

# **RUTGERS SCHOOL OF LAW-NEWARK – FACULTY BYLAWS**

*As adopted by the Faculty*  
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## **ARTICLE I. MEMBERSHIP**

A. Pursuant to Rutgers Policy §50.1.8, the legislative body of the School of Law-Newark shall consist of: the President of the University, the Chancellor of the Newark campus, and the following categories of faculty:

(1) the tenured and tenure-track Professors of Law, Associate Professors of Law, and Assistant Professors of Law, and any full-time tenure-track Instructor of Law who has served at least one year (hereinafter referred to as "the general law faculty");

(2) (a) the Clinical Professors of Law, Associate Clinical Professors of Law, and Assistant Clinical Professors of Law appointed pursuant to the faculty bylaw adopted November 2005 (Article VIII Sub-Article One of these Bylaws) (hereinafter referred to as "the CSS faculty") ;

(b) the Clinical Professors of Law, Associate Clinical Professors of Law, and Assistant Clinical Professors of Law appointed pursuant to the faculty resolution dated October 28, 1999 (Article VIII Sub-Article Two of these Bylaws) who have not been appointed pursuant to the faculty bylaw adopted November 2005 (hereinafter referred to as "the non-CSS clinical faculty"); and

(3) the tenured and tenure-track librarians of rank Librarian I, Librarian II, and Librarian III, and any full-time tenure-track Librarian IV who has served at least one year (hereinafter referred to as "the law librarians").

B. The Faculty Secretary shall maintain, make available to all members, and bring to every meeting of the legislative body, a complete and current list of the membership of the legislative body, sorted by the categories specified in section A of this Article, and showing which members are tenured and which if any have opted out of quorum calculations pursuant to Article IV Section D or Article VI Section B.

C. The Legal Research and Writing Faculty, the administrative staff of the School of Law, and visiting faculty members may participate on an advisory basis without vote in the meetings of the legislative body.

D. (1) For each non-executive session meeting of the legislative body the President of the Student Bar Association may designate five students who shall have the right to attend and speak at that meeting.

(2) In addition to the students designated pursuant to subsection (1) above, students who are members of a law school committee may attend and participate without vote at any faculty meeting, whether in executive session or not, at which that committee is reporting.

## **ARTICLE II. OFFICERS & REPRESENTATIVES**<sup>1</sup>

- A. The legislative body shall annually in the fall elect:
- (1) a Faculty Secretary; and
  - (2) a Representative and an Alternate Representative to the House of Representatives of the Association of American Law Schools.
- B. Pursuant to Rutgers Policy §50.2.1, the legislative body shall elect a University Senator every three years in the spring, for a term to begin July 1, and to fill an unexpired term when a vacancy occurs.
- C. The legislative body shall elect two Representatives to the Newark Faculty Council, in the spring, for staggered three-year terms beginning July 1, and to fill an unexpired term when a vacancy occurs.
- D. The Faculty Secretary shall maintain and make available to all members a current list of all the Officers and Representatives elected under this Article, showing their terms of office.

## **ARTICLE III. NOTICE.**

Wherever these Bylaws require notice, whether or not specified as “written” or “in writing,” that requirement shall be satisfied by electronic mail to the local Law School e-mail addresses or Rutgers University e-mail addresses of members.

## **ARTICLE IV. MEETINGS**

*A. Regular Meetings.* The legislative body shall meet on a monthly basis on Thursdays during the Fall and Spring semesters. The business of the first meeting of the Fall semester shall include the election of a Faculty Secretary.

*B. Special Meetings.* On the written request of twenty-five percent of the legislative body, the Dean shall call a special meeting. A special meeting may also be called on the Dean’s initiative, or by the President or the Chancellor.

### *C. Schedule, Agenda, and Notice*

- (1) At the beginning of each semester, the Dean’s office shall give written notice of the schedule of regular faculty meetings for that semester to all members of the legislative body, the Legal Research and Writing Faculty, the administrative staff of the School of Law, visiting faculty members, and the President of the Student Bar Association.
- (2) The week before each Thursday meeting, the Faculty Secretary shall make a written request for agenda items to the persons described in paragraph (1) of this section. A written agenda shall be sent to those persons on the Monday before the meeting.

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<sup>1</sup> See also election of two members of Committee of Review, Art. V(B)(1)(d) (page 8).

A written agenda of any special meeting shall be sent to those persons as part of the notice calling that meeting, or as soon after that notice as possible.

(3) It shall be in order to vote on a substantive proposal only if prior notice of the text or substance of the proposal has been given at least seven calendar days prior to the meeting, unless at least two thirds of those present are in favor of waiving such prior notice. [paragraph added by amendment, Sept.27,2012]

*D. Quorum.*

- (1) For purposes of calling a meeting to order, a majority of the combined general law faculty and CSS faculty must be present. For purposes of voting on any matter on which eligibility to vote is restricted to certain categories of members, a majority of the members of the legislative body who are eligible to vote on that matter shall constitute a quorum.
- (2) For the purpose of determining the total number with respect to which a majority is computed under this section, the following members of the faculty may, but are not required to, opt out of that total:
  - (a) A faculty member who has resigned his or her appointment, and whose resignation has been accepted but has not yet taken effect.
  - (b) A faculty member in the terminal year of his or her appointment.
  - (c) A faculty member on leave of absence or sabbatical leave.
  - (d) A fulltime faculty member whose current budgetary allocation is assigned 50% or more outside the law school.
- (3) A faculty member who has opted out may rescind such choice, and such member's eligibility to vote shall be restored upon such rescission.

*E. Presiding Officer.* The Dean, when present, shall preside at all meetings of the legislative body. The Dean shall, at least annually, designate and communicate to the legislative body a list of three members of the legislative body, in ranked order, the highest ranked who is present to preside in the absence of the Dean.

*F. Voting Rights.*

(1) Voting on reappointment, tenure and promotion of the general law faculty shall be limited to tenured members of the general law faculty, and in the case of promotion, to those members of rank equal to or higher than the rank to which promotion is sought.

(2) (a) Voting on reappointment and promotion of CSS faculty, and on the grant of a long-term presumptively renewable contract to a CSS faculty member, shall be limited to tenured members of the general law faculty and members of the CSS faculty who have been granted long-term presumptively renewable contracts, and in the case of promotion, to those members of rank equal to or higher than the rank to which promotion is sought—except that the voting constituency for promotion to the rank of Clinical Professor II, being presently under consideration by the Clinical Review Committee, is not determined by this bylaw.

(b) Voting on reappointment of non-CSS clinical faculty shall be limited to members of the general law faculty and CSS faculty.

(3) Only members of the general law faculty shall vote on initial appointment of general law faculty.

(4) Only members of the general law faculty and the CSS faculty shall vote on initial appointment of CSS faculty.

(5) Only law librarians shall vote on initial appointment of law librarians, except that the Dean shall appoint two members of the general law faculty, of whom at least one shall be tenured, to meet and vote with the law librarians on such appointments. Only tenured law librarians of rank equal to or higher than the rank sought shall vote on reappointment, tenure, and promotion of law librarians, provided that when there are fewer than six tenured law librarians at the required rank, the Dean shall appoint a sufficient number of tenured general law faculty or tenured members of the University Library Faculty to bring the total reviewing body to six members.

(6) All members of the legislative body shall vote in the election of University Senator, the election of delegates to the Newark Faculty Council, the election of two members of the Committee of Review, and the election of the Peer Evaluation Committee that makes recommendations for merit pay increases under the collective bargaining agreement. All members of the legislative body shall have any other voting rights clearly granted to all full-time faculty members by Rutgers Policies, the collective bargaining agreement, or other binding external authority. The voting rights of the non-CSS clinical faculty shall be limited to those specified in this paragraph. The voting rights of the law librarians shall be limited to those specified in paragraph (5) and this paragraph.

(7) When a law librarian has been designated as Director of the Law Library, the general law faculty may, by resolution, allow that person the courtesy title of Professor of Law and the right to vote on all matters except appointment, reappointment, promotion, or contracts of the general law faculty and clinical faculty.

*G. Voting Procedures.* Voting shall ordinarily be by voice or by show of hands, at the discretion of the presiding officer. A vote by secret ballot shall be conducted at the request of any of the members eligible to vote. On any motion moved and seconded at a meeting, those present may agree to authorize a post-meeting vote by ballot to be returned by a specified date after the meeting; all members otherwise eligible to vote on the matter shall be eligible to participate in such a post-meeting vote, whether present at or absent from the authorizing meeting; the results of such a vote shall be promptly announced to the membership, and shall be appended to the minutes of the meeting that authorized the vote.

*H. Minutes.* The Faculty Secretary shall prepare minutes of each meeting, which shall include: The date and time of the meeting; a list of the members present and of those absent; a separate list of others present; the dates of prior minutes approved; a summary of the Dean's announcements; the mover, wording, and disposition of any main motion; and the time of adjournment. A draft of the minutes shall be sent as soon as possible after the meeting to the persons described in Section C (1) of this Article, with a request to submit corrections within three days. After incorporating any submitted corrections, the Faculty Secretary shall send a copy of the draft minutes to the Chancellor.

I. *Executive Session.* A motion to go into executive session for a specific stated reason may be approved by majority vote. The motion may specify certain categories of non-members or individuals allowed to attend the executive session. If the executive session is to consider the report of a committee, all members of that committee who participated in the preparation of or deliberation on that report shall be allowed to attend and speak at the executive session. The minutes of an executive session shall record only final actions taken.

