

Legal Fees and Court Costs for the Marguerite Kay Case

Read at the open session: UA Faculty Senate meeting, January 22, 2001

William S. Bickel

Since 1996 the administration has spent an inordinate amount of resources on the Marguerite Kay case. During this period the former Vice President for Research assembled a professional squad to execute his plans. The team was assisted by lawyers from the state Attorney General's office, the University Attorney's office and the Regents legal staff. The administration also recruited and paid private attorneys to advise the faculty committees and panels - particularly the CAFT.

The administration has recently engaged Regent Chris Herstam's law firm, that's Regent Chris Herstam's law firm: Lewis and Roca of Phoenix. Lewis and Roca's Dale Denneman, Esquire, reportedly one of the most highly paid lawyers in the country, had since taken over the Kay case as the administration's top gun and unofficial chief counsel in all of its legal, semi-legal and extra-legal dealings in the courts and on campus. I have heard that the administration has already spent an unspecified large amount of money - some suggested it might be close to one million dollars - to prosecute the Kay case.

As a senator I ask <sup>President</sup> Likens and <sup>Chairman</sup> Hogle for an accounting of all monetary transactions and cost equivalents in time spent so far by the university personnel, faculty and staff on this matter. The report should include:

contract transactions, (*names of the attorneys*)  
dates,  
~~\_\_\_\_\_~~  
dollar amounts for attorney's fees,  
service charges,  
travel expenses,  
rental spaces (for CAFT II hearings),  
court reporters services,  
transcripts and court costs including payments imposed by the court  
as well as all other miscellaneous expenditures.

The administration should also disclose to the Senate the total cost to the UA for the out-of-court settlement with the administration's star witness Cathleen Covar in her recent lawsuit against the UA.

The administration should release this cost in response to my request in behalf of faculty colleagues.

Statement of Roy Spece, January 22, 2001

The Faculty Senate has made clear that it does not want to consider action regarding the Marguerite Kay case. Although I strongly disagree with this decision, I must accept it. However, I do wish to answer Senator Tom Davis's accusation at the last Faculty Senate meeting that it is a breach of confidentiality to openly discuss documents such as the UCEC report in the Kay matter. I referenced this and similar documents in my confidential report to this body several months ago. Focusing on the report complained about by Senator Davis, it was discussed in the CAFT proceedings, which were public; it was explicitly invoked at a prior Faculty Senate meeting by Chair Hogle; it does not contain the identity or testimony of any witness who has been assured confidentiality; and any scintilla of confidentiality associated with it lay in favor of Dr. Kay, who explicitly approved of the disclosure so as to bring to light substantive and procedural defects in the process. It is totally illogical, therefore, to suggest, let alone accuse persons of, breach of either the letter or spirit of confidentiality with reference to discussion of this report.

# **Chair of the Faculty's Report**

**January 22, 2001**

- 1. Budget Proposals at the State Legislature (hearings TODAY)  
--- SEE HANDOUT**
- 2. UPDATE on Health Insurance State Bidding Process**
- 3. Plans for Proposals for Proposition 301 monies – to the Board of Regents this week (SPBAC recommendations too)**
- 4. The Latest on [Pickaprof.com](http://Pickaprof.com)**

## State Government Update

Last week I reported on the specifics of the Joint Legislative Budget Committee Staff recommendation and the Executive Budget. As the Legislative Session is still young, no decisions have yet been made regarding the University's appropriation.

The next steps in that process are the legislative hearings that will take place the week of January 21.

On Monday, January 22, 2001 at 9:30 a.m. the Universities and the Board of Regents will present their missions, goals, and performance measures before the House Appropriations Committee in House Hearing Room 4.

On Tuesday, January 23, 2001 the Universities and the Board of Regents will make their budget presentations before the Senate Appropriations Committee at 8:00 a.m. in Senate Hearing Room 109, and before the House Appropriations Committee at 1:30 p.m. in House Hearing Room 4.

These meetings are open to the public and University employees are welcome to attend provided vacation time is used unless on official university business.

The final decisions on University budgets will not be made at this time. Normally, they will be made between now and March, although there is an attempt to wrap up the entire State budget earlier this year. One obstacle to that happening is the difference in revenue estimates of \$250-300M between the Governor and the Legislature with the Governor using the lower number.

This issue will probably be the most significant factor driving the appropriations process for this coming biennium. The Governor and significant elements of the Legislature are firmly committed to the support of the Universities, but the Governor has less money available to assist us due to her sincere opinion that revenues will not be as robust as the Legislature believes.

Ultimately, the two estimates will become one and the substance of that settlement will have a decisive effect on how well the Universities fare. The Governor's recommendation is generous to the Universities, but the JLBC treatment of salaries, building renewal, debt service, eminent scholars, and digital television is even more beneficial. Our first effort must be to hold on to what is in the JLBC recommendation – other issues, including the Graduate Teaching Assistant issue, will be put on the table, but the JLBC recommendation may for once be the cap and not the floor.

## Bills

Here are comments on a few bills:

Retirement – HB's 2048 and 2049 increase the State Retirement System multiplier from 2.1 to 2.5 (2049 does it based on years of service). I think some increase is possible this year, but I doubt it will go all the way to 2.5.

Northwest Campus – HB 2093 would appropriate \$5.2M to the UA to construct a joint classroom, library, bookstore and food service facility at the Pima Northwest Campus. This is part of the University's Capital Improvement Plan and we will work to gain passage for the bill.

I will communicate with you again next week or sooner if necessary.

Greg Fahey  
1/19/01

AS OF Jan. 12

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for Government Relations



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### State Government Update

The 2001 Legislative Session began on January 8th, 2001 and both the Executive and Legislative Budget recommendations for the biennium were presented this week.

I will touch on only the key features of these recommendations and deal with other matters in future communications as appropriate or as they become known.

#### I. Executive Budget - *from office of the governor* Salary Package

- 4 % pay increase for university employees effective 1/1/02 and 5% increase effective 1/1/03. The mode of distributing these dollars would be left to the Board of Regents and the Presidents.
- Building Renewal would be funded at 50% of formula for each of the next two years.
- Digital Television - \$120,000 per year for increased operating costs of KUAT due to digital conversion.

#### II. Joint Legislative Budget Committee (JLBC) Recommendation

*House + Senate  
Approp. Committee Staffs*

- Salary Package - 5% per year for each of the next two years, effective January 1. There are no restrictions on the use of the money other than the requirement that the minimum increase be \$1500 for all those with at least "satisfactory"

In addition, \$1M is appropriated on July 1, 2001 for only University Classification Maintenance adjustments (to prevent the loss of key university personnel) with ~~\$2M~~ \$1M appropriated on July 1, 2002 for that purpose - this is a system-wide appropriation.

- Building Renewal is recommended to be funded at 100% of formula for each of the next two years.
- Debt Service - The JLBC recommends the appropriation of \$3.7M in General Fund dollars to fix a "calculation error" that led to the underfunding of UA debt service in the current biennium.
- Eminent Scholars - The JLBC recommends the restoration of \$466,100 lost to the UA in 1998 due to the movement of University Land Fund dollars to the Eminent Scholars Matching Grant Fund. This change is effective in FY 2003.
- Digital Television - A one time capital appropriation is recommended to cover some of the costs of KUAT's conversion to digital television.



## State Government Update continued

- New Facilities Support – JLBC recommends \$411,600 for this purpose at the UA for FY 2002, and \$1,178,300 for FY 2003.

These budget proposals are the best the Universities have seen in over a decade. Obviously, there are still significant issues not addressed by either proposal (e.g. funding for the Graduate Student Workload Program), but it is an excellent beginning. We owe much gratitude to the Governor, legislators, and JLBC Staff for addressing so many of our needs at the start of the Session.

