subcommittee and the faculty member under consideration should be a cooperative one in which both seek sources of information that bear upon the faculty member's performance and promise. However, it is the responsibility of the faculty member to bring to the attention of the subcommittee evidence that he or she has met the standards for tenure, reappointment or promotion. During the investigation of facts pertinent to the report, the chair of the subcommittee should consult with the faculty member, requesting information that is pertinent and providing the faculty member with the opportunity of submitting other information and of suggesting lines of inquiry and sources of additional information. Any information provided by the faculty member will be considered by the subcommittee, and any line of inquiry suggested will be followed.
 6. When the subcommittee has completed a draft recommendation and report, it shall provide the faculty member with a copy and give the faculty member reasonable opportunity to suggest changes, including additions and deletions. The subcommittee shall consider all suggested changes, and its report will reflect its disposition of the suggested changes. A final draft of the recommendation and report shall be given to the faculty member and the Dean as chair of the Committee on Tenure, Reappointment and Promotion.
 7. The Dean, as chair of the Committee, shall call a meeting of the Committee to consider all tenure, reappointment and promotion decisions that must be made. Copies of the subcommittee reports and recommendations shall be distributed at the meeting. The faculty member under consideration shall have the opportunity to present to the Committee a written statement, to appear before the Committee, and to present relevant evidence. The Committee may adopt the report, with or without amendments, or reject it. If adopted, it shall constitute the Committee's recommendation and report to the Dean. If rejected, the Dean, as chair of the Committee, shall appoint a new subcommittee to revise it in light of the

discussion at the meeting, and a new meeting of the Committee shall be held to consider adoption or rejection of the revised report.

8. When a recommendation and report is adopted, copies shall be given to the faculty member and the Dean, who will transmit it to the Provost. The Dean shall add his or her recommendation and evaluation with a statement of supporting reasons. A copy of the recommendation and evaluation and the statement of supporting reasons shall be provided to the chair of the subcommittee and the faculty member. A copy shall also be made available to any other faculty member requesting it. Any meeting of the Committee, or recommendation from the Dean, will only occur at a time sufficient to provide the faculty member under review at least 10 working days to respond to a negative recommendation. The faculty member under review, or any member of the Committee, shall have the opportunity to present relevant evidence and arguments to the Dean in writing before the Dean makes a recommendation, and thereafter to present relevant evidence and arguments to the Provost.

VI.

SOURCES OF INFORMATION AND METHODS OF EVALUATION

A. In General

The evaluative process must look to the total contribution that the faculty member has made and is likely to make in the future to the goals of the University and the Law School. Decisions must be made on an individual basis, and comparisons between the faculty member under consideration and other faculty members must not govern recommendations.

The subcommittee and the Committee shall have access to prior annual and mid-probationary reports, responses to these reports, reports previously prepared by the Committee, student evaluations filed by the faculty member with the Dean, and to other parts of the faculty member's file that are given to them by the faculty member. The subcommittee shall consider all evidence that is relevant and material to the criteria for tenure, reappointment and promotion, including hearsay, but care will be taken to evaluate the evidence in light of its credibility.

The following enumeration of sources of information is not exclusive and does not imply that all sources will be useful or needed in all cases. For example, in some cases interviews with students and the faculty member's general reputation may be sufficient to convince the subcommittee or panel of the faculty member's teaching effectiveness. In other cases, however, that evidence may be inconclusive and require further investigation involving additional sources, which might include classroom visitations.

Before a favorable recommendation on tenure, reappointment or promotion is made, the faculty member under consideration must be judged to be highly competent in each criterion stated in the Faculty Handbook and this policy. There

must be a judgment that the individual's overall contribution to the Law School and the University has been and will continue to be significant.

For tenure, reappointment and promotion, a candidate is evaluated in terms of effectiveness in four principal areas: teaching; scholarship, research, or other creative work; service; and personal characteristics. A faculty member normally will not excel in all of these areas, but distinction or promise of distinction in either of the first two constitutes the chief basis for tenure, reappointment and promotion.

It is important that a faculty member's performance in teaching, scholarship and service be viewed in context of the responsibilities imposed upon the individual by the school. In some situations, particular assignments may limit a faculty member's opportunities in other areas. The development of new programs, the assignment to innovative courses requiring extraordinary planning and preparation time, and administrative duties are examples.