## **ARTICLE V. COMMITTEES**

### **A. Appointment, Eligibility, and Quorum**

(1) Except as otherwise provided by these Bylaws, the Dean shall appoint the faculty and administrative members, and the chairs, of all Committees on an annual basis at the beginning of the fall semester, and may change the membership of any committee at any time. [Note: The Budget & Planning Committee and the Appointments Committee are elected, and the Promotion and Tenure Committee is appointed, in the spring semester.]

(2) The Dean shall provide notice of the membership of all Committees to the legislative body and such notice shall be appended to the minutes of the first faculty meeting of the fall semester.

(3) All members of the legislative body shall be eligible for appointment to all Committees, except as otherwise provided by these Bylaws.

(4) The law librarians shall not serve on the Appointments Committee, the Promotion and Tenure Committee, the Clinic Review Committee, or the Scholastic Standing Committee. The non-CSS clinical faculty shall not serve on the Appointments Committee, the Promotion and Tenure Committee or the Clinic Review Committee.

(5) All Committee members shall serve until their successors are appointed or elected. Members may be appointed or elected to successive terms.

(6) Except as otherwise provided in these Bylaws, the Student Bar Association may appoint student members to each standing committee listed under section (B)(2) of this Article, up to half of the combined number of number of faculty members and administrative voting members of that committee.

### **B. Standing Committees**

#### **1. Standing Committees Required by Rutgers Policy §50.1.9**

a. *Admissions Committee.* The Admissions Committee shall include as voting members the Associate Dean for Academic and Student Services, the Assistant Dean for Admissions, the Assistant Dean for the Minority Student Program, and at least

two members of the legislative body, and shall not have any student members. The Admissions Committee recommends to the faculty criteria for the admission of students and establishes policy guidelines by which the Admissions Office operates. The faculty members on the committee may review individual applications forwarded to them by the Assistant Dean for Admissions.

b. ***Appointments Committee.*** The Appointments Committee shall be selected in accordance with Article VI of these Bylaws.

c. ***Budget and Planning Committee.***

(i) election of Budget and Planning Committee

During the spring semester, the Dean shall present a proposed Budget and Planning Committee to the legislative body in writing. At that time, the Dean also shall give the legislative body notice of the date by which any alternative slates shall be submitted and the date of the faculty meeting at which voting shall take place on the committee proposed by the Dean and any alternative slates submitted by the due date. The slates may contain overlapping members and also may identify the chairperson. The call to the meeting shall list each of the slates.

The Budget and Planning Committee shall consist of at least seven and no more than nine members of the legislative body, of whom a majority shall be tenured. No more than two students may be appointed to this committee, who may participate with vote on all matters except those dealing with individual faculty status or compensation. The Director of Development and the Associate Dean for Finance and Administration shall serve as non-voting advisory members of this committee.

If no alternative slate is submitted by the due date, the committee proposed by the Dean shall serve as the Budget and Planning Committee. If any alternative slate is proposed, a vote shall be taken by secret ballot.

(ii) duties of Budget and Planning Committee

The Budget and Planning Committee shall review budget information concerning the Law School and advise the Dean and the faculty on resource allocations and priorities. The legislative body may designate the tenured members of the Budget and Planning Committee as the Peer Evaluation Committee for the purpose of making recommendations on merit pay increases under the collective bargaining agreement. When the tenured members of this committee perform that function, they shall obtain the advice of the Director of the Law Library and of the Associate Dean for Clinical Education.

d. ***Committee of Review.*** Pursuant to Rutgers Policy §50.1.9 B (3), the Committee of Review shall consist of four tenured members of the legislative body, of whom two shall be appointed by the Dean and two shall be elected. Prior to the meeting at which the election shall take place, the Dean shall announce the two appointed members and request nominations for the two elected members. The committee shall not have any student members. This committee shall have advisory powers only. It may report to the Dean, or the Chancellor, or the President, or the Governors, and may in its discretion make reports also for the information of the legislative body. The duties of the



committee shall be to counsel and advise any member of the legislative body who seeks such advice with respect to any problem affecting his or her status as a member of the University. The committee may also on its own initiative make suggestions as to personnel matters to the administrative officers .

e. ***Curriculum and Academic Policy Committee*** [the Courses of Study Committee] The Curriculum and Academic Policy Committee shall include at least five members of the legislative body, including at least one member of the CSS or non-CSS clinical faculty. The Dean may appoint non-faculty administrators to this Committee, but the faculty members shall constitute a majority of the voting members. The Student Bar Association may appoint student members to this Committee up to half of the combined number of the Committee's faculty and administrative members. A quorum for a meeting of this committee shall include both half of its faculty members and half of its total membership. The Curriculum and Academic Policy Committee examines and recommends to the full body all requests for additions to or major changes in specific courses or the academic program. The Committee shall recommend to the full body proposals for new courses of four or more credits. It may, on its own authority, approve new courses of three credits, or may refer the proposal to the full body for further action. The Vice Dean responsible for academic affairs may approve new courses of two credits or less, or may refer the proposal to the Committee for further action. The committee is also responsible for advice and recommendations on: grading and examination policy; the development of the academic calendar; policies to improve academic guidance and support for students, particularly poorly performing students; and any other academic or curricular issues referred to the Committee by the Dean or faculty.

f. ***Promotion and Tenure Committee.*** The Promotion and Tenure Committee shall be appointed in the Spring semester and shall consist of at least three tenured members of the general law faculty, at or above the rank of the candidates to be considered for promotion during the coming academic year. This committee has responsibility for gathering documentation relating to members of the general law faculty or CSS faculty who are candidates for reappointment or promotion, and presenting that information to the tenured members of the general law faculty. The Promotion and Tenure Committee shall not have any student members, but may seek advice from the Student Bar Association.

g. ***Rules of Procedure Committee.*** The Rules of Procedure Committee shall include at least three members of the legislative body, no more than one administrative member, and no more than one student member. This committee shall annually review these Bylaws for compliance with current University policies and collective bargaining agreements, and recommend amendments when appropriate.

h. ***Scholastic Standing Committee.*** The Scholastic Standing Committee shall include as voting members six faculty members appointed by the Dean from the general law faculty or CSS or non-CSS clinical faculty, two members of the administrative staff appointed by the Dean, and six student members appointed by the

Student Bar Association. When the Committee sits quasi-legislatively, all faculty, administrative, and student members may vote; and a quorum shall consist of four faculty members. Regardless of the actual number of members present, the number of votes cast by the student members shall not exceed the number cast by the faculty members. Any recommendation voted by the Committee shall include a breakdown of the vote by the three categories of Committee members. When the Committee sits quasi-judicially, the administrative members may sit but not vote. The quasi-judicial procedures of this Committee shall be as enacted by the general law faculty and CSS faculty [See Appendix A.]

## 2. Other Standing Committees

- a. ***Clinic Review Committee*** [ see Article VIII, Sub-article Two, section III, at page 27]
- b. ***Faculty Development Committee***. The Faculty Development Committee shall encourage the production and development of faculty scholarship through colloquia, symposia and other gatherings, encourage the discussion of pedagogy, and coordinate the mentoring program for junior faculty.
- c. ***Health and Safety Committee***. The faculty members of the Health and Safety Committee shall be jointly appointed by the Dean and the AAUP-AFT, pursuant to AAUP Contract 2007-11, Art.XX (C).
- d. ***Library and Technology Committee***. The Library and Technology Committee shall advise and recommend measures to enhance the Law School's capabilities in the law library and information technology.
- e. ***Loan Repayment Assistance Program (LRAP) Committee***. The Loan Repayment Assistance Program Committee shall be responsible for overseeing the effective administration and insuring the financial integrity of the LRAP program, and shall make the annual LRAP award decisions.
- f. ***Minority Student Program (MSP) Committee***. The Minority Student Program Committee shall provide advice and support to promote the Minority Student Program.
- g. ***Public Interest Committee*** The Public Interest Committee shall promote the public interest activities of students and faculty.
- h. ***Student Life Committee*** . The Student Life Committee shall advise the Dean and faculty on non-academic aspects of student life at the Law School.

C. Special Committees. The Dean may form special committees of limited duration, and may appoint non-members as well as members of the legislative body as voting members of such committees. The Dean shall give notice to the legislative body of both the membership and the charge of any special committee. The legislative body may by resolution form special committees of limited duration.

## ARTICLE VI. APPOINTMENTS PROCEDURE

[ The procedure set forth in this Article is used for general law faculty hires, new clinical faculty hires, who are hired into the Clinical Scholar Series, and for “look-see” visitors (meaning visitors who are being considered for a permanent appointment to the faculty). Decisions about instructional visitors (visitors who are not being considered for a permanent appointment to the faculty) are made by the Dean; decisions about adjunct faculty appointments are made by the Vice-Dean in consultation with the Dean.]

### A. Committee Procedures

[source: April 16,2007 proposal from Appointments Committee, and April 19,2007 faculty meeting minutes; revised to reflect new terminology]

1. *Composition.* The Appointments Committee shall consist of six or more members of the general law faculty, the Dean of the Law School ("the Dean"), and four students enrolled in the Law School. The Dean may appoint the Vice-Dean to serve as his or her representative on the Appointments Committee.