Much work needs to be done, not only to gain funding for other programs but to hold on to what is now on the table -- especially in the JLBC recommendation. One major reason for the fact that JLBC covers more of our request than the Executive is that it is built on a revenue estimate \$250M higher than the Executive Budget. Before the session ends these two revenue estimates will be brought into alignment. This means that while we will pursue funding for issues not addressed in either recommendation, just holding on to JLBC will be our first order of business.

The Legislative Budget Hearings are now scheduled for January 22<sup>nd</sup> and January 23<sup>rd</sup>. I will let you know the times and locations in the near future.

Greg Fahey  
1/12/01

Legislative web site: www.azleg.state.az.us

Note also: Bill for Pima - UA Northwest location building

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## Professor Reviews

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Pickaprof's Online Professor Review system has proven to be one of the site's most valuable features. It offers the students a chance to voice their opinions on a professor or class. All reviews are listed under an anonymous screen name.

In a review, we encourage you to include information that would be beneficial to other student who may take the class. Some examples of useful information are:

- Type and number of exams (essay, multiple choice...)
- Teaching Style of prof (straight lecture, overheads...)

Each professor review is read and screened based on content. The following are not allowed in reviews:

- Profanity
- Personal attacks on professors or other students
- References to other reviews

Examples of professor reviews:

Dr. Smith

5	Math 151	<i>catfish</i>
TAKE DR. SMITH!!! Not only is she an incredible lecturer, but she is extremely approachable, readily available outside of class, and really cares about her students.		
5	Math 151	<i>bobo</i>
Smith is a GREAT teacher. She is very thorough in her lectures and explains things very well. She also has very good reviews and will tell you exactly what you need to know, so there isn't any confusion when you get to the test. Her tests are very fair, and if you have done your homework, you should do very well in her class.		



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## Grade Distributions

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Pickaprof provides the following grade distributions:

- Number of A's, B's, C's, D's, and F's a professor has given in a specific course.
- Number of A's, B's, C's, D's, and F's a professor has given in all courses the professor teaches.
- Number of A's, B's, C's, D's, and F's given by all professors of a specific course.
- Number of A's, B's, C's, D's, and F's given in an entire department.
- Average GPA (Grade Point Average) in a specific course for all professors.
- Average GPA a professor gives.

Example of grade distributions:

### GPA Averages

Dr.Smith - Undergrad	2.89
Dr.Smith - Math 151	2.72
All Professors - Math 151	2.68
All Professors - Math Dept	2.60

### DR.Smith - Undergrad

149 students in 6 classes

A:  30%

B:  40%

C:  20%

D:  9%

F:  1%

2 % Dropped - Avg GPA: 2.89

### Dr.Smith - Math 151

149 students in 6 classes

A:  25%

B:  35%

C:  30%

D:  7%

F:  3%

2 % Dropped - Avg GPA: 2.72

### All Professors - Math 151

149 students in 6 classes

A:  20%

B:  40%

C:  30%

D:  8%

F:  2%

2 % Dropped - Avg GPA: 2.68

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## Course Evaluations

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Pickaprof collects the course evaluations from the schools it reports provides service to. Course evaluations are traditionally a taken in class toward the end of the semester. Course evaluations generally rate professors and based on several criteria, including:

- Course organization
- Communication of information
- Overall strength of the course / professor

Example of course evaluations:

<b>Course Evaluations</b>	<b>Professor in this class</b>	<b>Professor overall</b>
Course Well Organized	3.2	3.5
Communicated Information Effectively	4.1	4.0
Helped to think, reason, and evaluate	3.6	3.4
Overall Instructor Rating	3.2	3.6
Overall Course Rating	3.8	3.8

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## Student Registration

Pickaprof requires accurate registration information to notify you when next semester's course schedule is posted and sometimes to know where to send a free t-shirt!

### Registration Information

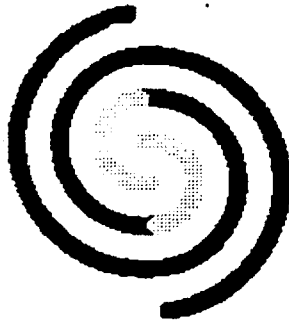
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Graduate											
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**SUBMIT REGISTRATION**

WE DO NOT SPAM OR SELL OUR USER LISTS!!! Pickaprof requires accurate registration information in order to provide you with additional services such as letting you know what tutoring services are available for your classes and where to send your books if you take advantage of Pickaprof's book purchasing service. Some students will be chosen at random to receive a free t-shirt.

For complete information about registration please read our [privacy policy](#)



# Principles for Emerging Systems of Scholarly Publishing

May 10, 2000

The following set of principles was agreed to by the undersigned individuals as a result of a meeting held in Tempe, Arizona, on March 2-4, 2000. Sponsored by the Association of American Universities, the Association of Research Libraries, and the Merrill Advanced Studies Center of the University of Kansas, the meeting was held to facilitate discussion among the various academic stakeholders in the scholarly publishing process and to build consensus on a set of principles that could guide the transformation of the scholarly publishing system.

The creation, dissemination, and application of new knowledge are fundamental to the development of an informed citizenry and a healthy global economy. Institutions of higher education exist to fulfill these functions. From the lab to the classroom to industry to the public, the advancement of knowledge through research and teaching is an invaluable contribution made by higher education to the public good. Scholarly publishing is the process through which newly discovered knowledge is refined, certified, distributed to, and preserved for researchers, professors, students and the public.

The current system of scholarly publishing has become too costly for the academic community to sustain. The increasing volume and costs of scholarly publications, particularly in science, technology, and medicine (STM), are making it impossible for libraries and their institutions to support the collection needs of their current and future faculty and students. Moreover, the pressure on library budgets from STM journal prices has contributed to the difficulty of academic publishers in the humanities and social sciences, primarily scholarly societies and university presses, to publish specialized monograph-length work or to find the funds to invest in the migration to digital publishing systems. Numerous studies, conferences, and roundtable discussions over the past decade have analyzed the underlying causes and recommended solutions to the scholarly publishing crisis. Many new publishing models have emerged. A lack of consensus and concerted action by the academic community, however, continues to allow the escalation of prices and volume.

The participants in the Tempe conference came together with the hope of building consensus on a set of principles that would inform the design and evaluation of new systems of scholarly publishing. The goal was to provide guidance while leaving open to creativity and market forces the actual development of such systems. The following set of principles is the result of their discussions. While the principles and their explanations reflect a North American perspective, the participants recognize that the advancement of knowledge and scholarly publishing are international enterprises. While the academic community in North America may agree on collective action, international discussion and support will be needed for the success of any new systems.

The participants encourage broad discussion and endorsement of these principles by institutions of higher education, scholars, scholarly societies, and scholarly publishers. Endorsement carries with it the commitment to implement local actions that will bring institutions of higher education closer to the goal of providing access to all relevant published research across all disciplines to all faculty by way of systems that ensure dependable management and affordable access to information over time.

1. *The cost to the academy of published research should be contained so that access to relevant research publications for faculty and students can be maintained and even expanded. Members of the university community should collaborate to develop strategies that further this end. Faculty participation is essential to the success of this process.*

With the creation, dissemination, and application of new knowledge central to their mission, institutions of higher education must work to create systems that will provide affordable access to all relevant published scholarship across all disciplines for researchers, teachers, and the broader public. To do this, faculty, university administrators and professional societies must work together to create the systems that will contain, and in some cases, reduce substantially the costs of scholarly publishing. Since every faculty member should have access to all the relevant published research in her/his area, it is imperative that we find ways to bring down the cost to accommodate the expanding volume of publication within available budgets. The business arrangements of the journals for which faculty write, edit, and review must become a major focus of contributors, editors and readers if scholarly publication is to become affordable again.

