

UNC CHARLOTTE
FACULTY GRIEVANCE COMMITTEE
PROCEDURES FOR DISPOSITION OF GRIEVANCES
Effective August 15, 2012

These procedures are intended to assist the Grievance Committee in the disposition of faculty grievances filed pursuant to the UNC Charlotte's *Procedures for Resolving Faculty Grievances Arising from Section 607(3) of The Code* located at <http://www.legal.uncc.edu/607GrievanceProcedures.html>.

The Grievance Committee (hereinafter "Committee") is a public body under North Carolina law, and its meetings must therefore be open to the public, as set forth in UNC Charlotte Policy Statement #53, "Open Meetings Requirements." However, any meeting of the Committee that involves confidential or privileged information, including personnel records or hearing or investigating a complaint, charge, or grievance by or against a public officer or employee, must be conducted in closed session. Hearings shall be called to order in open session, and a proper motion to go into closed session must be made prior to any discussion of confidential or privileged information (see Appendix A). The Committee must make a motion to go back into open session prior to adjourning a hearing.

The Committee is authorized to hear, mediate, and advise with respect to the adjustment of grievances of members of the faculty. The power of the Committee is solely to hear representations by the persons directly involved in a grievance, to mediate voluntary adjustment by the parties, and to advise adjustment by the administration when appropriate. Advice for adjustment in favor of an aggrieved faculty member may be given to the Chancellor only after the dean, department chair, or other administrative official most directly empowered to adjust it has been given similar advice and has not acted upon it within a reasonable time. If the grievance is against the Chancellor, the Committee shall give its advice to the Board of Trustees.

1. Purposes of the Hearing

Grievance hearings serve several important purposes. The primary purpose of the hearing is to give the faculty member (hereinafter "Petitioner") the opportunity to prove his or her contention that an action or inaction of a member of the University community directly affected the faculty member's employment status and relationships. Conversely, the hearing provides an opportunity for the person or persons against whom the Petitioner brings a grievance (hereinafter "Respondent") to answer the Petitioner's allegations. Another important purpose of the hearing is to create a record of testimony and documentary evidence for review by the parties, the Board of Trustees and the Board of Governors, should the Petitioner seek further review of the grievance.¹

2. The Scope of Review

The scope of review by the Committee in grievances is limited as provided in the Procedures for Resolving Faculty Grievances Arising from Section 607(3) of The Code of The University of North Carolina (hereinafter the "Grievance Procedures"). "Grievances" within the province of the Committee's power shall include employment related grievances other than those involving decisions about reappointment, promotion, the conferral of tenure, discharge, imposition of serious sanctions, termination, or those within the jurisdiction of another standing committee. No grievance that grows out of or involves matters related to a formal proceeding for nonreappointment, nonpromotion, suspension, discharge or the imposition of serious sanctions, or termination of a faculty member or that is within the jurisdiction of another standing committee of the faculty may be considered by the Grievance Committee.

¹The preservation of evidence in a form that will permit later review is mandated by the Board of Governors in The Administrative Manual of The University of North Carolina, III-I-1, adopted November 13, 1987.

3. The Burden and Standard of Proof

In a grievance, the *burden of proof* rests with the Petitioner and not with the Respondent. The *standard of proof*--i.e., the degree of proof required--is characterized in the Grievance Procedures by providing that the Petitioner must satisfy the Committee that his or her contention is true by a preponderance of the evidence. Because that standard is not further defined in the Grievance Procedures, the Committee will interpret it as requiring the Petitioner to prove that his or her allegations are more likely true than not true. The Committee determines whether this burden of proof has been met by weighing all of the evidence and the demeanor and credibility of the witnesses, in the light of experience and common sense judgments.

4. Confidentiality

The Grievance Committee and all individuals involved in the resolution of a grievance shall treat all documents submitted or created in connection with the process of review of a grievance, and the information contained therein, as confidential personnel information. Such confidential records, information, and verbal information derived from any discussions that are part of the formal review process shall not be disclosed to or discussed with any person except those participating in the review of the grievance as provided in the Grievance Procedures, those persons required or permitted to be consulted in accord with decisions of the Committee, or those persons permitted access to such documents by law.

5. Pre-Hearing Procedures

a. Request for Redress

Upon receiving a grievance petition for redress from the University Mediation Coordinator, the Grievance Committee must determine if a hearing is justified and that the issues presented are within the purview of the Grievance Committee's responsibility. If the Committee decides that the facts merit a hearing, it shall schedule an evidentiary hearing.

b. Substitution of Committee members for conflict of interest

A Committee member who holds an appointment in the department of a person directly involved in a grievance, who will testify as a witness at the hearing, or who has any other conflict of interest, bias, or appearance of bias, or who appears to be unable for any reason to assess the evidence fairly, impartially, and without prejudice, is disqualified and shall not participate as a Committee member in the proceedings.