[Note: see also Art.VIII, Sub-Art.One (I)(C)(1), at page 21, concerning Appointments Committee membership when a CSS position is to be filled.]

### 2. *Faculty members.*

(A) *Voting powers.* Each of the faculty members on the Appointments Committee (including the Dean) shall have the power to vote on each matter that the Appointments Committee considers.

### (B) *Selection of Faculty Members for Service on Committee.*

(i) Faculty members shall be selected according to the following procedures. During the Spring Semester, the Dean shall present to the faculty, in writing, his/her nomination of six or more faculty members to serve on the Appointments Committee. The Dean shall also designate one or two faculty members as the chairperson or chairpersons of the committee. (The Dean shall make such nominations sufficiently early in the Semester so that the Appointments Committee may satisfy its obligations under section 5 of these rules.)

(ii) Any faculty member may nominate an alternative slate of faculty members for appointment to the Appointments Committee. When the Dean presents his/her slate of nominees, s/he shall give written notice of the date by which any alternative slates of faculty nominees must be submitted. The Dean shall allow at least seven days for submission of alternative slates. The slates may contain overlapping members and also may identify the proposed chairperson or chairpersons.

(iii) At the close of the period for nominating alternative slates, if no alternative slate has been nominated, the faculty shall vote on whether to approve the Dean's nominations. Each nominee shall be elected if a majority of the votes cast favor his or her election to the Appointments Committee. If some or all of the nominees are not elected, the Dean shall nominate other faculty members to fill the unfilled faculty positions on the Committee, and such person or persons shall be elected if approved by majority vote of the faculty.

(iv) If at least one alternative slate has been nominated, the faculty shall vote among the slates. The slate receiving a majority of ballots cast shall be elected. If no slate receives a majority of votes cast, the faculty shall choose between the slates receiving the two highest numbers of votes. The members of the slate that receives the higher number of votes during the second round of voting will serve as the faculty members of the appointments committee.

(v) Any votes required above may be conducted without holding a faculty meeting.

### 3. *Students.*

(A) *Voting powers.* One of the student members may vote on matters considered by the Appointments Committee. Any student who casts a vote regarding whether to invite a candidate back to campus for a job talk must have participated in at least two-thirds of the initial interviews of faculty candidates.

(B) *Selection.* The student members of the committee shall be chosen by the Student Bar Association ("SBA") from among the elected student representatives. The student who will serve as the voting member of the committee must be designated in writing by the beginning of the Fall semester following the beginning of the Appointment Committee's term. First year students may not serve on the Appointments Committee.

(C) *Terms of Appointment.* The term of each student member of the Appointments Committee shall commence at the beginning of the Fall Semester.

4. The Committee shall act by a majority vote of the committee's voting members. However, a majority of the tenured faculty members of the committee may decide to interview a candidate during the initial screening process or bring a candidate to the full faculty. [Note: see Minutes, Apr.19, 2007, page 4, re addition of second sentence.]

5. *Spring Semester Responsibilities.* The Appointments Committee shall begin its term during the Spring Semester. During the Spring semester, the Committee shall consider the appointments priorities for the upcoming academic year, and attempt to come to a tentative decision about those appointments priorities. The Committee shall then present its tentative decision about appointments priorities to the faculty and provide an opportunity for faculty and student representatives to comment upon and discuss those priorities. If the Committee fails to arrive at a tentative decision about appointments priorities, the Committee shall provide an opportunity for faculty to discuss appointments priorities with the Committee. Such a Committee presentation of priorities or faculty discussion of priorities may take place in one or more faculty meetings or may take place in one or more informal meetings called by the Committee for such purpose.

6. *Information Regarding Candidates.*

(A) The Committee shall report to the faculty all relevant information concerning candidates whom the faculty will consider for appointment to the faculty, including:

- (1) the candidate's academic record (including class standing as can best be determined),
- (2) the evaluation of each candidate by outside references,
- (3) the assessment and critiques of the candidate's written work by members of the Law School faculty,
- (4) the formal teaching evaluations submitted by students in classes the candidate has taught (for a reasonable period of time), if any, or a composite summary of such evaluations,
- (5) the written evaluation, if any, of the candidates prepared by Rutgers law students on the basis of interviewing the candidate on campus (which evaluation shall identify the student members of the Appointments Committee who were present at the interview as well as the total number of students attending the interview).

(B) Notwithstanding section 6(A), the Committee may in its discretion forgo seeking the academic record of all lateral candidates who are presently full time faculty at another law school .

B. Faculty Appointment Procedures [source: April 5, 1988 Proposal from the Planning Committee, and Minutes of April 14, 1988, revised to reflect new terminology.]

1. An affirmative vote of at least sixty percent of the general law faculty shall be necessary for a candidate to be deemed acceptable for appointment. For purposes of this vote, the following members of the faculty may, but are not required to, opt out of the voting pool on the question of whether the candidate is acceptable:

a. A faculty member who has resigned his or her appointment, and whose resignation has been accepted but has not yet taken effect.

b. A faculty member on leave during the period when appointments candidates were brought to the law school to meet the faculty.

c. A faculty member in the terminal year of his or her appointment.

d. A fulltime faculty member whose current budgetary allocation is assigned 50% or more outside the law school. [see Minutes of Dec.1,2011]

2. A faculty member who has opted out may rescind such choice, and such member shall be entitled to vote on any matters subsequent to such rescission.

3. The pool of acceptable candidates shall be ranked by the general law faculty and, subject to post-ranking adjustments and limitations, offers shall be made to candidates in the order in which they are ranked.

#### C. Tenured Faculty Decisions on Appointments

[source: Nov,27,1984 proposal from Planning Committee, adopted at Dec.13,1984 faculty meeting; revised to reflect current practice and new terminology]

After the full general law faculty has met and determined the acceptability, ranking and post-ranking adjustment of candidates for the faculty, the tenured members of the general law faculty shall take a separate vote to determine whether they ratify the actions of the full general law faculty. The decision whether to ratify the actions of the full faculty made by the tenured faculty under this bylaw shall be by majority vote of the tenured faculty present at the meeting.

#### D. Visiting Appointments

[source: April 16, 2007 proposal from Appointments Committee, paragraph 7, and April 19, 2007 faculty meeting minutes]

(A) If a faculty appointment is made as a "look see" visit the candidate shall go through a process substantially similar to the appointments process for a permanent faculty member (although not necessarily during the normal time period for an appointment process), and shall be appointed only after a vote to hire of 60% of the faculty eligible to vote. The faculty may, but is not required to, vote on the permanent appointment while the "look see" visitor is at the school.

(B) If the Dean makes a visiting appointment otherwise than as a "look see" visit, the faculty may consider that visiting faculty member for a permanent appointment, or as a "look see" visitor, not earlier than the semester following the completion of the visit and the permanent appointment, or "look see" visit may commence in the semester following consideration if the faculty so desires.

## **ARTICLE VII. REAPPOINTMENT, PROMOTION AND TENURE PROCEDURES**

[Source: Rutgers Law School Policy on Promotion and Tenure, adopted Oct.10,1986, amended Oct.29,1987; section 3(d) comes from current University policy. **This article is only compiled and is not being re-enacted concurrent with adoption of these Bylaws**, and should be understood to be applicable to decisions on reappointment and promotion of members of the general law faculty, and the CSS faculty, and to be effective only to the extent that it is consistent with the University's criteria and procedures for reappointment and promotion as set forth in Rutgers Policies §§ 60.5.14 through 60.5.18 and the current Academic Reappointment/Promotion Instructions issued by the Executive Vice President for Academic Affairs. See also Appendix B, Law School Applications of the Standards for Promotion and Tenure.]

### 1. Introduction

#### a. Timing of Promotion and Tenure Decisions

For persons appointed as assistant professors (usually someone five or less years out of law school), a two or three step process will ensue. First, a promotion to associate professor without tenure will normally be considered during the spring semester of the third year of a three-year initial appointment. If promotion is granted, there will normally be a three-year appointment as an associate professor without tenure. During the third year of that appointment (or sooner at the initiative of a candidate), there will be a decision on tenure (with or without promotion to full professor). Thus, consideration for tenure will normally occur in the sixth year, although a candidate may always ask that the process be accelerated.

Failure to secure tenure by the end of the sixth year means that a candidate will leave the University. However, a seventh or terminal year is available to any person denied tenure in the sixth year.

If a candidate is awarded tenure as an associate professor, but the promotion to full professor is either not sought by the candidate, or is denied, at the time that tenure is granted, a subsequent request for promotion to full professor will be considered at whatever juncture the candidate feels that the relevant university criteria have been satisfied.<sup>2</sup>

For persons initially appointed as associate professor or professor without tenure, the timing of subsequent decisions will vary. Absent a request for consideration at an earlier time, during the third year of an initial three-year appointment, the candidate may seek tenure (with or without promotion to full professor) or the candidate may choose to seek a reappointment or extension of term as associate professor without tenure.<sup>3</sup> In the latter event, tenure may be sought anytime thereafter, through and including the sixth year on the faculty. If the candidate is denied tenure in the third year of an initial appointment, the tenured faculty may recommend a reappointment, without prejudice to further consideration for tenure.

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<sup>2</sup> [added Oct.29,1987:] Faculty members considering requesting promotion should discuss this decision with the dean.