Containing costs might be accomplished over time within the current configuration of scholarly communication through the effective use of technology to streamline publishing functions, while increasing access and value. Such systems have been developed within the not-for-profit community by Stanford University's HighWire Press and The Johns Hopkins University's Project Muse; other efforts, such as BioOne, are being facilitated by SPARC, the Scholarly Publishing and Academic Resources Coalition. One could also envision systems that would build peer-review and abstracting and indexing functions on discipline- or institution-based e-print services. Such a system is being promoted by the Open Archives initiative, an effort that strives for compatibility among e-print services. Cost-containment should also continue through library consortial purchasing of electronic resources, a strategy that appears to be effective in lowering the unit costs of electronic information. Whatever the solution(s), cost must be made to fit within available budgets or the system will fail to provide the information to scholars that they need.

2. *Electronic capabilities should be used, among other things, to: provide wide access to scholarship, encourage interdisciplinary research, and enhance interoperability and searchability. Development of common standards will be particularly important in the electronic environment.*

With the growing volume of scholarly research, it is increasingly difficult to uncover all of the relevant material published on a given subject. As more scholarship becomes available in digital form, this problem can be surmounted through powerful search systems provided that commercial, technical and legal constraints do not prohibit such searches. Searching, navigation, and linking across titles and across disciplines is essential since many disciplines have multiple titles that serve them and many problems have multidisciplinary aspects that may lead a researcher to publications in fields as diverse as microbiology, law, economics, and internal medicine. The development of standards is critical to the implementation of cross-field searching and navigation. In addition, given the importance of older literature to the advancement of new knowledge, retrospective works should be digitized and made accessible online.

3. *Scholarly publications must be archived in a secure manner so as to remain permanently available and, in the case of electronic works, a permanent identifier for citation and linking should be provided.*

The advancement of knowledge is dependent on access to prior scholarship. While research libraries, with significant support from the National Endowment for the Humanities, have made significant progress in preserving print publications, there is still a large proportion of unique printed material yet to be treated and a number of additional formats, such as videotapes, sound recordings, and film, whose preservation needs have yet to be addressed in any significant way. Electronic publishing adds yet another set of complex issues to the archiving and preservation of scholarly works. With libraries no longer owning copies and with the fragility of the electronic

media, questions of what should be archived by whom and how are critical issues that need to be addressed. Despite many unanswered questions and unknown costs, archiving and preserving scholarly publications in all media are critical to any credible system of scholarly publication.

4. *The system of scholarly publication must continue to include processes for evaluating the quality of scholarly work and every publication should provide the reader with information about evaluation the work has undergone.*

The academic community relies on the judgment of peers when assessing the quality of faculty work. While core archival journals are expected to preserve the peer-review process, the scholarly community recognizes that the exact nature and methodology of quality assessment varies by discipline. Any evolving system of scholarly publication should allow for an evaluation process to take place as appropriate and should provide a transparent mechanism that informs the reader—an expert, a student, the public—of the nature of the evaluation the work has undergone in its various versions. This recommendation recognizes the development of discipline- or institution-based collections of articles which may go through different stages of review and where neither the hierarchy of existing journals nor the reputation of the publisher may exist as a signature of quality assessment.

5. *The academic community embraces the concepts of copyright and fair use and seeks a balance in the interest of owners and users in the digital environment. Universities, colleges, and especially their faculties should manage copyright and its limitations and exceptions in a manner that assures the faculty access to and use of their own published works in their research and teaching.*

The role of copyright is central to the academic community's mission of advancing knowledge. Members of the community are both creators and consumers of scholarly publications. As creators, faculty depend on copyright to protect the integrity of their work and on fair use to be able to use and incorporate the works of others with attribution in their own work. By tradition, faculty have transferred without direct compensation all of their copyrights to journal publishers in return for the wide distribution of their work. In some cases this tradition has resulted in the need for faculty to seek permission and pay a fee to use their own work in their research and teaching. If the academic community is to achieve its mission of advancing knowledge, it is critical that faculty authors retain the rights to use their own works in their teaching and in subsequent publications. Widespread adoption of university policies requiring faculty to retain such rights could provide individual faculty with the bargaining power to negotiate such agreements with publishers.

While this document concentrates on copyright and fair use of scholarly works, the importance of copyright and fair use go well beyond the scholarly publishing system. It is imperative that the academic community monitor and critically examine any new license arrangements or proposed legislation (whether it be copyright amendments or any body of law affecting intellectual property directly or indirectly) and take appropriate action to make sure that such arrangements or legislation do not upset the balance between owners' rights and users' exceptions to them that has been achieved in copyright law with its provisions for fair use and library and educational exemptions.

6. *In negotiating publishing agreements, faculty should assign the rights to their work in a manner that promotes the ready use of their work and choose journals that support the goal of making scholarly publications available at reasonable cost.*

By judiciously assigning the rights to their work, faculty members can help assure that scholarship remains affordably available to the community. In the publication process, faculty can choose to publish in journals whose access and pricing policies make their work easily and affordably available. All faculty members should know the cost of journals to libraries and should consider refraining from submitting their work and assigning copyright to expensive journals when high quality inexpensive publication outlets are available. In fields where alternatives do not exist,

universities and scholarly societies should work with faculty to develop such outlets.

**7. *The time from submission to publication should be reduced in a manner consistent with the requirements for quality control.***

In rapidly evolving fields, lags of 12 months or more mean that scholarly history rather than cutting-edge research is the subject of publication. If published scholarship is to be a useful building block, it is imperative that the lag between submission and publication be shortened as much as possible for each field. While a number of factors contribute to the lag—peer review, author's changes, back and forth with editors—and are important to the quality of the final work, technology should be exploited to speed up the process where possible. For example, some journals have already designed systems that select reviewers based on workload and availability. In addition, a number of disciplines depend on e-print systems for quick distribution of their work.

**8. *To assure quality and reduce proliferation of publications, the evaluation of faculty should place a greater emphasis on quality of publications and a reduced emphasis on quantity.***

While a fundamental factor contributing to the rapid increase in the volume of published research is the rapid expansion of knowledge, the academic credentialing system encourages faculty to publish some work that may add little to the body of knowledge. In the spirit of creating an environment that reduces emphasis on quantity across the system and frees faculty time for more valuable endeavors, faculty in research institutions should base their evaluation of colleagues on the quality of and contribution made by a small, fixed number of published works, allowing the review to emphasize quality. This de-emphasis of quantitative measures could moderate the rate of increase in new titles and numbers of articles published. Some universities have already modified faculty evaluation in this manner and federal granting agencies, such as the NIH, have implemented policies to limit the number of articles cited in the grant application process.

**9. *In electronic as well as print environments, scholars and students should be assured privacy with regard to their use of materials.***

The digital environment, in particular, makes it very easy to obtain data on users and use patterns, information that can have great marketing appeal. It is incumbent on the academic community to assure the privacy of individual users with regard to their use of scholarly publications or other source materials made available through our institutions, consistent with state and federal laws.