If such Committee member does not recuse himself or herself from the proceedings, the Petitioner or Respondent may request that the chair of the Committee consider excluding from the proceedings any member of the Committee who they believe has a conflict of interest or bias. Such requests should explain why a conflict of interest or bias is perceived to exist. When a request to exclude a Committee member is received, the Committee chair should speak with that member before a decision whether to exclude or not is made. If the disqualified member is the Committee chair, the remaining Committee members shall elect one of the members to serve as acting Committee chair while these conditions exist. The Committee shall also select one of its members with permanent tenure to replace the chair if he or she is incapacitated or absent.

c. Witnesses and exhibits

In the spirit of avoiding unfair surprise, and to facilitate the hearing process, at least two days before each party's presentation, the Petitioner or the Respondent will provide the other party and to the Committee chair a list of witnesses and copies of exhibits they intend to introduce at the hearing. With assistance from the Faculty Governance support staff, the Committee chair will provide copies of all exhibits for each Committee member. The failure to list a witness, or to provide advance copies of all exhibits, will not preclude a party from calling the witness or from introducing a document. However, the opposing party may be granted a temporary adjournment of the hearing if the Committee deems a delay necessary in order for that party to respond adequately to the new evidence. It is important to note that the Committee has no authority to compel the attendance of witnesses. However, the Committee chair may request the assistance of the Chancellor to obtain the attendance of witnesses affiliated with the University.

d. Arrangements for court reporter and transcript

The Committee chair will arrange for the hiring and payment of a court reporter through the Office of the University Attorney. The court reporter will be present and will make a verbatim record of the hearing. At the hearing, the Committee chair should instruct the court reporter to collect and mark all documents submitted by both parties and include them as exhibits with the transcript. The documents should be forwarded to the University Attorney's Office at the conclusion of the proceedings. Any party desiring a transcript may obtain one from the University Attorney's Office at his or her own cost.

6. The Hearing

a. Call to order

The chair of the Committee will call the hearing to order in open session, determine whether a quorum of eligible Committee members is present, introduce the members of the Committee, introduce the Petitioner and Respondent and the individual each has selected to assist them at the hearing (if any), and explain procedures. The chair of the Committee shall admonish all witnesses that the proceedings are confidential. The Committee shall then go into closed session by making a proper motion (see Appendix A), specifically identifying the legal basis for meeting in closed session (to discuss personnel matters-- Article 7 of Chapter 126 of the North Carolina General Statutes or The Privacy of State Employees Personnel Records Act; or to hear or investigate a complaint, charge, or grievance by or against a public officer or employee). The chair of the Committee has responsibility for keeping a verbatim record of the testimony and preserving all documents offered as evidence. Except as otherwise provided in the Tenure Policies, the conduct of the hearing shall be under the control of the chair of the Committee.

b. Opening remarks

Starting with the Petitioner, each party will be given the opportunity to make uninterrupted opening remarks limited to five minutes each. The purpose of opening remarks is to orient the Committee to the nature of the case and to the facts the party intends to establish. Opening remarks are not evidence. Therefore, there will be no questioning by either party or by the Committee following the opening remarks.

The Petitioner shall set forth his or her contention in the following format:

"I assert that I am entitled to relief in the form of _____ because the following actions or decisions of _____ have affected my employment status and/or relationships in the following manner: _____."

c. Presentation of Petitioner's case

At the conclusion of opening remarks, the Petitioner will present uninterrupted evidence (witnesses, documents, his or her own testimony, etc.) in support of his or her allegations. Other than objections to questions, all witnesses shall be questioned first by the Petitioner on an uninterrupted basis, then by the Committee, and finally by the Respondent. Questions by the Respondent shall be limited to questions within the scope of the evidence presented by the Petitioner and not for the purpose of presenting the Respondent's rebuttal. The Committee expects that the Petitioner normally will present the case within three hours, although the Committee may grant additional time in its discretion. The Petitioner may reserve a portion of the three-hour presentation time and use it for rebuttal time at the conclusion of the Respondent's evidence. If the Petitioner wishes to reserve rebuttal time, the Petitioner must notify the Committee of that fact at the beginning of the hearing.

d. Respondent's case

After the Petitioner concludes his or her presentation, Committee shall adjourn for no fewer than five and no greater than ten calendar days to allow the Respondent to prepare a rebuttal. The chair of the Committee shall then call the hearing to order again, and the Respondent may present evidence (witnesses, documents, his or her own testimony, etc.) in support of his or her allegations. The order of questions and limitation on interruptions shall be the same as for the Petitioner's case. The Committee expects that the Respondent will present his or her case within three hours, although the Committee may grant additional time in its discretion.