<sup>3</sup> [added Oct.29,1987:] A recommendation for reappointment without tenure from the tenured faculty is reviewed by the Dean and the Provost before being sent to the Executive Vice President for decision.

The flexibility thus built in is necessitated by variation in the degree of scholarly orientation among people appointed as associate professor or professor without tenure. Some such people have been absorbed in practice as an attorney and need longer than three years to get their academic and scholarly bearings.

b. Role of the Tenured Faculty and Committee on Promotion and Tenure

The tenured faculty operates as a committee of the whole in making recommendations to the University on reappointment, promotion, and tenure matters. There exists a Committee on Promotions and Tenure whose function is to gather data on a candidate to be considered by the tenured faculty. That Committee is responsible, inter alia, for soliciting outside evaluations regarding scholarship, professional service and general usefulness, and for organizing class visitations to gather data on teaching effectiveness. That Committee's function is purely informational, and it makes no recommendation to the tenured faculty.

2. Preparation of the Candidate's Record

a. Finished Nature of Written Work Products

Principal reliance in evaluating scholarly and research accomplishment must be placed on finished work products, meaning those already published<sup>4</sup> or which are ready for publication. Unfinished work products may be submitted for internal faculty consideration as "work in progress." If the candidate requests, such work in progress will be submitted to external reviewers. However, the principal utility of such material is to indicate the continuing productivity and active mind of the candidate.

b. Selection of Outside Reviewers

The Committee on Promotions and Tenure prepares a list of outside reviewers, after soliciting suggestions from both the candidate and faculty knowledgeable about the candidate's field or fields. When each review is received, a notation is included on the review as to whether the reviewer serves upon nomination of the Committee or the candidate. The current practice described below should be continued.

1. The Committee prepares a list in rank order of the outside readers it has selected. This is done without disclosure to the Committee of the list of outside readers nominated by the candidate.

2. Any outside reader who is included on the Committee's list of nominees and who is also nominated by the candidate is treated as a committee nominee and not as the candidate's nominee.

The Committee shall afford the candidate an opportunity to identify any potential bias or other objections as to possible outside reviewers in accordance with the following provision of "the academic reappointment/promotion instruction."

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<sup>4</sup> While "published" normally refers to works in print, it can include transcriptions of speeches, testimony, or other oral presentations, which are then widely disseminated.



"The candidate, in addition, may prepare a list of persons in his/her field from whom he/she prefers letters of evaluation not be solicited. The candidate shall provide a written explanation for the exclusion of each person on that list. If a letter of evaluation is solicited from an individual on the candidate's not for solicitation list, the candidate's written explanation shall be attached to the individual's letter of recommendation. A department chair or dean may, at his/her discretion, also attach an explanation for his/her decision to solicit a letter from the individual. Such attachments, whether prepared by the candidate, the department chairperson, or the dean, shall be held, like the letters to which they refer, in confidence."

c. Confidentiality of Outside Letters Evaluating Scholarship

The University imposes a very strict requirement that outside letters be available only to faculty charged with evaluating a candidate. An assurance of confidentiality is given to each outside reviewer and such assurance contributes significantly to frank, uninhibited review. Our current procedures for limiting access to such materials must therefore be maintained. However, the Dean has, upon a candidate's successful completion of the University's review process, summarized the substance of constructive criticism which may contribute to the candidate's professional growth. Such a summary must, of course, be carefully constructed to prevent breach of confidentiality, or the Dean must secure a release from the outside reviewer.

d. Material Aiding Teaching Evaluation

A variety of indices of teaching ability are consulted by the tenured faculty. The results of student evaluation questionnaires are collected and examined. Many tenured faculty also seek input from individual students who have been taught by the candidate and whose integrity and judgment the faculty member has come to trust. Signed evaluations by alumni may be solicited and examined. Most importantly, consideration is given to written evaluations prepared by tenured faculty, or a committee thereof, based on class visitations taken not earlier than the second year of the initial appointment. Finally, candidates are encouraged to submit a videotape of a class or classes, though use of such material represents an innovation at Rutgers Law School.

3. Conduct of the Tenured Faculty Meeting

a. Voting Authority

The pattern of voting authority has been fixed by University policy. The tenured faculty is given responsibility for all reappointment, promotion, and tenure recommendations (to the University) except for promotion to Professor or Professor II. In

the cases of promotion to Professor or Professor II, only tenured faculty at or above the rank of Professor or Professor II, respectively, vote on the promotion.

Where a candidate who has served as a visiting professor seeks a permanent appointment, a two-stage process shall be employed. The full faculty and the tenured faculty shall vote on the candidate in accordance with the procedures on appointments, and, if the appointment involves tenure, the tenured faculty shall vote on the matter of tenure as well. In the latter instance, the regular "tenure evaluation" procedure shall be utilized.

b. Dean's Vote

Because the Dean submits an independent recommendation to the University, he or she does not cast a vote as part of the tenured faculty voting on promotion and tenure decisions.

c. In-House Review of Scholarship

It is the duty of each member of the tenured faculty to review the written submissions from a candidate. This is an important responsibility even though no ready means exist for policing the obligation.

Customarily, faculty "experts" in the candidate's field of scholarship are expected to review and comment upon a candidate's scholarship. When such commentary takes the form of detailed appraisal, it is hoped that the expert's evaluation will be written and distributed to the tenured faculty in advance of the tenured faculty meeting in question. If this is done, the written evaluation must be submitted to the candidate and made a part of the record which is forwarded to the University in accordance with University regulations.<sup>5</sup>

d. Voting Procedures

A positive recommendation requires a positive vote by a minimum of two-thirds of those voting. (Those voting include those voting positively, negatively, or abstaining.) If fewer than two-thirds of those voting support the candidacy, the recommendation of the department shall be recorded as a negative recommendation. Only those faculty who attend the meetings in which the candidate is considered are to be accorded a vote; a vote by an absent faculty member is not permitted under any circumstances. When a faculty member has been present at the start of a meeting but leaves before the actual vote is taken, the Dean shall determine whether the faculty member has been present at the meeting and has heard sufficient debate to permit a ballot at the meeting.

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<sup>5</sup> [added Oct.9,1986:] University practices currently permit the tenured faculty to create a "Reading Committee" whose comments are made available to the tenured faculty along with outside confidential letters. These comments are not available to the candidate until after the Board of Governors has acted on the candidacy. The faculty of the Law School has not adopted the "Reading Committee" procedure.

#### 4. Transmittal of the Record to New Brunswick

##### a. Preparation of Evaluation Forms

After the tenured faculty decides on a recommendation, the Dean will appoint a three-member drafting committee from those faculty who attended the meeting to prepare the recommendation form summarizing the tenured faculty's evaluation of the candidate. Before submission to New Brunswick, the form will be made available for review by the tenured faculty members who attended the meeting at which the candidate was discussed. Such faculty may suggest changes to the drafting committee if they believe the form does not accurately express the substance of the faculty's consideration, including a fair narrative of dissenting views.

##### b. Student Commentary

Tabulations of student evaluations of teaching effectiveness, as well as any communications by students, signed or anonymous, will be included in the record.

#### 5. Review of Record [section added Oct.9, 1986]

Under current University promotion and tenure practices, the candidate for promotion or tenure is entitled to review the record, except for confidential outside letters of recommendation, after the Board of Governors has acted on the application. University practices governing promotion and tenure may change and should be consulted.

### **ARTICLE VIII. CLINICAL FACULTY**

**SUB-ARTICLE ONE. CLINICAL SCHOLARS SERIES** [Bylaw adopted November 2005] [Note: Within this Sub-article, “tenured & tenure-track faculty” should be understood to refer to the general law faculty.]

#### **I. Clinical faculty hired after the adoption of this bylaw**

##### A. Scholarship

1. The Clinic Scholar Series (CSS) position includes a clinical scholarship requirement. Scholarship means in-depth study, learning, and research in a specific field of inquiry designed to make direct contribution to knowledge in that field. Scholarship is measured by peer recognition of its originality, effect on, and importance to the development of the field, whether that be development of law or legal thought, advancement of legal education—including the understanding of clinical pedagogy and design—the improvement of the practice of law, or the functioning of legal institutions, agencies, or procedures. A member of the CSS track should demonstrate a continuing commitment to scholarship.

The scholarship must be manifested in a minimum of two major publications or their equivalent (e.g., multiple shorter publications could be considered the equivalent of one major one). In addition to audiences for traditional scholarship, the writings can be directed primarily to practicing lawyers, judges or clinical professors and could include, for example, writings on clinical pedagogy or design, lawyering theory or skills, doctrinal developments in one's practice areas, or a treatise or monograph on an area of the law. The writings need not be published in traditional law reviews or be of a theoretical nature, but they should contain significant new insights developed by the writer rather than mere summaries of the work of others. Briefs may not be used to satisfy this requirement, though of course a brief can serve as the basis for a monograph, chapter in a book, or law review article. Student notes cannot be used to satisfy this requirement.