## Signatories to

### Principles for Emerging Systems of Scholarly Publishing

Shirley K. Baker, Vice Chancellor for Information Technology and Dean of University Libraries,  
Washington University Libraries

Douglas Bennett, President, Earlham College

Myles Brand, President, Indiana University

Felix E. Browder, President, American Mathematical Society

Daryle Busch, President, American Chemical Society and Professor, University of Kansas

Jerry D. Campbell, University Librarian and Dean of Libraries, University of Southern California

Mary Case, Director, Office of Scholarly Communication, Association of Research Libraries

Gerhard Casper, President, Stanford University

Stanley Chodorow, Special Associate of the President, University of California

Alan P. Covich, President, American Institute of Biological Sciences and Professor, Colorado State University

Ronald G. Douglas, Executive Vice President and Provost, Texas A&M University

Rodney A. Erickson, Executive Vice President and Provost, Pennsylvania State University

David Ferriero, Vice Provost for Library Affairs and University Librarian, Duke University

Mark S. Frankel, Program on Scientific Freedom, Responsibility and Law, American Association for the Advancement of Science

Kenneth Frazier, Director, University of Wisconsin Libraries

Frederick Friend, Director, Scholarly Communication, University College London

Peter Givler, Executive Director, Association of American University Presses

Wyatt R. Hume, Executive Vice Chancellor, University of California, Los Angeles

Joanne Jessen, Director of Publications, American Speech-Language-Hearing Association

Richard Johnson, Enterprise Director, SPARC

Arnita Jones, Executive Director, American Historical Association

Clifford Lynch, Executive Director, Coalition for Networked Information

James V. Maher, Provost and Senior Vice Chancellor, University of Pittsburgh

Peggy S. Meszaros, Senior Vice President and Provost, Virginia Tech University

Rush G. Miller, University Librarian and Director, University Library System, University of Pittsburgh

James G. Neal, Dean of University Libraries, Johns Hopkins University

Charles E. Phelps, Provost, University of Rochester

Bernard Rous, Deputy Director of Publications, Association for Computing Machinery

Keith Russell, Dean of Libraries, University of Kansas

David Shulenburg, Provost, University of Kansas

Carla Stoffle, Dean of Libraries, University of Arizona

Suzanne Thorin, Dean of University Libraries, Indiana University

Herbert Van de Sompele, Head of Library Automation, Ghent University

John Vaughn, Executive Vice President, Association of American Universities



Marlie Wasserman, Director, Rutgers University Press

Duane Webster, Executive Director, Association of Research Libraries

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ARL Office of Scholarly Communication Home Page



ARL Home

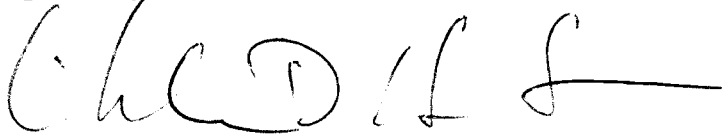
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**Last Modified:** June 6, 2000

The Research Policy Committee recommends endorsement of the "Tempe Principles" as a means to bring together authors, publishers, and users of intellectual property protected under copyright. New models for publishing should and must be investigated while respecting the rights, responsibilities, and traditions of all involved. The Research Policy Committee will give the "Tempe Principles" due consideration during our discussions of policies related to intellectual property that come under review by the Committee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles D. Hurt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charles D. Hurt, Chair  
Research Policy Committee  
22 January 2001

## PROPOSED ABOR WHISTLE-BLOWER POLICY

### CHAPTER VI

#### 6-914 Whistle-blowing Policy and Procedures

##### A. Purpose

To prohibit supervisory personnel from taking adverse personnel action against an employee, or from failure to take appropriate action, as a result of the employee's good faith disclosure of alleged wrongful conduct to a public body or to a designated University officer on a matter of public concern. The employee who discloses and subsequently suffers an adverse personnel action as a result is subject to the protections of this policy.

##### B. Source

Arizona Revised Statutes §38-531; §38-533, §41-1062;

##### C. Applicability

All employees and supervisors of employees of the Arizona Board of Regents or a state university under the Board's jurisdiction, as well as paid graduate assistants, who disclose alleged wrongful conduct, as defined in this policy, and, who, as a result of the disclosure, are subject to an adverse personnel action.

##### D. Policy

No adverse personnel action can be taken against a university employee in knowing retaliation for any lawful disclosure of information on a matter of public concern to a public body, including a designated university officer, which information the employee in good faith believes evidences: (1) a violation of any law, (2) mismanagement, (3) gross waste of public funds, or (4) an abuse of authority, collectively referred to herein as "alleged wrongful conduct."

No supervisor, director, chair, dean, department head, or any other employee with authority to make or materially influence significant personnel decisions shall take or recommend an adverse personnel action against an employee in knowing retaliation for disclosing alleged wrongful conduct to a public body. Any employee found to have so violated this policy shall be disciplined, up to and including termination, in accordance with existing university rules, policies, and procedures.

E. Definitions

1. Abuse of Authority: action or decision which is outside the scope of the alleged violator's position, scope of duties, or level of authority as authorized by the university president or designee. However, even actions or failure to take actions which are within the alleged violator's authority may constitute abuse of authority if the violator's motive or purpose is to harass, intimidate, or treat the employee unreasonably or capriciously under the applicable facts and circumstances.
2. Adverse Personnel Action: an employment-related act or decision of a supervisor or higher level authority which affects an employee negatively. The following are adverse personnel actions in the university's personnel system:

termination of employment, including denial of tenure, denial of continuing status, non-renewal, or dismissal for cause;

demotion;

suspension;

written reprimand;

retaliatory investigation;

decision not to promote;

receipt of an unwarranted performance rating;

withholding of appropriate salary adjustments;

imposition of involuntary transfer or reassignment;

elimination of the employee's position, absent a reduction in force, reorganization, or a decrease in or lack of sufficient funding, monies, or work load;

denial of awards, grants, leaves, benefits or training for which the employee would normally be eligible; or

other significant changes in job responsibilities and involving conditions which are inconsistent with the employee's position, salary or grade.

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3. Alleged Wrongful Conduct: violation of law, mismanagement, gross waste of monies, or abuse of authority.
4. Day: calendar day. In cases of faculty, academic professionals, and other employees appointed on an academic year (nine month ) basis, day does not include summer, mid-semester, semester, or other similar break periods.
5. Discloser: an employee who reports alleged wrongful conduct to a public body, as defined herein.
6. Disclosure: oral or written report by an employee to a public body of alleged wrongful conduct on a matter of public concern.
7. Disclosure Investigation: review and determination made by the appropriate university officer and/or designees of a disclosure.
8. Filing: receipt by the office where filing is required.
9. Gross Waste of Public Funds: action or decision which is outside the scope of the alleged violator's spending or budgetary authority, or even when the action or decision is within budgetary authority, the action would be considered by a reasonable person to be grossly excessive or wasteful of public funds.
10. Knowing Retaliation: an adverse personnel action taken by a supervisor or other authority against an employee based on a prior disclosure of alleged wrongful conduct.
11. Mismanagement: action or decision which exceeds the scope of the alleged violator's responsibilities, or even if the action is within responsibilities, the action would be considered by a reasonable person to be grossly excessive or unfair.
12. Personnel Action: an employment-related action or decision which affects an employee positively or negatively.
13. Public Body: The Arizona Attorney General; the Arizona Legislature; the Governor of Arizona; a federal, state, or local law enforcement agency; the local County Attorney; a member of the Arizona Board of Regents, a university president, provost, vice president, vice provost, or college dean.