B. Teaching

1. In General

Wide variations in personality, talent and style inevitably and desirably produce great diversity in methods and approaches to teaching. Whatever the method or approach, excellence under this criterion requires demonstrated teaching ability comprising both competence in and motivation toward furthering the intellectual development of students.² The tenure candidate's classroom teaching must be thoughtful, provocative and effective. Performance in teaching situations, both in and out of the classroom, must be of a quality to justify the conclusion that he or she is fully capable of furthering substantially the intellectual and professional development of those studying at the graduate-professional level.

The context in which courses are taught may be influential in judging the performance and promise of a faculty member. Thus, whether a course is taught in the first year or thereafter, its subject matter and its relationship to other courses in the area may affect both the manner in which the course is taught and student reaction.

Because of the wide diversity in faculty and courses, the subcommittee should discuss with the faculty member his or her objectives in the courses taught, the methods adopted to achieve those objectives, and changes that the faculty member anticipates making in future teaching.

² This sentence applies to faculty members initially hired to start in the Fall semester of 2014 or later. For faculty members hired prior to that date, this sentence reads: "Whatever the method or approach, substantial performance under this criterion requires demonstrated teaching ability comprising both competence in and motivation toward furthering the intellectual development of students."

2. Student Evaluation

In all cases the subcommittee will seek student opinion through the interviewing of students who have taken courses from the faculty member. This may be done by interviewing individual students or by group meetings. Both the Student Bar Association and the faculty member will be consulted in compiling a list of students to be interviewed, and the subcommittee will ensure that it contains a cross-section of students.

It is desirable that written student evaluations also form an important part of the evaluative process, and it is expected that each faculty member will regularly seek student opinion of his or her teaching effectiveness. If the faculty member has obtained written student evaluations, these will be considered when offered to the subcommittee or panel by the faculty member or when the faculty member has made them a part of his or her file by depositing them with the Dean.

Unsolicited comments by students, made to the subcommittee or panel or relayed by others, will be considered. Graduates of the school who took courses from the faculty member may be contacted for their opinion, due consideration being given to obtaining a cross-section of graduates. In its consideration of student evaluations, the subcommittee should keep in mind that not all faculty will appeal in the same degree to all students. Variation in such appeal is inevitable.

3. Evaluation by Peers

Other faculty members often will be able to evaluate the teaching effectiveness of the individual under consideration. This is clearly true where the other faculty member has observed the candidate's classes for a period of time sufficient to form a judgment. It is usually also true when another faculty member is teaching the same course, and often true when they are teaching in the same areas. Participation with a faculty member in Continuing Legal Education or other programs often reveals some aspect of the person's teaching effectiveness and habits of preparation.

4. Classroom Observations

As part of the process of evaluating teaching effectiveness, one or more members of the subcommittee, or other designated faculty members, will ordinarily visit classes of the faculty member. No subcommittee member will conduct more than two classroom visits per semester without the permission of the faculty member. The faculty member may request that the visitation be preceded or followed by a thorough discussion of the content of the material to be covered in the classes and the objective that the faculty member is seeking to achieve. Precautions shall be taken to ensure that the faculty member is not prejudiced by the presence of others in his or her class, and to ensure that the classes observed are representative. The faculty member shall have the option of requiring notice before a particular class is taught or of allowing the visitation without notice. The faculty member shall have the option of having a class reviewed by videotape.

5. Other Sources of Information

Other possible sources of information about teaching include self-evaluations by the faculty member of his or her teaching, discussions with the faculty member and inspection of the materials used in the courses taught by the faculty member.

6. Clinical and Non-traditional Courses

Since clinical courses and some other non-traditional courses involve student supervision, a one-to-one relationship between faculty and a student as their main component, and teaching by example, some aspects of the evaluation of the teacher's performance are different. Student opinion shall be obtained in the manner previously provided, and, to the extent relevant, the other sources of information may be employed in the evaluative process. In addition, judges and lawyers who have observed the faculty member in cases involving the clinic may be able to assess the effectiveness of the faculty member as to case preparation and presentation, and the manner of supervision given to students.

In the clinical setting, discussions with the faculty member under consideration are of special value in ascertaining the faculty member's approach to the supervision of students. As usual, discussions with students are also likely to provide insight into teaching and normally should be conducted.