2. Clinical faculty will be given two 3-year terms to complete this requirement, though like all faculty, clinical faculty can seek promotion early. Writings commenced or completed before appointment to the CSS track will be considered toward the requirement. Clinical faculty will be expected to demonstrate tangible evidence of progress at the end of the first term to justify a promotion to the next contract. Ordinarily, clinical faculty will be hired as Assistant Clinical Professors in the first term and will present at least one work of scholarship as well as evidence that he or she has met the clinical series requirements of substantial proficiency in lawyering, clinical teaching and supervision, and service before being promoted to the next term as Associate Clinical Professor. Ordinarily, at the end of that term, a Clinical Associate Professor will present at least one additional major work of scholarship as defined in A.1 above, as well as evidence that he or she has met the existing clinical series requirements of excellence in lawyering, clinical teaching and supervision, and service, to be promoted to Full Clinical Professor where he or she will receive a long-term presumptively renewable contract of five years, subject to funding and, in addition, terminable "for cause" as that term is used in university personnel decisions involving the termination of non-probationary faculty and administrators.

Failure to attain a new contract at any stage of the process leading up to the long term presumptively renewable contract will result in a final one-year contract and termination following that final contract.

3. Clinical faculty who receive a long-term presumptively renewable contract will have the same continuing teaching, service, and scholarship obligations as tenured faculty.

#### B. Scholarship Support

Clinical faculty members on the new CSS track will be provided with the array of scholarship supports provided to tenure track faculty (e.g., research leaves, sabbaticals, research assistants, conference travel, research grants), with the same conditions and limitations that apply to tenure-track faculty. An implication of this principle is that faculty members on this new track will ordinarily receive one research leave, at full pay, in each of the two three-year contracts. When a CSS faculty member becomes entitled to

long-term renewable contracts, he or she will ordinarily receive research leaves with the same conditions and limitations that apply to tenured faculty (e.g., a one-semester leave after teaching for six semesters, at eighty percent of normal pay). Clinical faculty members who carry caseload and/or administrative loads throughout the summer may apply for summer coverage, and the dean will take all reasonable steps to provide that coverage. Similar arrangements will be made for clinical faculty in the fall and spring semesters, including those on soft-money grants, who require coverage in order to utilize a research leave.

### C. Appointments and Promotion Process

1. *Entry-level appointments.* All new clinical faculty approved by the faculty as set out below will be appointed on the new CSS track.

In the years when a CSS position is to be filled, the Appointments Committee shall include at least one tenured faculty member who teaches in a clinic or (when they become available) one CSS faculty member who has been granted a presumptively renewable long term contract. The Appointments Committee will conduct a national search that will include, but not be limited to, the AALS hiring procedure. Clinical scholar candidates will then be presented to the faculty in the same manner as candidates for tenure track positions, a process that includes interviewing with faculty and giving a presentation to the faculty on a topic of potential clinical scholarship. The packet that goes to the faculty for its consideration shall be constructed in the same fashion as the packets for tenure track candidates. This means that the packet should ordinarily include an official law school transcript.<sup>6</sup> The faculty vote of whether to proceed with the appointment will require that the candidate gain a vote of 60% of the entire eligible faculty, comprised of the tenured, tenure-track, and CSS track faculty. If, in the case of competing candidates, more than one clinical candidate meets the 60% threshold, faculty shall rank order the candidates in the same way it rank orders candidates for a tenure track line and provide instructions to the dean about how to proceed with offers. The ranking for the clinical position shall be separate from the ranking for the tenure-track position.

2. *Promotion of faculty hired as entry-level faculty.* Promotion shall be handled by the regular Promotion and Tenure Committee in the same manner as entry-level tenure track faculty. The Committee will send the candidate's writings to outside reviewers when candidates apply for promotion to Associate Clinical Professor and Full Clinical Professor. The full committee report, including the outside reviews, shall be made available to the faculty, which will vote whether to promote the candidate to the next rank. Faculty votes will be advisory to the dean. The dean's decision will be subject to the provost's approval.

[Note: Criteria and procedures for promotion to the rank of Clinical Professor II are under consideration by the Clinical Review Committee.]

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<sup>6</sup> This requirement will not apply to applicants who have been out of law school for over twenty years.

#### D. Participation in Governance

1. Subject to paragraph 2. in this Part, clinical faculty members upon appointment to the CSS track pursuant to paragraph C, will have the same voting rights as tenured and tenure track faculty except for the right to vote on tenure track personnel issues. Tenure-track personnel issues include all stages of appointing a dean.

2. The right to vote created in this Part will not include the right to vote to amend this by-law for a period of ten years from the date this by-law is adopted by the faculty.

#### **II. Transition for current clinical faculty (CCF)**

A. *Transitional appointments.* Current clinical series faculty members are invited to apply for appointment to the new clinic series scholar track. The timing of the transition will be set out in this Part. The mechanism of appointment will be the same as in I.C.I above except no national search will be involved. The scholarship requirement will be the same as in I.A.I above.

B. Up to two CCF may be considered for the new track in the academic year following adoption of this bylaw. Another two CCF faculty may be considered for the new track in the year after the dean has secured funding<sup>7</sup> for these initial CSS positions and for the scholarship amenities (e.g. sabbaticals, research assistants, summer stipends, anticipated case coverage in the clinic) for the three years covered by the initial contract. This process can be repeated until all the CCF who wish to be considered for the new track have applied. If, at any time during the six year probationary period, funding becomes unavailable for the scholarship amenities for currently-appointed CSS faculty, the appointment of additional CCF to the CSS under the transition process shall pause until this funding is restored. Priority among CCF for application to the track will ordinarily be determined by the following criteria and in the following order: 1) rank; 2) seniority within rank; 3) seniority at Rutgers Law School; 4) and years of legal experience. The dean, in consultation with the faculty, may permit "out of order" transitions if a CCF has a competing offer from another law school and wishes to convert to CSS early. Once appointed to the CSS track, a faculty member cannot return to the 1999 clinic series. Once appointed to the CSS track, a failure to secure a long-term presumptively renewable contract pursuant to this bylaw will result in a termination of employment after a terminal year.

C. CCF who are approved for the Clinical Scholar Series will have voting rights as specified in Part I. D.

D. CCF who do not apply to the new track, or who do apply but are not appointed to the new track, may remain in their current clinical series status with their current titles (and may be considered for promotion) as long as two conditions are met: (1) they

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<sup>7</sup> The term funding is meant to include, among other sources, government and foundation grants, state funding, private donations, endowments, attorney fee awards, and hard lines or other law school funding presently allocated to the clinical programs.

continue to meet the present clinical series requirements and (2) the ABA does not definitively determine that the CCF non-voting positions, as components of an overall clinical program that is making a transition to the CSS track, are nonetheless inconsistent with accreditation standards. Should the ABA definitively determine that the CCF non-voting positions are in violation of accreditation standards, CCF must apply for appointment on the new track within one year or at the expiration of their current contract, whichever period is longer.

In the event the ABA definitively determines that the CCF non-voting positions are in violation of ABA accreditation standards, any CCF who do not apply for the new track, or apply and are not appointed, shall receive a terminal year before their employment is terminated. If prior to the ABA determination, CCF have applied for, but denied, an appointment to the new track, they may reapply within one year after the ABA definitively determines that the CCF non-voting positions are *inconsistent with* accreditation standards.

E. *Transitional promotions.* The promotion of current members of the clinic series track who are accepted onto the new clinic track will be handled as set out in I.C.2 above, though they will retain their current rank in the new series. If a Full Clinical Professor begins the new track, he or she will not be asking for promotion after the first three year contract, but a review of his or her work by outside reviewers will still be required.

F. CCF will retain their present titles when proceeding to the new track—e.g., full clinical professors will remain full clinical professors even though they will convert to a 3-3 contract arrangement.

### **III. Other Issues**

A. CSS faculty will be expected to teach non-clinical courses periodically as determined by the Dean, subject to the same set of expectations and norms that govern the teaching assignments of tenured and tenure-track faculty. For example, the dean can presently urge a tenured faculty member to teach an overload when that seems the best, or the only, way to staff the curriculum, in exchange for a lighter load at some point in the future. The same would hold true for classroom teaching by CSS faculty. The dean shall arrange for appropriate coverage of clinical responsibilities where necessary to permit the assumption of non-clinical teaching duties.

B. The creation of new clinics, or the transfer of a line into or out of the clinical programs, shall be subject to a planning process that begins with the Budget and Planning Committee and ultimately requires a 60% vote of the faculty.

C. The dean shall make a report to the faculty, before it votes on this by-law, showing in detail the funding available to support the Clinic Scholar Series. The vote can be held without regard to whether the CSS is fully funded.

D. The dean will take all reasonable steps, subject to available funding and in consultation with the tenured and tenure track faculty, to make financially secure the positions of CSS faculty members who are reappointed to the second three-year contract under I.A.2. or who proceed directly to the long-term presumptively renewable contract.

E. Clinical faculty who are appointed to the new track and are unable to take advantage of a research or summer leave because: 1) his/her departure from case work during the leave period would present concerns for clients under the code of professional responsibility; or 2) due to other concerns that would stay the probationary period for tenure track faculty, may apply to the dean for a stay of the 6-year track for a period of time equal to the unused leave(s). In no event, may a stay under this provision exceed a total of one year. In the event funding is unavailable for a CSS track members' research leave or summer coverage leave, the CSS member shall be eligible for a stay of the 6-year track until such leaves are provided. This stay has no limit and is in addition to other stays authorized in the first sentence of this paragraph.