E. (continued)

14. **Service Provider:** individuals or entities who have contracted with the university to provide hearing officer services. The hearing officer shall be selected by a process which includes mutual agreement of the parties.
15. **Supervisory Employee:** Any supervisor, director, chair, dean, department head, or other employee who has authority to make or materially influence significant personnel decisions.
16. **University Officer:** president, provost, vice-provost, vice-president, or dean of Arizona State University, Northern Arizona University or the University of Arizona.
17. **Violation of the Law:** a violation of a federal or Arizona state law (statute)
18. **Whistle-blower Complainant:** (“Complainant”): A current or former employee who disclosed alleged wrongful conduct to a public body and who subsequently is subject to an adverse personnel action as a result of making the prior disclosure.
19. **Whistle-blower Complaint:** a complaint filed by a complainant with a university officer alleging that an adverse personnel action was taken in retaliation for a prior disclosure of alleged wrongful conduct to a public body.
20. **Whistle-blower Complaint Review:** a review by a university officer or committee of a whistle-blower complaint, resulting in a written decision which the university officer provides to the complainant.
21. **Whistle-blower External Hearing:** a hearing conducted by an external hearing officer approved by the complainant and university to conduct a hearing if the complainant is dissatisfied with the decision of the university officer following a whistle-blower complaint review.

F. Making a Disclosure

Any employee may make a disclosure to any public body within 45 days after becoming aware of the alleged wrongful conduct. In order to allow the university an opportunity to review alleged wrongful conduct and to take necessary internal corrective action, employees are encouraged to report in writing a disclosure of alleged wrongful conduct to a university president, provost, vice president, vice provost or dean (“university officer”) so that a university investigation can be initiated.

**F. (continued)**

If the employee is unwilling or unable to put an oral disclosure in writing, the university officer who investigates the disclosure will prepare a written summary of the employee's disclosure and provide a copy to the employee. Within 10 days after receipt of the summary, the employee may submit a written supplement to the university officer who prepared the summary. Failure to submit a supplement within 10 days will constitute acceptance of the summary as an accurate statement of the disclosure made by the employee. The university officer and/or designees will conduct an investigation into the allegations of the disclosure and will take necessary corrective action, as warranted. At the conclusion of the investigation, the university officer will notify the discloser and other affected employees in writing of the determination. A copy of the determination shall be retained by the provost, the discloser, and the alleged violator. A discloser must suffer adverse personnel action as a result of making a disclosure to file a whistle-blower complaint and receive a hearing.

Where the university officer determines the employee's allegations do not meet the definition of disclosure under this policy, the university officer shall refer the employee to other available university grievance or appeal processes to address the employee's concerns. Furthermore, where the employee's allegations constitute a complaint of discrimination on a basis covered by the university's non-discrimination or similar policy, the employee's allegations shall be referred to the university office charged with investigating allegations of discrimination, rather than being investigated as a disclosure of alleged wrongful conduct under the whistleblower policy.

**G. False Allegations of Wrongful Conduct**

Any employee who knowingly makes false allegations of alleged wrongful conduct to a public body shall be subject to discipline, up to and including termination of employment, in accordance with university rules, policies, and procedures.

**H. Legitimate Employment Action**

This policy may not be used as a defense by an employee against whom an adverse personnel action has been taken for legitimate reasons or cause under university rules and policies. It shall not be a violation of this policy to take adverse personnel action against an employee whose conduct or performance warrants that action.

**I. Whistle-blower Complaint**

Within 30 days after a current or former employee is notified of an adverse personnel action and believes the action was based on his or her prior disclosure of alleged wrongful conduct, he or she may protest the action by filing a written whistle-blower complaint with a university designated officer or committee. The university officer or

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committee, on receipt of a whistle-blower complaint, shall review the complaint expeditiously to determine: 1) whether the complainant reported alleged wrongful conduct to a public body on a matter of public concern before an adverse personnel action was imposed; 2) whether the complainant suffered an adverse personnel action after reporting alleged wrongful conduct to a public body; 3) whether the complainant alleged that the adverse action resulted from the prior disclosure; and 4) whether the complainant alleged adverse action was the result of knowing retaliation for the employee's disclosure.

Within 45 days after receipt of the complaint, the university officer shall notify the complainant in writing of the results of the review and whether the adverse personnel action is affirmed, reversed, or modified, and provide a copy of the decision to the employee's supervisor. The supervisor will implement the decision and will verify implementation in writing to the university officer within 10 days after receipt of the university officer's decision.

Where the designated university officer or committee finds the employee did not make a disclosure pursuant to this policy, the employee shall be referred to other available university grievance or appeal processes to pursue their complaint. Furthermore, because there are other university policies and statutes that provide remedies for claims of retaliation following the filing of an unlawful discrimination complaint, such retaliation claims will be referred to the university office charged with investigating allegations of discrimination rather than being reviewed as whistleblower complaints.

A complainant who is dissatisfied with the decision of the university officer on the whistle-blower complaint may file a request for a whistle-blower hearing and proceed under the following procedures.

J. Procedures

1. Request for Hearing

The Board, through its universities, has contracted with qualified service providers to provide qualified external hearing officers and a hearing process for a complainant who is dissatisfied with the university officer's decision. The purpose of the hearing is to determine whether an adverse personnel action resulted from the complainant's prior disclosure of alleged wrongful conduct. No other issues or determinations are authorized. The hearing officer cannot be a university employee and, except for the contractual arrangement to provide hearing officer's services, cannot have substantial interest in the university.

a. Request for Hearing

Within 15 days after receipt of the university officer's decision, a



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complainant who is dissatisfied and desires an external hearing must file a written request for hearing with the university representative or office designated to review these requests.

b. Contents of Request for Hearing

A request for hearing must contain the following:

1. a specific statement that it is a request for a whistle-blower hearing by an external hearing officer;
2. the name, work address, work telephone number and position of the complainant;
3. the name, work address, work telephone number and position of the university officer who issued a decision on the complainant's whistle-blower complaint;
4. a statement of the reasons for requesting a hearing including the objectionable portion of the university officer's decision;
5. a statement of the specific relief or remedy requested; and
6. copies of 1) the employee's prior disclosure or the writtensummary prepared by a university officer; and 2) the university officer's decision on the whistle-blower complaint.

2. Appointment of Hearing Officer

Within 20 days after receipt of a request for hearing, the designated university office or committee who receives the complaint will determine whether the complainant qualifies for an external hearing based on the following:

- a. the complainant identified an adverse personnel action imposed on him or her and the date of notice of the action;
- b. the complainant made a prior disclosure of alleged wrongful conduct to a public body on a matter of public concern prior to the adverse personnel action;
- c. the complainant alleges the adverse personnel action resulted from the prior disclosure;

J. (continued)

and

- d. whistle-blower complaint review to the request for hearing.

If the request qualifies for an external hearing, the designated university office or committee will forward the request to the service provider to begin the process of selecting an external hearing officer and conducting a whistle-blower hearing.

If the request does not qualify for a whistle-blower hearing, the request will be returned to the complainant with written reasons for rejection. Within 10 days after receipt of the decision, the complainant may file a written appeal of the rejection to the university president or designee for a reconsideration of the decision. The president or designee will respond to the complainant in writing within 20 days after receiving the appeal for reconsideration. If the president or designee reverses the decision, the case will proceed; if the president or designee affirms the decision that the request does not qualify for a hearing, that decision is final.

### 3. Submission of the Record

Within 20 days after receipt of the request for hearing, the service provider shall notify the complainant and the identified university officer that the request for hearing is accepted and assist the parties with the mutual selection of the hearing officer, the procedures for a pre-hearing conference in person or by telephone, and the procedures which will be followed in conducting the hearing, including submission of evidence, documents, and witness lists. The hearing officer may require the parties to submit summaries of their positions before the hearing commences.

The hearing will be conducted within 90 days after the request is received by the service provider, unless the hearing officer extends the time for good cause.

### 4. Conduct of Hearing

Hearings before the hearing officer shall be conducted according to this policy and the rules and procedures of the service provider. The procedures designated in this policy supersede rules of the service provider, if there is a conflict. The formal rules of procedures or evidence do not govern the hearing. Generally, the party advocating a particular point or fact has the burden of proof on that point or fact. Ultimately, the person seeking review has the burden of persuading the hearing officer that the adverse action was based on a prior disclosure of alleged wrongful conduct to a public body. The evidence standard is proof by a J. (continued)

J. (continued)

preponderance of the evidence.