7. Non-classroom Teaching

In all cases, the availability of the faculty member to the students and his or her participation in the non-classroom teaching obligations of the faculty will be evaluated.

C. Scholarship, Research and Other Creative Work

1. In General

Like teaching, wide variations in personality, talent, style and opportunities result in a diversity of the types of research that faculty members undertake. Any evaluation of scholarship, however, involves a judgment of the scholarly abilities and interests of the faculty member. Therefore, a favorable recommendation presupposes that the faculty member undertakes research projects with care and thoroughness, and that he or she has the ability to observe and analyze legal issues and processes and to organize results in a way that leads to a better understanding of the subject researched.

A faculty member has the obligation to disseminate his or her research beyond teaching in the Law School in order to allow other interested scholars and lawyers to share in the research. Dissemination also has the function of subjecting the faculty member to the critical review of others, thereby providing additional evidence of the competency of the faculty member as a scholar. Thus, except in highly unusual situations, dissemination of a faculty member's research in a form subject to critical review by other scholars and

lawyers is a necessary requirement for a favorable recommendation.

Much of the research conducted by a faculty member on an initial appointment will be in the context of classroom preparation. This is often due in part to the fact that the faculty member's legal education, including his or her graduate legal education, and prior practice may have been general in nature and may not have afforded an opportunity to develop the area of expertise in which he or she is asked to teach. This must be taken into consideration in making recommendations. The faculty member's promise as a scholar is often of greater concern than his or her publications at this stage, but there must be tangible evidence of such promise, and it is expected that a person will produce some disseminated scholarship before the time for a recommendation on tenure, reappointment or promotion occurs. More is expected of those who have greater experience as teachers or practitioners before joining the faculty.

2. Acceptable Research for Law Faculty

Both the purposes of legal research and the methods of its dissemination are varied, and no enumeration of either can be complete. For example, research may be for the purpose of evaluating court decisions, statutes, or the legal writings of others. It may be speculative, or suggest new areas for the development of the law, or it may be in the context of existing decisions and statutes. Research may be for the purpose of organizing a body of law that is presently unorganized, or for the purpose of reorganization. It may be designed to assist lawyers in the planning of client affairs or to provide them with simplified approaches to complex matters in litigation or planning. It may be aimed at educating those who have no experience in a particular area of law or at furthering the understanding of experts in the area.

The methods of disseminating research are also varied. Treatises, books and articles on specialized subjects, book reviews and other publications are the traditional means recognized in all disciplines, and have a special place in the dissemination of a law faculty's research. Reports and monographs resulting from a funded or unfunded research project undertaken by a faculty member alone or in cooperation with others are also valid methods of dissemination, as are reports prepared for committees of the bar, the court, the executive or legislative branches of government or other public or private agencies. Statutes, court rules, procedural codes drafted by the faculty member and accompanying memoranda, as well as briefs submitted in the litigation of a case, and memoranda prepared in the context of consultantship are other examples. Publication of class materials, manuals for the clinical law program or lawyers, materials distributed at Continuing Legal Education programs, and papers, even though not published in any form, given at meetings involving legal educators or the practicing bar also are appropriate.

3. Evaluation of Scholarship, Research and Other Creative Work

A faculty member under consideration for tenure, reappointment or promotion will be asked to supply the subcommittee or panel with a complete list of all of his or her

research undertakings including both those that have resulted in dissemination beyond the Law School and those that have not. The faculty member should be encouraged to make this list as complete as possible, refraining from any concerns of modesty. The subcommittee will then discuss with the faculty member his or her research activities, including projects presently in progress and those planned for the future.

Research that is published in any form will be evaluated by the subcommittee. In determining whether the faculty member under consideration meets the standard of excellence in scholarship, the Committee must evaluate whether the scholarship has had an impact and/or constitutes a significant contribution to the faculty member's field.³ The opinions of other faculty members at this school who have teaching or research interests similar to those of the faculty member under consideration will be sought. Sources outside the Law School will also be consulted. Again, it is impossible to enumerate all ways in which this may be accomplished, but some examples may be helpful.

