

University of Michigan Law School Faculty Grievance Procedure

Preamble. The Law School establishes the following peer-based procedure to promote the prompt, effective, and fair resolution of faculty members' grievances. In the interest of University-wide uniformity, the procedure adopted here is based closely on the University's Model Faculty Grievance Procedure (adopted September 2010), amended as necessary to reflect special features of the Law School.

The procedure is available to faculty members of the Law School who have disputes or complaints concerning the way decisions have been made about any aspect of their employment, other than decisions that are based solely and exclusively on judgments about professional performance. This procedure is available to tenured and tenure-track faculty, to clinical and legal practice faculty, whether or not on long-term appointments, to visiting and adjunct faculty, and to any other person qualifying as a faculty member of the Law School under Regents' Bylaw 5.01 (revised October, 2003), except where such persons are included in a collective bargaining agreement or unit.

The following grievance procedure is intended to provide for review of administrative action concerning faculty members so that, if mistakes have been made, they may be corrected, or alternatively, if the action taken was proper, it may be better understood by the person or persons affected. Informal consultation should resolve most problems. The formal procedures set forth here will therefore apply only when informal methods have failed.

The formal procedure provided here does not apply to disputes between or among faculty members acting in a non-administrative capacity, or faculty members of the Law School and another academic unit of the University or faculty members or administrators of another academic unit. The SACUA Faculty Hearing Committee may be an appropriate forum for complaints of this nature.

The success of these procedures depends upon the willingness of all members of the University community to participate when asked, and to participate truthfully and in good faith.

Section 1. Coverage

Sec. 1.01. The terms "faculty" and "faculty member" as used in this Procedure include tenured and tenure-track faculty, clinical and legal practice faculty, whether or not on long-term appointments, visiting and adjunct faculty, and any other person qualifying as a faculty member of the Law School under Regents' Bylaw 5.01 (revised October, 2003).¹

Sec. 1.02. This grievance procedure provides for review when a claim is made that a decision or action concerning a faculty member's conditions of employment at the Law School violates University or Law School policy or is illegal or manifestly unfair.

¹ University of Michigan Regents' Bylaw 5.01 revised October, 2003), provides: "The term *faculty* shall include members of the teaching and research staff together with the executive officers, the directors of various teaching, research, and library units, research associates, curators, and persons with similar duties."

Sec. 1.03. The Procedure shall be available to all faculty members who are not included in a collective bargaining agreement or unit. Faculty members otherwise entitled to use this procedure may file a timely grievance to contest the action that removed their title or brought their appointment to an end.

Sec. 1.04. The procedure applies only to decisions made by the Law School acting through its Deans and other authorized persons. The procedure does not apply to issues between faculty members or groups of faculty members.²

Sec. 1.05. The procedure applies only to a decision or action concerning a specific individual or specific individuals, including those adversely affected by application of a policy or standard operating procedure, written or unwritten. Challenges to general Law School or University policy are to be handled through normal governance or administrative processes.

Sec. 1.06. The procedure does not apply to decisions regarding employment, including tenure, promotion, retention, renewal, and merit pay determinations, that are based solely and exclusively on judgments about professional performance. But this grievance process does apply to claims that the procedure followed in making such decisions failed to follow University or Law School policies and procedures or was illegal or manifestly unfair, or that the decisions violated standards of nondiscrimination contained in Regental Bylaw 14.06 (revised September 2007). In no case, however, shall this grievance process extend to any matter requiring an interpretation of substantive tenure, promotion, retention, renewal, or merit pay standards, or an inquiry into the determination made by the tenured faculty, or by any member or part of the tenured faculty, whether those standards were satisfied by the Grievant or by any other past or current member of the faculty.

Sec. 1.07. The procedure does not serve as an additional step in a dispute that has been addressed in another formal hearing procedure of the University or a University unit. But a faculty member may use this grievance process to review new sanctions imposed by the Law School acting on the basis of findings made in a different hearing procedure.

Section 2. Filing Grievances; Parties and Responsibilities

Sec. 2.01. A faculty member shall file a grievance within 90 calendar days of the date the grievant first knew or could reasonably have been expected to know, on the basis of documentation or otherwise if there is no documentation, of the decision or action that gave rise to the grievance. Grievances shall be filed on a Faculty Grievance Form (FGF) and submitted to the Director of Academic Human Resources (DAHR) and the SACUA Faculty Grievance Monitor (FGM). The DAHR shall transmit a copy of the FGF to the

² The SACUA Faculty Hearing Committee was created by the Senate Assembly in 1987 to address issues between or among faculty members.

named respondent(s), with copies to the Law School Dean. In extraordinary circumstances, a Grievance Hearing Board (GHB) may extend the deadline for filing a grievance. The grievant must assert such circumstances in the FGF and provide supporting evidence.