The hearing officer has subpoena power. The hearing shall be either recorded or transcribed, as determined by and at the university's expense, so as to provide an accurate, written rendition of the hearing.

5. Attorneys or Advisers

Complainant, at his or her own expense, may be represented by counsel (an attorney) during the hearing process, and counsel may present the case during the hearing. The university representative may be represented by counsel, who may be a university attorney or outside counsel, during the hearing process, including the hearing.

If the complainant is not represented by an attorney at the hearing, the university will not be represented by an attorney at the hearing. The parties may receive the advice of counsel prior to and during the hearing process.

6. Resolution By Agreement

At any time, the parties may agree upon a resolution of the matter. In such event, the written agreement shall be presented to the designated university officer who shall close the case and notify the service provider and the parties in writing that the matter is "resolved by agreement."

7. Hearing Officer's Decision

Within 30 days after the close of the hearing, the hearing officer or service provider shall provide the hearing officer's written report to the parties and to the university president. The report will contain findings of fact and the evidence relied upon to sustain those facts, conclusions including reference to applicable law, rules or policies and a decision by the hearing officer that the adverse personnel action was or was not based on a prior disclosure, and whether the adverse action is affirmed, reversed, or modified.

The university will implement the decision of the hearing officer within 10 days after receipt, except that the hearing officer may not direct that the university grant renewal, tenure, continuing status or promotion to a faculty member or academic professional.

J. (continued)

If the hearing officer finds that an adverse personnel decision related to renewal, tenure, continuing status or promotion of a faculty member or academic professional was the direct result of the disclosure of alleged wrongful conduct, the hearing officer shall remand the complaint to the university for further proceedings consistent with its internal procedures.

K. Dismissal of Tenured Faculty or Continuing Academic Professionals:

Board of Regents policy 6-201, "Conditions of Faculty Service," and 6-301, "Conditions of Professional Service," provide extensive due process and procedures for dismissal of tenured faculty or continuing academic professionals, including review and/or hearings by university faculty committees. In dismissal cases, the internal grievance hearing process as set out in the hearing provisions of ABOR Conditions policies must be completed and include a report with recommendations from the committee to the university president for decision. The grievance committee will consider the whistle-blower and other grievance issues raised by the grievant. If the complainant disagrees with the results of the internal process, he or she may request a whistle-blower hearing as provided in the policy.

L. Request for Review or Rehearing

1. In compliance with *Arizona Revised Statutes §41-1052.B*, the complainant who is dissatisfied with the decision may request a rehearing or review by filing a written request with the service provider no later than 15 days following receipt of the written decision. The service provider will forward the request to the hearing officer on receipt. The request shall be based on one or more of the following grounds:

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- a irregularities in the proceedings, including but not limited to any abuse of discretion or misconduct by the hearing officer or hearing panel, which has deprived the complainant/grievant of a fair and impartial hearing.
  - b newly discovered material evidence which with reasonable diligence could not have been presented during the fact-finding or hearing process
  - c excessive severity of the sanction
  - d the decision is not justified by the evidence or is contrary to the law.
1. Following receipt of the request for review, the hearing officer shall make whatever review is deemed necessary to resolve the issues that have been raised.
  2. The service provider will provide the hearing officer's written decision on review to the parties and university president within 20 days after receipt of the request from the complainant.
  3. When the complainant does not request rehearing or review, the hearing officer's decision following the hearing becomes the final agency decision 15 days after the complainant's receipt of that decision. When the complainant requests review, the hearing officer's decision following review is the final agency decision.
  4. The hearing officer's decision is subject to judicial review only under A.R.S. Section 12-901, et seq. The hearing officer's decision following the hearing shall include a statement notifying the complainant that he or she has 35 days from the date on which the decision becomes final to seek review of that decision in the Superior Court in accordance with the provisions of the Administrative Review Act, A.R.S. Sec. 12-901, et seq.

(ABOR 1/01, 11/90)

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## **Grievance Policies and Procedures for Faculty** *draft 01/08/01*

Purpose: To provide for hearing procedures for members of the General Faculty

Source: *Arizona Board of Regents Policy Manual - 6-201*  
*Arizona Board of Regents Policy Manual - 6-301*  
*University Handbook for Appointed Personnel (UHAP)*

### **I. Grievance Principles**

A. The Board of Regents and the president, administrators and faculty of The University of Arizona (UA) recognize the importance of providing a prompt and efficient procedure for fair and equitable resolution of grievances without fear of prejudice or retaliation for initiating a grievance or participating in the grievance process.

Note: "Grievant" and "respondent" may refer to one or more individuals

B. Each individual's attempt to rectify a perceived wrong is considered consistent with UA's role as an upholder of individual rights.

C. The existence of a grievance process in no way diminishes the responsibility of faculty and administrators for the exercise of sound academic judgment.

D. All grievants shall have clearly defined avenues of appeal and redress that may include mediation and/or a hearing before a faculty committee that reports to the president. The president decides the matter and his or her decision is final. The grievant's rights to further judicial appeal shall not be abrogated by this policy.

E. Faculty grievance procedures apply to general faculty as defined in the Constitution.

F. The preferred option is to resolve grievances internally at the level closest to the grievant. By using internal conciliation and hearing procedures first, the grievant should be able to obtain acceptable results without escalation to a formal charge with an outside agency.

G. At each level of decision-making, the grievant shall be informed of the informal and formal options available for redress and appeal if the grievance is unresolved.

H. In cases involving suspension without pay or dismissal, conciliation before a more formal hearing is mandatory. In other cases, grievant may choose either a conciliation route that may then be followed by a grievance route or may directly choose a grievance hearing.

I. The grievant may choose to have legal counsel at his or her expense in all hearings. If grievant chooses not to have counsel, the respondent shall not have counsel either.

J. Each grievant has the right to a fair, full, and reasonably speedy investigation and judgment by members of the appropriate committee.

K. Two or more faculty members experiencing the same grievance have the right to seek redress jointly or individually, unless the basis for the grievance is release solely for reorganization based on either budgetary or financial emergency or programmatic changes, in which case, the grievants shall all seek redress jointly.

L. Written records of grievance-related matters at each level are to be kept and made available to all parties in the case, except privileged communications or documents that are confidential pursuant to state or federal laws or regulations..

M. All parties to a grievance are entitled to frequent notification of the status of their case, at least at the conclusion of each stage of the process.

N. Grievances involving faculty members who teach off the main UA campus shall be handled by grievance procedures prescribed herein, unless overridden by local administrative policies.

O. Grievants and witnesses are assured freedom from reprisals related to their testimony. A separate whistle blower policy describes whistle blower protections, and when those protections are applicable.

P. Allegations of sexual harassment may be filed with the University Office of Equal Opportunity and Affirmative Action (EO/AA) following the procedures developed by that office. A separate sexual harassment policy describes the policy and procedures.

Q. Allegations of discrimination based on gender, sexual orientation, age, race, national origin, religion, disability and/or veteran status may be filed with EO/AA. Separate discrimination policies describe the policies and procedures.

## II. Grievance Resolution Procedures

### A. Introduction

1. Informal problem resolution may be requested, or formal grievances may be filed if the grievant believes:

a. There has been a violation, a misinterpretation, or an arbitrary or discriminatory application of university policy, regulation, or procedure which, applied personally to that faculty member, infringes upon his or her privileges, responsibilities, or terms and conditions of employment.

b. There have been salary, teaching assignment, equipment access or other inequities.

c. He or she has been discriminated against on the basis of gender , sexual orientation, race, religion, national origin, age, disability and/or veteran status.

d. There has been an infringement on his or her academic freedom.

e. There has been improper suspension or dismissal.