- a. Faculty members at other law schools or, where appropriate, in other disciplines at this university or at other universities may be asked to evaluate the work.
- b. The extent to which the publication has been cited as authoritative by courts or other writers should be considered.
- c. Where the publication is designed to assist the practicing bar, lawyers and judges may be consulted as to the extent that the publication has assisted them.
- d. If the publication is a statute, its adoption, and any comment upon the statute published elsewhere is relevant; if the publication is in the form of a brief or memorandum of law, the extent to which a court has relied upon the publication in reaching a decision should be considered.
- e. Where the publication is designed for classroom use or use in the clinical law program, the extent to which the materials have been used, as written or in an altered form, at other schools, and the extent to which students believe that they are useful in helping them in understanding the material, is relevant.
- f. Materials prepared for Continuing Legal Education programs may be evaluated, in part, by lawyers attending the program and using the materials.
- g. Where the publication results from funded research, the degree to which the funding agency is satisfied by the publication is relevant.
- h. If the publication is in the form of a report to a committee, the extent to which the committee believed it to be helpful, and the extent to which it was adopted by the committee, should be considered.

The subcommittee shall solicit letters from external reviewers. The candidate shall suggest potential reviewers to the subcommittee. The subcommittee, in consultation with tenured faculty, shall identify additional reviewers. The chair shall select at least three reputable individuals who can evaluate the candidate's contributions. At least two letters should be solicited from reviewers selected by the candidate and at least one letter should

³ This sentence applies to faculty members initially hired to start in the Fall semester of 2014 or later.

be solicited from a reviewer not provided by the candidate. The materials supplied to external reviewers shall include a *curriculum vitae* and written instructions requesting: 1) a statement of the relationship between the reviewer and the candidate and the extent of the reviewer's knowledge of the candidate's scholarship; 2) an assessment of the quality of the candidate's scholarship; and 3) an evaluation of the extent to which the scholarship constitutes a significant contribution to the candidate's field.

In determining the extent to which a publication supplies evidence that the faculty member has met his or her research obligations, the subcommittee or panel will consider the extent to which it furthers the understanding of the law, the thoroughness of the research, the logic of the organization and analysis, the reasonableness of the conclusions or end product, and the extent to which it is innovative or imaginative. All such judgments must be made in the context of the purpose of the publication.

D. Service

1. In General

Service activities of a faculty member are divided into those that are of service (a) to the Law School, (b) to the University, (c) to the legal community, (d) to legal education, and (e) to the community at large. All shall be reviewed in evaluating a faculty member under consideration for tenure, reappointment or promotion. The extent to which a faculty member engages in service activities will vary among the faculty, and from time to time. Involvement in the administration and governance of the Law School is expected of all. Exceptional service will be considered a positive element in recommendations, but service activities should not be so extensive as to detract unduly from the faculty member's teaching and research obligations.

Service frequently involves teaching or research. For example, service on a committee may lead to the production of reports or the drafting of statutes or rules of court. To the extent that this is the case, the product of such service should also be considered evidence of scholarship.

2. Evaluation of Service

The subcommittee should ask the faculty member under consideration to provide a detailed and complete list of his or her service. The subcommittee should also discuss service activities with the faculty member to ascertain the extent of participation that each has involved. Service activities shall be judged upon the following criteria: (1) the importance of the activity, (2) the degree of the faculty member's participation, including the amount of time involved and the quality of the faculty member's service, and (3) the appropriateness of the activity for an academic lawyer. Where the Dean of the Law School or another University official has requested that the faculty member undertake the activity, this shall be taken into consideration.

Inquiries should be made of the Dean, the Associate Dean, the chair of committees upon

which the faculty member has served, and others at the Law School who are likely to have information about the quantity and quality of the faculty member's performance in committee work and other administrative assignments. Inquiries will also be made of administrators, faculty members and others in the University who are acquainted with the faculty member's service to the University, and of those who are likely to know of the faculty member's work in legal education, in the legal community and in the community at large.

E. Personal Characteristics

Great care must be taken to ensure that personal suspicion or animosity not be allowed to influence tenure, reappointment or promotion decisions. The personal characteristics of the faculty member being considered are relevant only insofar as these characteristics have a direct bearing on the individual's teaching, research or service obligations. In no case shall the race, religion, sex, or political persuasion of the faculty member be of any influence in judging his or her personal characteristics.