e. Petitioner's case in rebuttal

If the Petitioner has reserved rebuttal time as provided in Section 6.c above, at the close of the Respondent's case the Petitioner may submit evidence limited to rebuttal of the Respondent's evidence.

f. Closing remarks

At the conclusion of all the evidence, the Petitioner may make closing remarks to the Committee, followed by the closing remarks of the Respondent. Closing remarks shall not exceed fifteen minutes per side. Since the Petitioner bears the burden of proof, the Petitioner may also make brief final remarks in response to the Respondent's closing, not to exceed five minutes.

g. Committee deliberations and decision

After closing remarks are concluded, the Committee will remain in closed session, excuse all persons present who are not Committee members, and commence deliberations. Deliberations shall not be recorded by the court reporter. If the Committee wants to see the transcript, the Committee chair will go back into open session, adjourn the hearing, and reconvene the Committee in closed session after the transcript is available. Otherwise, the Committee may begin its deliberations immediately. The Committee may consider only such evidence as is presented at the hearing and need consider only the evidence offered that it considers fair and reliable. The burden is on the Petitioner to satisfy the Committee that his or her contention is true. The Committee must make a motion to go back into open session prior to adjourning the hearing. The Committee's decision will be by majority vote.

If the Committee concludes that the Petitioner has not established his or her contention, it shall so advise the petitioner, the respondent, and the Chancellor within ten (10) days following its decision. If the Committee concludes that the Petitioner has established his or her contention, the Committee shall seek adjustment of the grievance pursuant to Section IX.E of the Grievance Procedures. Furthermore, the Committee shall keep the Petitioner apprised of the status of the case and shall give the Petitioner and the Respondent prompt written notice of any decision related to the case.

APPENDIX A

MOTION TO GO INTO CLOSED SESSION

I move that we go into closed session to:

(Specify one or more of the following permitted reasons for closed sessions)

___ Prevent the disclosure of privileged information (see attached language):

___ under _____ of the North Carolina General Statutes or regulations.

___ under _____ of the regulations or laws of the United States.

[N.C.G.S. 143-318.11(a)(1)]

___ Prevent the premature disclosure of an honorary award or scholarship.

[N.C.G.S. 143-318.11(a)(2)]

___ Consult with our attorney:

___ to protect the attorney-client privilege.

___ to consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action; if known, title of action is: _____ v. _____

[N.C.G.S. 143-318.11(a)(3)]

___ Discuss matters relating to the location or expansion of business in the area served by this body.

[N.C.G.S. 143-318.11(a)(4)]

___ Establish or instruct the staff or agent concerning the negotiation of the price and terms of a contract concerning the acquisition of real property.

[N.C.G.S. 143-318.11(a)(5)]

___ Establish or instruct the staff or agents concerning the negotiations of the amount of compensation or other terms of an employment contract.

[N.C.G.S. 143-318.11(a)(5)]

___ Consider the qualifications, competence, performance, or condition of appointment of a public officer or employee or prospective public officer or employee.

[N.C.G.S. 143-318.11(a)(6)]

___ Hear or investigate a complaint, charge, or grievance by or against a public officer or employee.

[N.C.G.S. 143-318.11(a)(6)]

___ Plan, conduct, or hear reports concerning investigations of alleged criminal conduct.

[N.C.G.S. 143-318.11(a)(7)]

Language for Motion to Go into Closed Session on the Basis of Privileged or Confidential Information

If the reason for going into closed session is to discuss information that is privileged or confidential because of State or Federal law (i.e., you are going to check the very first box on the Motion to Go into Closed Session form), the Open Meetings Law requires the motion for closed session to include the **name or citation of the law** that renders the information to be discussed “privileged” or “confidential.”

Below are phrases that should be inserted in the blank in the motion printed on the form, depending on the particular reason for the closed session. The list is not exhaustive, but it should cover the vast majority of cases. If you have any question about the language of a particular motion, please contact the University Attorney.

If the matter to be discussed in closed session is:

State employee personnel records -- cite the following State law:

“Article 7 of Chapter 126 of the North Carolina General Statutes”

or

“The Privacy of State Employees Personnel Records Act”

A student’s education records -- cite the following Federal law:

“Public Law 93-380, as amended by Public Law 93-568”

or

“The Family Educational Rights and Privacy Act of 1974”

Social Security account numbers -- cite the following Federal law:

“Public Law 93-579, as amended by Public Law 94-455”

or

“The Privacy Act of 1974”

Invention disclosures and other University documents that disclose details of University inventions not yet protected through the patenting process -- cite the following Federal law:

“35 U.S.C. 101 et seq. ‘Patentability of Inventions and Grant of Patents’”