2. Grievance resolution procedures differentiate among ombudsperson and conciliation processes and grievance hearings. An ombudsperson provides impartial, informal, confidential problem solving and conflict resolution. Conciliation is a more formal process involving the faculty and others (e.g., department chair, dean, other faculty

members) who are conferred with individually or assembled by a neutral conciliator. A grievance hearing, the most formal method of resolution, is requested by a faculty member, and conducted by the Committee on Academic Freedom and Tenure. A fourth process involves the filing of a harassment or discrimination complaint with the Office of EO/AA.

3. In most cases, faculty may choose an informal route (ombuds or conciliation), which may be followed (if necessary) by the grievance hearing route or the grievance hearing route alone. In cases involving recommendations for suspension without pay or dismissal from employment, ABOR rules require conciliation be attempted before a grievance hearing can be held. Grievances alleging discrimination or sexual harassment may be filed with either the Grievance Clearinghouse Committee (see section II, C, below for composition of Grievance Clearinghouse Committee) or EO/AA.

4. The recommended starting point for resolving grievances is at the head or dean level, whichever is applicable. If, however, the grievant does not wish to follow this route, or this route has not provided acceptable resolution, a grievant has the option of using an ombudsperson, conciliation or a more formal grievance hearing process.

## **B. Informal Resolution Procedures**

### **1. Introduction**

Informal resolution procedures are provided for the faculty member who desires informal assistance in the resolution of a complaint. An ombudsperson, Committee on Conciliation member or professional mediator will mediate, conciliate, and coordinate communication among the grievant, respondent, and others related to the complaint. The purpose of this process is to air differences between the parties and to resolve the complaint to the satisfaction of both parties without resorting to formal hearings. Informal resolution is strongly recommended.

The names of university ombudspersons and members of the faculty Committee on Conciliation are available from the Faculty Center.

### **2. Ombudsperson Committee**

- a. The ombudsperson is an informal process used to prevent disputes where possible, or facilitate problem resolution.
- b. The ombudsperson is a designated neutral who helps manage conflict perceived conflict by listening and generating options to help the faculty member resolve his or her problem. The ombudsperson may work with one, both, or all parties to reach a mutually satisfactory agreement and prevent disputes from escalating.
- c. The purpose of this informal process is to provide confidential, informal assistance in resolving disputes or questions in a neutral setting before resorting to formal grievance processes, preserving or improving working relationships and creating a better working environment.
- d. The ombudsperson will not take any action nor disclose any information without the permission of the person seeking assistance, unless required by law to do so.



### 3. Conciliation Process

- a. The faculty member seeking conciliation shall file a complaint with the Ombuds Office or the Committee on Conciliation within 30 days of the occurrence of the actions which form the basis of the complaint.
- b. The grievant shall not be represented by an attorney during conciliation. He or she may have an adviser from the university community who can attend meetings and review written documentation. Access shall not be given to information deemed confidential or privileged under federal or state laws or if access would constitute an invasion of privacy. If the ombudsperson or conciliator denies access, all parties will be given a written explanation. If the grievant disagrees with the ombudsperson's or conciliator's determination, the grievant may terminate mediation and file the complaint within 15 days to the Grievance Clearinghouse Committee.
- c. The ombudsperson or conciliator shall have 30 days after receiving written statements from the grievant and respondent to try to resolve the conflict.
- d. Conciliation process results shall be summarized in a report prepared by the ombudsperson or conciliator and sent to the parties and to the president.
- e. If a mutually satisfactory resolution results from the conciliation, the process ends. If the parties cannot resolve the differences, the grievant may, if he or she chooses, seek a grievance hearing with a request to the Grievance Clearinghouse Committee. The request shall be filed within thirty (30) days of receipt of the ombudsperson's or conciliator's report.

### C. Grievance Hearing Procedures

1. Whether or not a grievant has sought conciliation, he or she may request a hearing by a grievance hearing committee through the Grievance Clearinghouse Committee. If the grievance involves discrimination, the grievant may file a complaint with the Office of EO/AA.
  - a. The Grievance Clearinghouse Committee consists of the chairs of the Committee on Academic Freedom and Tenure (CAFT), the Committee on Conciliation, the Committee on Ethics and Commitment, and a representative of the Equal Opportunity/Affirmative Action Office.
  - b. The chair of CAFT will function as the ex-officio chair of the Grievance Clearinghouse Committee. Requests for hearings by a grievance committee should be filed with the chair of CAFT. Faculty may locate the chair of CAFT by visiting the

CAFT web page (<http://w3fp.arizona.edu/caft/>) or by phoning the Faculty Center (621-1342).

2. No fewer than three faculty members shall constitute a hearing panel. Members shall not participate in hearings when there is a conflict of interest.

3. The grievance procedure will involve the following steps:

a. Within 30 days of receipt of the conciliator's report or within 30 days of the occurrence of the actions which formed the basis for the grievance, the grievant shall make a written request for a formal hearing to the chair of the Grievance Clearinghouse Committee. Written requests should be marked confidential and sent to the Chair of Grievance Clearinghouse Committee. If any Board of Regents or University policy provides shorter time limits, the shorter limits will apply.

The request must be filed by the grievant by hand delivery or by certified mail, return receipt requested, with the chair of the Grievance Clearinghouse Committee at his or her university office address and shall state: grievant's name, address, telephone number, a statement of the complaint, remedies sought, and the name and address of grievant's attorney, or that grievant is proceeding without an attorney.

b. The Grievance Clearinghouse Committee shall decide which committee or process will hear the case based on the following jurisdictional guidelines:

1. Alleged discrimination.

If discrimination in employment, program, or activity based on race; color; religion; sex, including sexual harassment; national origin; age; disability; or veteran status is the essence of the grievance, the Equal Employment and Affirmative Action Office may consider the case and conduct an investigation in accordance with the procedures established by that office.

2. Other faculty grievances, including alleged infringement on academic freedom and tenure, will be handled by the Committee on Academic Freedom and Tenure (CAFT).

i. CAFT shall hear any faculty allegation that a decision affecting his or her employment relation with the university was not determined in substantial compliance with regular university procedures. This includes dismissal, nonrenewal of contracts, promotions, sabbatical leaves, and leaves. When, however, the matter concerns the basis or reasons for administrative decisions on promotion or leaves, the committee shall not have jurisdiction.

ii. If the allegation asserts that a decision on

nonretention or denial of tenure was not determined in accordance with regular university procedures or was based on discriminatory or other unconstitutional grounds, the committee may hear the case. In performing its function of assessing the procedural regularity of the tenure and promotion process, CAFT has an important fact-finding role, similar to that of a board of inquiry. To the extent possible, this role should be carried out in a non-adversarial, collegial way.

iii. CAFT shall hear disputes on the amount of salary due a nontenured faculty member who has been suspended or dismissed before the expiration of the employment period.

iv. CAFT shall hear other faculty grievances, such as alleged unfair treatment because no policies or procedures exist or existing policies or procedures have been misinterpreted, misapplied, or violated by a university administrator.

c. The chair of the Grievance Clearinghouse Committee shall forward the request for a hearing within seven days after it is filed to respondent, with instructions to respond within 15 days. The response shall contain the name, address, telephone number of respondent, a statement of respondent's position on the issue, and the name and address of the respondent's attorney if grievant elects to be represented by an attorney. Respondent is not obligated to have an attorney.

d. Within 15 days of the original request, the grievant and respondent will receive written notification from the chair of the Grievance Clearinghouse Committee as to which committee will hear the case and a statement of procedures of that committee.