Sec. 2.02. The parties to a grievance are the faculty member who initiates the grievance and the decision-maker(s) responsible for the contested decision or action. The Dean is to be named as a respondent only if the Dean was actively involved in the contested decision or action. When the grievance involves a decision made, or an action taken, by a group of persons, or a decision or action reviewed through multiple organizational levels, the presumption is that the individual with the current ultimate authority to make the decision or take the action (for example, the person whose signature authorizes the decision or action) will be named as the sole respondent.

Sec. 2.03. Both the grievant and the respondent shall abide by all the procedures set forth here, shall participate in good faith, and shall respect the confidentiality of the process. Communication concerning the proceedings shall be limited to parties, advisers, mediators, and any others for whom information is strictly necessary for the legitimate effectuation of the process.

Sec. 2.04. Before filing a formal grievance, a grievant shall seek to resolve the dispute by discussing it informally with the person(s) who made the disputed decision or took the disputed action, or actively participated in the decision or action, or who has the authority within the Law School to provide redress.

Sec. 2.05. Before, during, and after the processing of any grievance, the parties are strongly encouraged to seek an informal resolution by personal discussions between or among themselves, by invoking the Law School or University ombuds or mediation structure, or through the intervention of the Law School official(s) with the authority to provide redress. At any step before rendering a final decision, the Grievance Hearing Board (GHB) may remand the case to the parties with directions to seek an informal resolution. When remanding a case, the GHB shall set a timeframe for successful resolution. If resolution fails, the case will return to the GHB for further processing. Informal resolution, however, shall remain entirely voluntary.

Sec. 2.06. Prior to the first meeting of the GHB, the GHB, the grievant, or the respondent may initiate in writing a one-time clarification of the issues to be considered. If the GHB requests the clarification, the request shall be transmitted simultaneously to the grievant and the respondent, who will have 10 working days to provide a written response. If one of the parties submits a clarification, a copy shall be provided to the DAHR, the FGM, and the other parties. The other parties will have 10 working days to provide to the DAHR, the FGM, and the party who submitted the clarification any additional comments or information in response to the clarification. The DAHR will then forward both the clarification and the response to the GHB.

Section 3. Grievance Hearing Board (GHB)

Sec. 3.01. A Grievance Hearing Board (GHB) shall be established as provided in Section 5 to handle each grievance filed by a faculty member. Closely related grievances may be consolidated before a single GHB.

Sec. 3.02. The GHB shall meet within 15 working days after it is established. The Board shall first determine in executive session whether the complaint is within the authority or jurisdiction of the grievance process under Sections 1.01 through 1.06. In addition, the Board may dismiss the grievance without a hearing if it concludes, on the basis of the FGF and all other material before the GHB, and with all questions of fact assumed in the grievant's favor, that there are no grounds for deciding the case in the grievant's favor. The GHB may also dismiss the grievance without a hearing if the grievance is filed after the expiration of the time period set forth in Section 2.01.

Sec. 3.03. Within 10 working days of its first meeting, the GHB shall advise the grievant, the respondent, the DAHR, the FGM, and the Dean in writing whether it will proceed with a hearing. If the Board decides the complaint is not grievable because it is not within the coverage of Sections 1.01 through 1.06, or the grievance is to be dismissed under Section 3.02, it shall state its reasons in writing. If the Board decides to proceed, it shall specify in a written notice to the parties, the DAHR, the FGM, and the Dean when and where the hearing will be held and what issues are to be addressed by the parties. The hearing shall be scheduled within 30 working days or as soon thereafter as is practicable.

Sec. 3.04. If the GHB decides the complaint is not grievable, the grievant shall have 15 working days to appeal this decision pursuant to the appeal procedures set forth in Section 4.

Sec. 3.05. The GHB shall ensure fair procedures for the parties in any hearing.³ Specifically, the grievant and the respondent shall have the following rights:

- (a) To be accompanied before the GHB by advisers, who may be attorneys. The advisers may advise their clients but may not participate directly in the hearing.
- (b) To appear and present their cases, and to cross-examine the witnesses and challenge the evidence presented by the other party; and
- (c) To have access to all relevant evidence, testimonial and documentary, except confidential evaluations and evidence that would infringe upon the privacy interests of third persons. Upon a party's request, the chair of the GHB shall be allowed to examine relevant confidential files of an academic unit or department and to provide the Board and all parties with a summary of their contents as they relate to the grievance, giving due consideration to protecting

³ The grievance procedure must comply with the demands of due process, most critically, fair notice and an opportunity to be heard. It is not intended to be a substitute for either a civil or a criminal trial and is not subject to all the requirements applicable in those settings.

the confidential aspects of the material.

Sec. 3.06.