## **SUB-ARTICLE TWO. CLINICAL SERIES POSITIONS**

### **FACULTY RESOLUTION REGARDING LONG TERM APPOINTMENTS OF CLINICAL TEACHERS As revised October 28, 1999**

#### **I. TITLES AND TERMS OF EMPLOYMENT**

**a. Clinical Series Appointments:** There shall be created at Rutgers Law School - Newark a clinical series of academic appointments: Assistant Clinical Professor, Associate Clinical Professor and Clinical Professor ("Clinical Series Positions"). Persons holding Clinical Series Positions shall be on 12 month contracts, shall be full-time employees of the University, and are bound by University regulations governing outside employment.

**b. Initial Appointment.** The Law School will initially hire persons to fill these positions for a three-year term or for a one-year term as a visiting clinical faculty member, as appropriate for the circumstances of the particular appointment. Persons currently employed as clinical attorneys or staff attorneys may apply for an appointment embodying the terms specified in this Resolution, including the procedures specified in Paragraph III herein. If appointed to a one-year term, a visiting clinical faculty member may apply for a three-year appointment in the Spring Semester of his/her visiting year.



**c. First Reappointment.** Following an initial three -year appointment, the Law School may appoint a person in a Clinical Position to another three-year term, if reappointment is appropriate under the standards set out in Paragraph II below.

**d. Reappointment for Renewable Term.** Following the two three-year appointments described above, the Law School may reappoint a person for a five year renewable term if reappointment and/or promotion are appropriate under the standards set out in Paragraph II below.

**e. Non-renewal or Termination of Employment.** A clinical series professor may be terminated before the expiration of the current term of appointment under the following circumstances:

A. For cause.

B. Upon expiration of external funding for the position, and after all reasonable efforts by the Law School to place the clinical series professor in another available clinical position within the professor's area of competence have proved unsuccessful.

C. Upon a curricular decision by the Law School Faculty to permanently close a specific clinic or permanently reduce its size and reallocate the resources devoted to the clinic to another purpose. Where a clinic is reduced in size but not closed, terminations shall be in reverse order of seniority of service and only after all reasonable efforts by the Law School to place the clinical series professor in another available clinical position within the professor's area of competence have proved unsuccessful.

Except for termination for cause, any decision to terminate an appointment before its expiration, or not renew an appointment upon expiration, must be communicated to the clinical series professor no later than March 15 in order to be effective at the end of the current academic year. In the case of terminations because of a curricular decision to close or reduce the size of a clinic, notice shall be given at least one academic semester in advance of termination.

**f. Fill-in Appointments.** Notwithstanding the provisions of this Resolution, a person may be appointed to a Clinical Series Position, including the title Visiting Clinical Professor, for a one year term to replace a person temporarily absent from his/her position in a clinic.

**g. Applicability.** The procedures set forth in this Resolution for appointment, reappointment, non-renewal and termination shall be applicable to full-time University-funded clinical attorney positions as well as to full-time clinical attorney positions funded by a source other than the University. In the latter instance, the procedures shall be subject to the continuation of the outside funding.

## II. STANDARDS FOR APPOINTMENT, REAPPOINTMENT AND PROMOTION

**a. Three-year Term - Initial Appointment.** For initial appointment to a three-year term, a person must have a sufficient background and demonstrate sufficient proficiency in the area of lawyering to justify the expectation that he/she will be able to meet the criteria for appointment to a five-year renewable term upon completion of two three-year appointments.

**b. Three-year Terms - Reappointments.** For reappointment to a three-year term after an initial appointment, a person must demonstrate sufficient proficiency in the area of clinical supervision, teaching and lawyering to justify the expectation that he/she will be able to meet the criteria for appointment to a five-year renewable term upon completion of the three-year appointment.

**c. Five-year Terms.** For appointment or reappointment to a renewable five-year term, a person must demonstrate excellence and substantial proficiency in the areas of clinical supervision, teaching and lawyering, as well as demonstrate significant public and institutional service. Except as described below, a person must serve two three-year terms of appointment to be eligible for consideration for appointment to a five-year term.

- i. A person who holds an academic or clinical appointment at another law school may seek an appointment on equivalent terms at Rutgers.
- ii. A person who has ten or more years of full-time practice may seek reappointment to a five year term after having served one three-year term.
- iii. Under exceptional circumstances, a person may seek initial appointment to a five year term with the consent of the Faculty.

### **d. Definitions.**

Clinical supervision includes directing clinical seminars in substantive and procedural areas of law and simulation of lawyering skills. It also includes active supervision of groups of students and individual students in carrying out the lawyering skills that are part of the students' clinical work.

Lawyering includes such litigation and non litigation skills as knowledge of law and procedure, knowledge and skill in the areas of written and oral advocacy, trial preparation, trial presentation, planning, client counseling and negotiation. Lawyering also includes knowledge of professional responsibility, ethical conduct and the dynamics and interrelationship between and among the attorney, his or her clients, adversaries, and the court system, with the purpose of establishing a foundation from which to build lawyering skills. Lawyering further includes those skills necessary to engage in the legislative process, administrative process, informal settlement processes, transactional processes, and others.

Because this is a University law school, excellence and substantial proficiency in lawyering and lawyering skills include familiarity with the court system, familiarity with relevant literature about substantive law or lawyering skills, as pertinent to the work in the clinic, and knowledge and thoughtfulness about the nature of the lawyers' tasks and the place of lawyers and the law in society. Traditional scholarship in the form of law review articles is not a requirement for appointment, reappointment or promotion.

However, should sufficient time be made available, it is hoped the clinical professors will participate in the work of the community of clinicians nationwide, including, for example, presentations at clinical programs and developments of clinic methodology and curriculum. Such efforts, though not required, would be viewed favorably as public service.

e. **Titles:** A person who has less than six years (or the equivalent) of full-time practice shall be styled an Assistant Clinical Professor. A person who has more than six years (or the equivalent) of full-time practice and who is currently serving a three year term of appointment shall be styled an Associate Clinical Professor. A person who is appointed or reappointed to a five year term shall be styled a Clinical Professor.

### **III. PROCEDURES FOR APPOINTMENT, REAPPOINTMENT AND PROMOTION**

Appointments governed by this regulation shall be made by the Dean upon the recommendation of a clinical committee whose members are appointed by the Dean and approved by the Faculty following the procedures used for composing the Appointments and Planning Committees. The Committee shall be comprised of seven tenure-track faculty members, four of whom shall have taught in a Rutgers in-house clinic for at least two semesters. All reappointments shall be made by the Dean upon the recommendation of the faculty as a whole, which will act following the recommendation of the clinical committee.

In preparing to make reappointments, the faculty, and any committee from which it seeks a recommendation, shall observe the clinical supervision and lawyering skills of the candidate, shall ask other members of the faculty to report their observation, and shall seek reviews of the candidate's lawyering skills from persons outside the University. The faculty shall also take note of student evaluations of the candidate.

### **ARTICLE IX. PARLIAMENTARY AUTHORITY.**

The current edition of Robert's Rules of Order Newly Revised shall govern the legislative body on any matter to which they are applicable and which is not governed by law, by Rutgers Policies, or by these Bylaws.

### **ARTICLE X. AMENDMENTS AND ADDITIONS.**

These Bylaws may be amended or supplemented by two-thirds vote of the legislative body, upon two weeks written notice of the nature of the proposed amendment or addition.

## **APPENDIX A. QUASI-JUDICIAL PROCEDURES OF THE COMMITTEE ON SCHOLASTIC STANDING**

[as amended by the faculty Sept.20, 1984, with sections renumbered, and section 3 reworded for clarity.]

1. When the Committee sits quasi-judicially to deal with any case arising under the scholastic regulations of the school as they affect an individual student including requests for readmission, a panel of three of the six faculty members will sit. Whenever a quasi-judicial hearing is held, the student is entitled to the presence of up to three student members of the Committee. The student also may have present an adviser of his or her choice. The student is strongly advised, although not required, to submit at least two days in advance of the hearing (1) a statement of reasons for his or her performance, and (2) any appropriate documentation he or she wants the committee to see.

2. The decision when the Committee is sitting quasi-judicially shall be by a majority vote of the three faculty members sitting. The student members will not participate in the vote. The decision shall include a brief statement of the reasons for the decision. Separate opinions will comply with this requirement. Where a faculty adviser who was not on the sitting panel is appointed, one of the sitting members shall orally brief the adviser.

3. A student who has had a quasi-judicial hearing shall have the right to appeal the final decision by a written petition within 10 days of such final decision. The appellate tribunal shall consist of three faculty members and two students who did not participate in the initial hearing. The student shall not appear before the appellate tribunal. If the student requesting relief does not request student participation on the appellate tribunal, the student representatives will not participate. The appeal must be perfected within 30 days from receipt of the written decision. The Committee may grant extensions for good cause shown if the request is submitted before the original deadline.

4. This appellate tribunal will review the initial proceeding on a proper and adequate record to determine whether: (1) there was bias in the initial hearing; (2) the procedural rights of the student were violated; or (3) the decision at the initial hearing was arbitrary, capricious and constituted an abuse of discretion.

5. If the appellate tribunal finds any one of the three grounds of appeal set forth in the prior paragraph to exist, the result will be a de novo hearing before the three faculty members who did not participate in the initial hearing and three students. The procedure will be the same in the de novo hearing as it was in the initial. The decision of the appellate tribunal is final as to whether or not to grant a de novo hearing. If such a de novo hearing is held, the decision of the panel of the Committee conducting that hearing also is final.