e. The grievant may ask the Grievance Clearinghouse Committee to reconsider its decision on case assignment. The reconsideration decision by the Grievance Clearinghouse Committee is final.

f. The chair of the designated hearing committee will set a hearing date in conjunction with all parties involved in the case. The hearing should begin within 60 days of the date of the original request. The sixty-day period includes only the time when the university is in session. Semester breaks and summer recess are not included. The parties shall receive notice of the hearing date at least 20 days before the hearing date.

g. A grievance shall not proceed if the grievant, after due notice, fails to be present or fails to obtain continuance. A grievant may withdraw his or her grievance at any stage in the grievance procedure by writing the chair of the committee designated to hear the grievance.

h. The grievant shall be advised of relevant statutes of limitation that would affect his or her ability to file for a hearing or investigation outside the university. Specifically, in

the case of discrimination, the grievant must file a complaint with the Arizona Civil Rights Division, U.S. Dept. of Education Office of Civil Rights, or the U.S. Dept. of Labor within 180 days of the occurrence of the action complained of. He or she has 300 days from the date of occurrence to file with the U.S. Equal Employment Opportunity Commission.

i. If a grievant commences a grievance with an outside agency based on the same or other grounds, conciliator or the chair of the hearing committee, depending on the progress of the internal grievance, will continue the internal grievance, unless the grievant desires to postpone the hearing process or withdraw the internal grievance.

Grievant shall be advised by the chair of the hearing committee to consider filing charges with an outside agency if the deadline to file may pass pending the outcome of the internal process.

j. No later than 15 days before the hearing date, the grievant and respondent will submit complete written documentation about the complaint and a list of witnesses to the chair of the hearing committee.

k. The chair of the hearing committee shall send a copy of the written documentation and witness lists submitted by the grievant and the respondent to the committee members within three days after receipt. The grievant's witness list and documentation will be forwarded to respondent and the respondent's witness list and documentation will be forwarded to grievant by the chair within three days after receipt.

l. The chair of the committee may call witnesses upon request of either party or on the chair's initiative. The chair may also require the production of books, records, and other evidence. Request shall be made either by personal delivery or by certified mail.

m. Hearings by grievance committees shall be conducted according to the following rules:

1. Hearings shall be recorded on tape. In addition, ABOR requires cases involving suspension without pay or dismissal to be recorded using a court reporter. Deliberations are not part of the hearing.

2. Unless overriding reasons under law or ABOR policy are given to grievant, respondent, and other appropriate parties, all parties shall have access to all information that is presented to the hearing body at no expense to them.

3. While a grievance is being processed, grievant and respondent should be informed about the status of the grievance.

4. Grievant may have legal counsel in any hearing. If grievant elects to proceed without counsel present at a hearing, respondent shall also proceed without counsel present. Either party may have the advice of counsel prior to the hearing. If the grievant has counsel, generally, an attorney in the University Office of General Counsel will advise the respondent.

5. Advice to the grievance committee

i. A University attorney may provide advice to the grievance committee if neither party is advised or represented by counsel and the University Attorney has not been involved in the case on behalf of either party.

ii. An outside counsel may be obtained to provide legal advice to the committee if the University Attorney is precluded from providing advice to the committee.

iii. Legal advice is limited to procedural and evidentiary matters, not substantive issues related to the case.

6. In the interest of fair treatment, it is expected that any member of the university community called to give testimony shall testify.

7. The grievant and respondent shall hear all testimony.

8. Upon request of either party and for good cause shown, the chair may continue the proceedings to another time.

9. Either party may demand that witnesses be excluded except while testifying. Generally, the committee will allow all witnesses to testify and documents to be presented which are related to the complaint or the response.

10. Each party may present an opening statement of his or her position. Generally, the grievant will then present all of his or her witnesses and documents. The committee members may question the witnesses and ask questions about documents presented. The respondent may question the grievant and witnesses. After the grievant has presented his or her case, the respondent shall have an opportunity to present witnesses and documents, and the committee members may question the witnesses and ask questions about documents presented. The grievant may question the respondent and witnesses. The members of the committee may question the parties throughout the hearing.

11. At the completion of the hearing, the chair will notify the parties that within 30 days the committee will forward a report of its findings, conclusions, and recommendations to the president, who will make the final decision.

12. Within 45 days of receipt of the committee report, the president shall decide the matter and forward a written statement to the grievant, the respondent, and the members of the hearing committee. If the president cannot issue a decision within the 45-day period, the president will notify the parties within the 45-day period of a delay in the issuing of the decision, the reasons for the delay, and the date on which the decision can be expected. The decision of the president shall be final.

13. The hearing report shall be provided to the parties by the president on request.

14. When CAFT determines that there has been a material failure by an academic unit to adhere to procedures governing the tenure and promotion process, it should advise the senior vice president and provost through its report to the president, so that the following steps can be taken.

i. The senior vice president and provost will consult with the faculty and/or head of that unit to ensure that such a failure does not happen again.

ii. If CAFT determines that such a failure was a deciding factor in a recommendation that the candidate be denied tenure or promotion, it should so advise the senior vice president and provost.

iii. The advice is not the functional equivalent of a recommendation to grant tenure or promotion. Tenure and promotion can only be granted when there has been an appropriate showing that the candidate has met the standards of the academic unit in which he or she is to be tenured or promoted. A determination by the senior vice president and provost, based on the recommendation of CAFT or otherwise, that a candidate's review has been procedurally flawed is not a showing that the standards of the academic unit have been met.

iv. The senior vice president and provost will take steps to determine whether the standards have been met. He or she may return the application to the academic unit from which it arose, with instructions to reconsider the application in the following academic year in accordance with proper procedures.

v. If, based on the advice of CAFT or otherwise, the senior vice president and provost determines that it is not likely that the candidate can receive fair reconsideration from the academic unit to which the application would ordinarily be returned, the senior vice president and provost, in consultation with the candidate and the chair of CAFT, will devise an ad hoc procedure to determine if the candidate has met the standards of the academic unit. Such a procedure, for example, might involve submitting the candidate's tenure (or promotion) application and the unit's standards to a committee consisting of faculty in the relevant discipline from another university.

vi. When the senior vice president and provost determines that an application for tenure must be reconsidered under

points (d) and (e), above, the candidate's contract should be adjusted to ensure that he or she will have an additional year under the terminal contract in which to find a new position (if the reconsideration results in a denial of tenure).

n. Grieving Dismissal or Suspension on the Grounds of Unfitness for Duty

1. When reason arises to question the physical or mental fitness of a faculty member who has tenure or whose term of appointment has not expired, the appropriate administrative officers, s designated by the president on a case-by-case basis, should ordinarily discuss the matter with the faculty member in a personal conference. Both parties will assess the situation in terms of applicable policies on sick leave, family medical leave, long or short term disability, etc., looking for solutions to the problem through appropriate benefits policies. ABOR 6-201 (Conditions of Faculty Service) and ABOR 6-301 (Conditions of Professional Service) provide guidance on cases involving the inability to perform duties based on physical or mental incapacity. ABOR 6-201 (J) (3) addresses situations where a faculty member's continued presence on campus is likely to be a substantial interference with the orderly functioning of the University or one of its units.

2. If the parties cannot agree on the application of some form of leave, or if no form of leave is appropriate in a particular situation, and the administrative officer designated by the president therefore recommends dismissal or suspension without pay, the faculty member may grieve this recommendation in accordance with procedures outlined in Part II of this document.

**Cross-References**

For the composition of grievance committees, see "Academic Constitution and Bylaws."

For the Board of Regents' official conditions policy, see "Conditions of Faculty Service" and "Conditions of Professional Service."