

Barry University
Dwayne O. Andreas School of Law

LAW SCHOOL FACULTY GOVERNANCE

Approved by Barry University Board of Trustees
Dec. 10, 2005

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ARTICLE VII: APPOINTMENT AND TERMINATION POLICIES AND PROCEDURES

A. Authority to Appoint, Reappoint, and Terminate Faculty

Faculty appointments and decisions related to retention are based upon recommendations of the Faculty and Dean. Final authority to appoint, reappoint, and terminate Faculty is vested in the President of the University under the authority of the Board of Trustees.

B. Types of Appointments

1. Tenure Track Appointments are probationary appointments given to those Faculty who are expected to apply for a tenured position on the track to which they were appointed upon successful completion of the requirements for tenure.
2. There are four types of law school tenure track appointments: Substantive; Legal Writing, Skills and Clinical and Law Library.
 - a. Substantive appointments are those given to Faculty who are expected to apply for tenure upon successful completion of the requirements for tenure in substantive teaching. Probationary doctrinal appointees are subject to the reappointment procedures in Article VII.D.
 - b. Legal Writing appointments are those given to Faculty who are expected to apply for tenure upon successful completion of the requirements for tenure in the Legal Writing department. Probationary legal writing appointees are subject to the reappointment procedures in the Article VII.D.
 - c. Skills and Clinical appointments are those given to Faculty who are expected to apply for tenure upon successful completion of the requirements for tenure in Skills and Clinical Teaching. Probationary skills and clinical appointees are subject to the reappointment procedures in the Article VII.D.
 - d. Law Library appointments are those given to Law Library Faculty who are expected to apply for a position with tenure upon successful completion of the requirements for library tenure as outlined in the Faculty Governance

Document Article IX. I.

3. Tenured appointments are given to Faculty who have applied for and received tenure pursuant to the Faculty Governance Document Article IX. Tenured appointees are entitled to appointment renewal unless terminated pursuant to the provisions of this Article.
4. Term Appointments are non-tenure track appointments given to those Faculty whose relationship with the Law School is limited to the term of employment stipulated in their letter of appointment. Term appointments do not confer upon the Faculty member any entitlement to continued employment beyond the terms specified in the letter of appointment. Term appointments include:
 - a. Visitors who are employed full-time to teach or pursue scholarly activities at the Law School for a limited period of time. There normally shall be a limit of three (3) consecutive years to such an appointment.
 - b. Adjuncts, a temporary academic title extended to those persons who teach less than a full-time load and have no other Faculty responsibilities.
5. Emeritus Appointments. The title Professor Emeritus may be granted to those Faculty who have limited or terminated their responsibilities as tenured members of the Faculty after five (5) or more years of distinguished service to the Law School. A Professor Emeritus is designated by the Board of Trustees upon the recommendation of the President and the Dean and the Faculty. No compensation accrues merely by virtue of the rank of Professor Emeritus.
6. Law Library Faculty, while on the tenure track, are not members of the Law Faculty, except for the Director of the Law Library who is a tenured or tenure track "doctrinal" Law School Faculty appointee.

C. Teaching Tracks

1. The Faculty and Administration have expressed the desire to offer positions on each of the tenure tracks to those individuals who have a genuine desire to develop expertise in teaching and scholarship within those areas, and who are committed to achieving tenure within their teaching track. A Faculty member may be assigned a teaching assignment in a discipline other than her/his own, only if the Dean should determine that there is a need that cannot reasonably be met by existing Faculty in that track. Such an assignment shall be made pursuant to the following procedures:
 - a. The Dean shall give notice of unfilled teaching assignments.
 - b. The Dean shall only make a cross-teaching assignment if no one on that tenure track wishes to teach the needed course during the affected term.

- c. The Dean, in his discretion, may hire an adjunct or assign Faculty from another track to teach the course for that time period.
 - d. Should the Dean assign a Faculty member from another track, such assignment shall be made with the express consent of both the affected Faculty member, and a majority of the Faculty.
 2. Course track designations shall be recommended by the Curriculum Committee, and approved by the Faculty.
 3. A tenure track appointee may apply for an opening on any other track after three years of continuous employment on the original track by applying for the position through the Faculty Recruitment Committee and going through the hiring process for the new position. Failure to receive an offer in another discipline will not affect the appointee's position in relation to retention, promotion, or tenure on his/her original track.

D. Search and Appointment Policies and Procedures

1. In the case of tenure-track Faculty, the authority of the Dean to hire Faculty is exercised through recommendations made by the Faculty in a Faculty meeting.

- a. Rank Upon Initial Appointment

The initial rank for Faculty appointment will depend upon the circumstances surrounding the appointment and the relative experience of the individual. In case of lateral appointment from another ABA approved law school, the Faculty member will normally be hired at the rank held at the other institution.

- b. Credit for Prior Service

- (1) Newly appointed Faculty with prior teaching experiences at an institution accredited by the ABA may, if the Dean agrees, receive up to three (3) years credit for that prior experience toward eligible service for promotion and tenure. The credit must be given in writing at the time of initial appointment.

- (2) A Faculty member, who applies for and receives an appointment to a permanent position on a track other than the one of his/her initial appointment, may be given credit for the years of service towards promotion and tenure on the new track. If such credit is given, the length of time allowed to obtain tenure will be reduced by the number of years credit given.