6. If the initial hearing resulted in a unanimous decision, in order for a de novo hearing to occur, four members of the five-member appellate tribunal must be in favor of

the de novo hearing. If the vote in the initial hearing was a 2-1 vote with the dissenter voting for less stringent conditions than the ones imposed, a de novo hearing will occur if three members of the five-member appellate tribunal vote in favor of such a hearing. If the initial hearing resulted in a unanimous decision and only three faculty members participate on the appellate tribunal, in order for a de novo hearing to occur, the vote of the faculty members must be unanimous. If the vote in the first hearing was a 2-1 vote with the dissenter voting for less stringent conditions than the ones imposed, a de novo hearing will occur if two members of the three-member appellate tribunal vote in favor of such a hearing.

## **APPENDIX B. LAW SCHOOL APPLICATIONS OF THE STANDARDS FOR PROMOTION AND TENURE**

[source: Rutgers Law School Policy on Promotion and Tenure, adopted by the Tenured Faculty, Oct.10,1986; amended Oct.29,1987.] [Note: When this was written the University listed five separate criteria for reappointment and promotion; subsequently these were combined into just three criteria applicable to general teaching faculty: teaching, scholarship, and service. The "service" criterion is a combination of the two former criteria "professional activity" and "general usefulness."]

### 1. Teaching Effectiveness

The learning process in law schools occurs in a variety of settings. While we tend to think of the large class and the dialogues that take place within it as the centerpiece of law teaching, the fact is that there are other important educational settings. Indeed, many outstanding graduates would undoubtedly identify as their most valuable law school educational experiences such varied ones as their law review work, the one-to-one experience of an independent study project, preparing a presentation for a demanding seminar, or working on the case of a real client in a clinical setting.

Although classroom teaching, seminar teaching, and clinic teaching take quite distinct and, in many ways, dissimilar forms, the standards of teacher excellence to which we refer in this policy cross the margins that divide them. Effective teaching enhances the learning process and, therefore, should have a measurable impact on student knowledge and skills.

#### a. Attributes of Effective Teaching

(1) Large class setting. The following attributes are relevant to effective teaching in the large class setting:

- (a) Mastery of the specific subject matter of the course, including the relevant literature;
- (b) Ability to relate that subject matter to other fields of knowledge, and to law as a social phenomenon, an instrument of power and a mode of conflict resolution;
- (c) Effective organization of the course, and effective communication of the organizing principles so that students can come to understand the extent of interrelationships and logic in the subject matter;
- (d) Use of materials which best advance the course's pedagogical objectives and which challenge the students;

- (e) Use of pedagogical techniques which effectively engage students and involve them actively in the learning process;
- (f) Ability to communicate clearly, and to maintain student interest;
- (g) Ability to stimulate the intellectual excitement of students, and to bring them to insights and understandings about the subject matter, and the legal process, which they are unlikely to have obtained through other means;
- (h) Insistence on a high quality of student performance in class responses, written assignments and examinations;
- (i) Commitment of substantial time to class preparation and to out-of-class interactions with students; and
- (j) Timely submission of grades

(2) Small group setting. Effective teaching in small sections of first-year courses, seminars, and independent study projects and through substantial faculty involvement in such activities as moot court and client counseling, requires many of the same attributes as effective large class teaching. In addition, though, it requires an ability to interact with individual students in a much more intensive way, often in connection with the student's development of a detailed project or in evaluating the student's performance in a simulated professional setting.

(3) Clinical setting. The attributes of effective teaching in the clinical setting are even more oriented toward the ability to use the intensive one-on-one learning situation. The assessment process must also recognize that the goals of clinical legal education are, in important respects, different than those of either large class instruction or small group, seminar-style instruction. The goal of clinic work is to advance the student's socio-legal insights, substantive knowledge, analytical abilities and transactional skills by applying them to live situations. In the course of problem solving, the student is called upon to research, to analyze facts in the light of research results, to write, and to take the procedural steps that are integral to litigation. Beyond this, he or she is frequently called upon to develop strategies, to interact with peers, teachers, adversaries, court personnel, clients and witnesses, to negotiate and perhaps to effectuate consensual solutions.

These tasks are done under the guidance and direction of the clinic teacher. Supervision is often one-on-one. The clinic teacher must establish and articulate the assigned tasks, review and criticize the student's work and maintain control of the problem-solving process while, at the same time, prodding the student toward initiative, involvement and self-realization.

The clinical process is significantly different from the classroom process. Teacher-student relationships are much more individualized. The reality of a live case requires integration of many areas of substantive law rather than concentration on self-enclosed subject matter. Unlike classroom teaching, which invites exploration for its own sake, clinic teaching demands quite immediate application of learning to the problems at hand. Finally, the variables created by the presence and roles of real people -- clients, witnesses, adversaries, judges -- produce an entirely different perception of the legal process than that provided by classroom learning.

The faculty attaches great importance to teaching effectiveness. Because the development of teaching effectiveness depends so heavily on the particular skills, personality and interests of the individual faculty member, it was concluded that general statements about developing teaching effectiveness would be less useful than a program specifically addressed to its development. Accordingly, the Faculty has established a standing committee on faculty development. The faculty expects that the Faculty Development Committee will provide individual specific forms of assistance in developing teaching capability particularly to benefit the persons who are new to the profession.

2. Scholarly or Creative Activity and Research Accomplishments. The University's "Policy With Respect to Academic Appointments and Promotions" provides as to scholarly or creative activity that:

Scholarly or creative activity should characterize academicians. If they function as scholars they are responsible to the University and to society to keep informed about advances in knowledge and to contribute to them. Typically, scholars engage in research work and produce publications. However, important and valuable scholarly activity may be carried on without being directed toward the production of research results. Such scholarship may be expressed in a variety of ways including teaching, advising, public lecturing, enriching courses, compiling of information, or participating in organized professional activities. These activities may be more difficult to evaluate than research work and publications, but they are no less important.

The policy regarding research accomplishments provides that:

Research accomplishment is a result of scholarly activity. It is measured most commonly by publication, written by faculty members and their graduate students. However, this should not imply that all research work need result in published material.

Especially within a law faculty, a dichotomy between scholarly or creative activity and research accomplishments is neither common nor very useful. Therefore, our policy treats the two criteria jointly. Moreover, in a law faculty, one measure of scholarship and research accomplishments is their influence on the intellectual or professional audience to which they are addressed. To satisfy this standard, scholarly work must be circulated and offered for critical appraisal and use by that audience.

a. Purposes of these criteria.

The underlying purposes of the scholarship and research criteria help to explain why this activity is valued and why achievement as a scholar is an essential condition of tenure and promotion.

First, scholarly work is a reflection -- often a very important one -- of the quality of the mind that produced it.<sup>8</sup>

Second, scholarly productivity is evidence of a likelihood of continuing intellectual or professional growth, and the granting of tenure or a promotion is premised on a prediction of continually improving performance as well as on a record of past accomplishment. Third, scholarship as manifested in its different forms provides a significant index of the quality of a law faculty -- an index of its institutional capacities and varied contributions to the world of law.

But there is another reason for demanding clear evidence of scholarship as a condition of promotion. Full-time faculty members should have undertaken a commitment to scholarship, in one or more of its various forms, not simply because the university asks it, but out of a belief that scholarship is an essential function of a university law school. Law must be viewed as something far more than a body of technical information; it is a complex social phenomenon, manifested as an instrument of power in a political economy or as an expression of changing social values and culture. The study of law in a university is a continuing effort to understand these dynamics of legal order, and, for some, to influence their course. Those who engage in this creative activity

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<sup>8</sup> Co-authorship raises difficult problems concerning attribution, credit and responsibility

put their work into a marketplace where it will, ordinarily, gain recognition and respect if it is of value. The purpose of the scholarship criterion is to assure that members of this faculty will make these contributions and that, over time, they will be of great value. The criteria are not intended to restrict the range of intellectual investigation either as to method or subject matter.

b. Avenues and formats for scholarship.

The traditional form of legal scholarship is the treatise, monograph or law review article, which usually is an exposition and normative critique of some body of legal rules and doctrine. But, increasingly, scholarly activities of many of us lead to quite different approaches to the discipline and quite different formats for putting scholarly work into circulation.

Indeed, much legal scholarship is bound to become increasingly heterogeneous and increasingly linked to other disciplines. This emerging diversity is leading, predictably, to a far broader array of formats for dissemination of this scholarship and research. The particular format is dictated by the kind of work pursued and by the audience one is seeking to reach.

However varied the purposes of scholarship and research, and however diverse the forms it takes, it must (i) ultimately appear in writing (occasionally speeches, testimony or other oral presentations may constitute evidence of scholarly or creative activity, but to be effectively evaluated these should be transcribed); (ii) be the result of thoughtful, substantial efforts; and (iii) be disseminated to, and warrant recognition by a significant audience, having in mind the purpose and special characteristics of the work. For example, appropriate forms of scholarship may include the following:

- (i) books or chapters in books;
- (ii) articles;
- (iii) book reviews which, by virtue of the critique offered, contribute significantly to the field surveyed;
- (iv) research project reports;
- (v) publications of organizations such as ALI, ABA, other bar associations, AALS, and various judicial and administrative conferences;
- (vi) publications resulting from professional service, including preparation of briefs<sup>9</sup> in important cases, conduct of arbitrations, court appointments, or service as a master or referee;
- (vii) publications resulting from governmental appointments, such as presidential or other executive commissions, legislative committees, judicial or administrative agency service;
- (viii) significant scholarly contributions resulting from clinical legal education programs, as evidenced by briefs, memoranda, legislative documents, reports;
- (ix) teaching materials, whether or not formally published that are comprehensive and which contribute to our knowledge of the field, e.g., by the original organization and presentation of the material.