(a) The GHB may call its own witnesses and obtain relevant documents, subject to the parties' right of access and the confidentiality restrictions of Sec. 3.05(c).

(b) Testimony before the GHB is voluntary. Any inference drawn from a witness's refusal to testify should be carefully supported and explained by the GHB.

Sec. 3.07. Hearings before the GHB shall be private and confidential, attended only by the principal parties and their advisers, if any; the Director of Academic Human Resources or designee; and the Faculty Grievance Monitor or designee. Unless otherwise directed by the GHB for good reason, witnesses shall attend only while testifying. The GHB chair may invite appropriate observers or others having a substantial interest in the outcome of the case, if both the grievant and the respondent agree.

Sec. 3.08. Portions of the hearing at which testimony is taken and evidence presented shall be recorded verbatim, but the recording may be by voice recorder. Both the grievant and the respondent may also record the hearing.

Sec. 3.09. The GHB shall deliver only to the grievant and the respondent a written provisional decision within 20 working days after the completion of testimony and argument. The content of the provisional decision shall remain confidential and may not be shared at any time with any other persons except those entitled without special agreement to participate in the hearing or advise the parties under Sec. 3.07.

Sec. 3.10. The grievant and the respondent shall have 10 working days after receipt of the provisional decision to submit a written response to the GHB.

Sec. 3.11. The GHB shall consider any responses to the provisional decision and shall deliver its final decision within 10 working days after receipt of those responses. Both the provisional decision and the final decision shall include a summary of the testimony, factual findings, conclusions with reasons the grieved decision or action was or was not violative of Law School or University policy, illegal, or manifestly unfair, and, if appropriate, a proposed remedy. Decisions of the GHB shall be by majority vote. The reasons for any dissent must be stated in a written minority opinion. The GHB shall present the final decision only to the grievant, the respondent, the Dean, the DAHR and the FGM.

Sec. 3.12. Although the GHB does not have executive authority, the parties are expected to respect and accept the findings, conclusions, recommendations, and any proposed remedy of the GHB as the considered judgment of a competent and disinterested peer group. The GHB may recommend actions that do not fall within the respondent's authority, but recommendations addressed to those who are not parties should not give

rise to the same expectations.

Section 4. Appeals

Sec. 4.01. The grievant or the respondent or both may submit a written appeal of a final decision by a GHB within 20 working days of the receipt of the decision. Either party may submit an appeal contingent upon the other party's appealing. If both parties submit contingent appeals, the appeals shall be treated as withdrawn.

- (a) If the Dean is not a respondent, the appeal shall be submitted to the Dean. The Dean shall recuse himself or herself if she or he has significant personal or professional associations with either party.
- (b) If the Dean is a respondent or has recused himself or herself, the appeal shall be submitted to the Standing Tenure Committee, which shall act without any member who is a grievant, respondent, or member of the GHB. For purposes of this appeal only, the Associate Dean for Clinical Affairs and the Director of the Legal Practice Program shall join the Standing Tenure Committee, except if they are a grievant, respondent, or member of the GHB. A member of this committee shall recuse herself or himself if she or he has significant personal or professional associations with either party. If the number of members of this committee is fewer than three, the number shall be brought to three by choosing by lot additional members from the Standing Tenure Committees of the past five years who, at the time of the lot, are either current or emeritus members of the tenured faculty.

Sec. 4.02. An appeal shall be decided on the record made before the GHB. When necessary in the judgment of the person or committee deciding the appeal, the proceedings may be remanded to the GHB to receive new information. A remand for new information shall be granted on the request of the grievant or the respondent only on a showing that the information could not, in the exercise of reasonable diligence, have been presented when the record was made. A remand shall set the times for further GHB proceedings, including any revised final GHB decision.

Sec. 4.03. The findings, conclusions, recommendations, and proposed remedy, if any, of the GHB shall be presumed valid on appeal, and shall be rejected or modified only because of substantial errors of fact or interpretation of Law School or University policies, because of serious procedural irregularities, or because the appeal authority's considered judgment is that the GHB erred in deciding whether the initially grieved decision or action was or was not violative of Law School or University policy, illegal, or manifestly unfair, or because any proposed remedy is clearly unreasonable or inappropriate.

Sec. 4.04. The Dean or Committee shall respond in writing within 30 working days of receiving the appeal, stating the action to be taken and the reasons for it. Committee decisions shall be by majority vote. The reasons for any dissent must be stated in writing. The response (including any dissent) shall be transmitted to the grievant, the respondent,

the members of the GHB, the DAHR, and the FGM.