The broad array of work products which may satisfy the requirement of scholarly or creative activity represents this faculty's recognition that there are various models for the successful law professor, so long as the work meets the qualitative standards described below.

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<sup>9</sup> While a litigation brief may indeed be evidence of scholarly accomplishment, there are a few caveats deserving of mention. A competent professional brief is assumed to be within the capability of every competent legal professional. To qualify as evidence of legal scholarship, therefore, a brief must demonstrate extraordinary research, analysis, insight or accomplishment. Where a brief or memorandum is the joint product of student and faculty effort, problems exist, as in the case with any jointly authored piece, about attribution of credit and responsibility. For these reasons, a candidate would be ill-advised to use advocacy briefs as the major evidence of scholarly accomplishment.



c. Qualitative standards.

The standards for evaluating the quality of scholarship and research are derived from the purposes of scholarship, described in Sec. 2(a). A good scholarly product will reflect those qualities which enable it to make a significant contribution to the intellectual or professional audience working in the field addressed. Recognition and use of one's work by members of such audience including academic peers, judges, governmental officials or professional leaders is, therefore, a major factor, particularly for promotion to higher professorial ranks.

Recognition may take different forms, depending on the kind of scholarship involved and the primary audience addressed. For most scholarly products, strong evidence of their impact is shown by their use or adoption. For example, one's scholarship may influence the substance of law, as when a court relies on a law review article (or, subject to caveats, a major brief). Alternatively, scholarship may change the way other scholars think about the law, as evidenced by references in their work or by book reviews.

Since it often takes time for a work to circulate, other evidences of intellectual or professional impact are usually necessary, particularly for earlier promotions. Thus, the tenured faculty's qualitative evaluation of scholarly work is best aided by detailed critiques solicited from leading scholars in the field. These critiques should provide information and judgments on matters such as:

- (i) the importance, and to whom and why, of the issues addressed by the candidate's scholarly or creative work and research;
  - (ii) the importance, in view of the prior "state of the art," of the answers offered, positions developed and insights provided;
  - (iii) the persuasiveness of the propositions offered and positions taken in view of available data and other relevant material relied on;
  - (iv) where appropriate, the validity of the research methodology devised to develop the data used;
  - (v) the communicative power of the work, especially in regard to the audience addressed;
- and
- (vi) the impact on and value of the total work to the audience addressed, with some careful identification of who that audience may be.

Of course, these criteria must be adapted to the various kinds of scholarship described. Using these kinds of critiques, and their own evaluations of the candidate's scholarly and research efforts, colleagues who pass on promotions must attempt to make several different kinds of more ultimate judgments, depending on the level of promotion to be considered.

In the case of a first, non-tenure promotion, the determination usually centers on whether work which has so far been completed demonstrates, quite clearly, the capacity to produce the kind and amount of creative scholarship to achieve the recognition required for later promotions.

In the case of tenure, the standard is higher: judgment turns on whether the candidate has, in fact, achieved, or clearly warrants, recognition as a scholar within an intellectual or professional audience which itself understands and uses scholarship or the candidate's work shows excellence equivalent to that exhibited by recognized scholars. Thus, for tenure, the candidate's work must be known and respected or, at least, the evidence must show that this will clearly happen as the result of work already completed. In the case of higher professorial promotions after tenure has been addressed, the candidate must be established as a distinguished contributor to the fields of endeavor chosen as shown by a record of demonstrated impact, which may include impact through professional activities.

d. Format and quantity of scholarship.

Normally, written evidence of scholarship should, in the judgment of the candidate, be in final form and represent the author's best effort before being sent to outside reviewers. The

finality standard adopted by this section is not a publication requirement. Published materials, however, do have several important attributes which will tend to strengthen the candidate's scholarship record: (i) they are demonstrably in final form, representing the author's best effort; (ii) ordinarily they have been subjected to some critical evaluation by those who chose to publish them; and (iii) they have had an opportunity for exposure in the author's chosen audience. Some scholarly pieces, although not formally published, may also have some or all of these attributes. These might include papers presented to professional associations, substantial reports or memoranda prepared for public agencies or professional associations, major briefs in significant cases, and teaching materials.

As to the quantity of scholarship expected, there is no bright line of sufficiency. Ordinarily, a candidate should produce at least one substantial piece of scholarship, as broadly defined in this policy, or its equivalent, during a first three-year contract prior to a promotion or reappointment decision. During the three-year contract immediately prior to the tenure decision, candidates for tenure who exhibit the commitment, skill, and productivity appropriate for an award of tenure should engage in research and scholarly/creative activity of an amount and kind that normally will produce two substantial pieces of scholarship or their equivalent; however some candidates may sufficiently demonstrate these qualities with one substantial piece of scholarship. Thereafter, one substantial piece of scholarship or its equivalent, every two years should be regarded as a rule-of-thumb. These guidelines should not be interpreted, however, as a determination by this faculty that a mechanical rule will be applied regarding the number of pages expected. Clearly, one scholarly effort could be of such a scope and magnitude, and could make such a significant contribution to the legal literature, that it alone could satisfy the scholarship requirement. Conversely, a considerable number of pieces of mediocre quality would not be sufficient evidence of scholarly or creative accomplishment.

The usual quantity expectations should take account of special cases, such as (i) a candidate who has assumed major clinical education responsibilities which occupy vacations as well as the normal academic year; (ii) a candidate appointed to the full-time faculty after he or she has attained widespread recognition as an outstanding professional, if not scholar, in law; and (iii) a candidate whose intellectual creativity as a teacher is so great, and so widely known, that his or her teaching can fairly be said to serve as a vehicle for scholarly work.<sup>10</sup>

In sum, quantity of scholarship is not precisely measurable in number pieces. Scholarly and research accomplishment should be sufficient, in relation to the time spent at Rutgers Law School, to demonstrate genuine distinction, a commitment to professional and intellectual inquiry, and promise of a continued inquiring mind and scholarly productivity throughout the candidate's professional life.

### 3. Professional Activity

Broadly stated, the yardstick for accomplishment should be useful involvement in activities that advance legal education, legal systems and/or the law and contribute to the professor's teaching, research and scholarship. Such involvement may be demonstrated in a variety of ways. Those that most readily suggest themselves are:

Legal Education: Participation in the education related work of the AALS, bar associations, continuing legal education organizations, community groups involved in law training for laypersons and such special academic programs as are not normally evaluated under "teaching effectiveness."

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<sup>10</sup> This refers to teaching far beyond good, effective teaching sufficient to meet the teaching effectiveness criterion.

Legal Systems: Service to courts, organized bar committees, legislative bodies having responsibility for the administration of legal systems and community groups concerned with the just administration of the law (e.g., legal services organizations, bail reform projects.)

The Law: Participation in the substantive work of groups the mission of which is orderly development of the law, which participation may take the form of study, writings, legislative drafting, testimony before legislative committees and litigation, among others.

This list of activities is not intended to be exhaustive. Undoubtedly there are other modalities in which credible professional activity can take place. So long as there is a demonstrable connectedness between such activity and the uses of the law, it should "count" in the evaluative mix.

A candidate for promotion or tenure should provide a reasonably detailed account of his or her professional activity during the period as to which his or her performance is to be judged. Supporting documents (e.g., reports, transcripts of legislative testimony) should be included if available. The candidate should also supply the Promotion and Tenure Committee with the names of persons from whom evaluations of the amount and quality of such professional activity may be solicited. Using the evaluators identified by the candidate in combination with such others as it may be able to identify, the Committee should solicit outside reports of professional activity for inclusion in the candidate's record.

A new faculty member should consider that engaging in professional activities will initially be viewed as an auxiliary activity, with the expectation that primary attention will be paid to teaching, research and scholarship. After tenure has been achieved, outstanding professional activities may become a more important consideration in promotion to Professor I.

#### 4. General Usefulness

Although general usefulness does not normally weigh as heavily in the promotion/tenure judgment as teaching, research and scholarly production, it is an important component of the candidate's record. All members of the faculty should have opportunities and obligations to contribute government, administration, curricular development, educational enrichment efforts and like services to the academic community of the Law School and the University.

Candidates who have worked faithfully at assigned committee tasks will have met threshold requirements for a satisfactory rating in this category. Candidates who have taken special initiatives in connection with committee work or who have made other positive contributions to the enrichment of the academic community (e.g., by developing or participating in symposia or speaker series; by initiating formal or informal faculty development efforts; by contributing to MSP or other student oriented special educational programs; by serving as an advisor to a student publication or by facilitating student published work) should be recognized, and their ratings in this category should reflect that recognition.

A candidate for tenure/promotion should be required to set out in written form and in some detail the institutional tasks that he or she has performed, within the Law School and/or the wider University community. The quality of the work should then be evaluated by co-participants (e.g., other members of committees on which the candidate has served) and their evaluations should be made available to the tenured body in written form so that the candidate's institutional contributions will form a real part of the substantive record. The Promotion and Tenure Committee should undertake the task of soliciting evaluations of institutional usefulness as part of its regular work.