Sec. 4.05. After exhausting the procedures set forth above, if the party believes that there has been a substantial inequity, that party may, within 20 days of receiving the decision, file a written appeal to the Provost. In considering such an appeal, the Provost shall act in accordance with Sections 4.02 and 4.03. The Provost shall respond in writing within 30 working days of receiving the appeal, stating the action to be taken and the reasons for it. The response shall be transmitted to the grievant, the respondent, the person or persons who decided the initial appeal under 4.01, the members of the GHB, the DAHR, and the FGM.

Section 5. Structure; Organization; Miscellaneous

Sec. 5.01.

(a) The University will establish a Faculty Grievance Hearing Panel (FGHP) from whose members each Grievance Hearing Board will have one selected randomly, subject to the exceptions contained in Sec. 5.03. The FGHP will consist of tenured faculty members, elected by each school or college in accordance with written rules formulated by that unit. The Law School governing faculty shall elect one member of the tenured Law School faculty (who may be an emeritus member) to serve on the FGHP. Law School faculty on the FGHP shall each serve a single term of three years, unless the Law School faculty member is one of the initial members of the FGHP chosen by lot to serve a term of only one or two years. At the expiration of the term, the governing faculty of the Law School shall elect a new member. FGHP members must not serve consecutive terms. Vacancies will be filled in the same manner except that if the unexpired term is one year or less, the replacement member shall serve an additional three-year term.

(b) The Law School shall establish a Law Faculty Grievance Panel (LFGP) from which two members may be selected to serve on a Grievance Hearing Board, subject to the exceptions contained in Sec. 5.03. At the beginning of each academic year, the Law School governing faculty shall elect five members from the tenured faculty (who may be emeritus members) or clinical or legal practice faculty on seven-year contracts to serve on the LFGP for one year. LFGP panel members shall serve no more than three consecutive terms

Sec. 5.02.

(a) Within 10 working days of receiving notice of a pending grievance from the DAHR, the grievant and the respondent, in consultation with the Law School Ombud, may agree on two Law School members of the LFGP to serve on the GHB. The parties shall transmit this choice to the DAHR and the FGM who shall appoint these members to the GHB. If the parties are unable to agree within these 10 days, the DAHR and FGM shall jointly choose two Law School members of

the LFGP by lot.

(b) Within 10 working days of the appointment of the Law School faculty members of the GHB, the DAHR and the FGM shall, in consultation with the Law School Ombud, appoint a member of the FGHP to serve as chair of the GHB. The chair shall not be a member (or emeritus member) of the Law School faculty.

(c) Except in extraordinary cases or in cases of recusal, members of the GHB shall continue to serve as members of the GHB until the grievance procedure (including any appeals and remands) has been completed even if their terms as members of the FGHP or LFGP have expired.

Sec. 5.03. A member of a GHB shall recuse herself or himself if she or he has significant personal or professional associations with either party, and any member shall be excused with the concurrence of both the DAHR and the FGM, if either the grievant or the respondent objects for sufficient cause to that person's serving. If the DAHR and the FGM disagree about excusing a GHB member, the issue shall be resolved by the Dean, or, if the Dean is a respondent, by the Provost. A recused or excused GHB member shall be replaced by using the same procedure applicable to the selection of that member. If more than 3 members of the LFGP are recused or excused, the DAHR and the FGM shall jointly choose a replacement member of the GHB by lot from the tenured faculty (who may be emeritus members) or clinical or legal practice faculty on seven-year contracts.

Sec. 5.04. The Faculty Grievance Monitor (FGM) is a tenured faculty member who is appointed annually by SACUA to monitor all grievances. In addition to the functions assigned elsewhere, the FGM and the DAHR shall have the following responsibilities:

- (a) Jointly to provide or arrange for the training of FGHP members, and especially those designated as GHB chairs, in the conduct of a hearing and the preparation of a formal written decision;
- (b) Jointly or separately to provide objective information to either the grievant or the respondent or both about the operation of the grievance procedure;
- (c) Separately to monitor the processing of all grievances and to report to the Dean or to the Provost if the Dean is a respondent, any delay or other failure to comply with specified procedures or GHB directives or decisions on appeal;
- (d) Separately to maintain confidential records of all grievance proceedings, including copies of all written documents that are submitted and of any written transcript of testimony that is prepared. If there is a single voice or electronic recording of the testimony, the DAHR shall maintain custody of it after the GHB renders a final decision, but shall allow access as needed by the parties, the FGM, and the University authority to whom any appeal is addressed; and
- (e) Jointly to provide redacted reports or summaries of cases, with party names and all identifying details deleted, to University administrators and faculty members, scholars, and others with a legitimate interest in knowing about the

proceedings.

Sec. 5.05. The Dean, or the Provost if the Dean is a respondent, shall take prompt action to remedy any undue delay in the processing of grievances or other failure by any party to comply with specified procedures or GHB directives or decisions on appeal.