- (3) Faculty serving in a tenured position who apply for and receive a position on another track may not transfer their tenure status without completing the tenure requirements of the new track.
 2. The Dean may extend offers for up to one year to Visitors. Extensions or terms longer than one year require approval of the faculty. Ordinarily, the authority of the Dean to hire Visitors should be exercised upon recommendations made by the Faculty at a Faculty meeting or by the Faculty Appointments Committee. In rare cases when a quorum of the Faculty or Faculty Appointments Committee cannot be convened, the Dean should gain a consensus from the Faculty regarding such an appointment. Such a consensus may be obtained by telephone.
 3. The Dean has authority to hire adjunct-faculty as needed.
 4. The Dean may not act contrary to a negative decision of the Faculty regarding an appointment.
- E. Reappointment/Retention: Faculty are entitled to the advice and assistance of their senior colleagues. The value of the advice and assistance is enhanced if there are periodic evaluations prior to the mandatory tenure year. Accordingly, all probationary appointees will be reviewed annually prior to the receipt of tenure.
 1. The committee will evaluate all aspects of the Faculty member's performance with regard to scholarship, teaching, community service and professional conduct, and other aspects of the Faculty member's professional duties. Faculty members are expected to promote the mission of Barry University and the Law School. Among other things, the annual evaluation will include class visitations and analysis of the submitted scholarship.
 2. Non-renewal recommendations shall be communicated to the Dean in writing two (2) weeks before the dates specified in § F. 3. c. of this Article. The Dean shall have the authority to accept or reject the recommendation of the Committee.
 3. The RPT Committee and the Dean shall communicate to the Faculty member the recommendation of each as to reappointment/retention.
 4. In any year in which a tenure-track Faculty member applies for promotion, the promotion review will substitute for the retention review. A recommendation to grant promotion is deemed to be a recommendation of reappointment.
 5. Letters of appointment for tenured and tenure-track Faculty will ordinarily be issued by the Dean on or before April 15th of the academic year prior to the academic year for which the appointment is effective. Faculty who fail to return signed letters within ten (10) calendar days will be deemed to have resigned.

F. Termination: From time to time, individual Faculty members and the Law School will find it necessary to sever their relationship. Termination may arise from a number of reasons: resignation; retirement; non-reappointment of probationary tenure-track Faculty members; dismissal for cause; temporary exclusion; and denial of tenure. The policies and procedures related to each type of termination are set forth below, except for those related to denial of tenure which are set forth in Article VIII.

1. Resignation

Faculty members may voluntarily terminate their appointments by resigning effective at the end of an academic year, provided that they give notice in writing at the earliest possible opportunity, but not later than March 15th of the academic year preceding the year for which the resignation is effective. Faculty members may request that the Dean waive this requirement of notice in case of hardship. Faculty who do not return signed letters of appointment within ten (10) calendar days of issuance will be deemed to have resigned unless the delay is excused by the Dean.

2. Retirement

Retirement from active service to the Law School is the termination of duties and responsibilities of the Faculty member because of age, infirmity, or other valid reason. After retirement, Faculty members are entitled to use the Law School Library and retain access to the Law School's cultural and educational events. Retired Faculty will be under the same provisions as other faculty of the University concerning group medical and dental benefits after retirement.

3. Non-Reappointment of Probationary Appointees

The authority to reappoint is customarily exercised through recommendation of the Retention, Promotion, and Tenure Committee after careful evaluation of the Faculty member's performance. The term "non-reappointment" means that the Law School has decided not to renew a Faculty appointment during the probationary period prior to the mandatory tenure year. The policies and procedures of this section apply to all non-reappointments other than the denial of tenure.

a. Non-reappointment is different from termination and dismissal for cause. Reasons for non-reappointment may include, but are not limited to the following: incongruity between the teaching expertise of the Faculty member and the educational goals of the University; unfavorable peer evaluation of the Faculty member's teaching, scholarship, community service or professional conduct which make promotion or the award of tenure unlikely; unfavorable evaluation of the Faculty member's other professional responsibilities.

b. A notice of non-reappointment is not a dismissal for cause. It is not necessary to set forth reasons in the notice of non-reappointment. The non-reappointed Faculty member may request, and is entitled to, an exit interview.

- c. Notice of non-reappointment shall be given in writing by the following dates:
 - (1) On or before March 1st of the first academic year of service if the initial appointment is not to be renewed;
 - (2) On or before December 15th of the second academic year of service if the appointment is not to be renewed; or
 - (3) At least twelve (12) months prior to the termination date of the Faculty member if the Faculty member is in the third year or beyond of a probationary appointment.

4. Termination Other Than Non-Reappointment

Termination is a severance action by which the Law School terminates the services of Faculty members without prejudice to their performance. Reasons for termination include discontinuance of a program, the contraction of enrollment which would require a reduction in Faculty beyond normal attrition, the financial exigencies of the Law School, or prolonged mental or physical illness of the Faculty member.

- a. Termination for bona fide discontinuance of a program or contraction of enrollment shall be made by the Dean. A Faculty member whose position is terminated as a result of discontinuance of a program or contraction of enrollment will be notified in accordance with the deadlines specified in this Article.
- b. The termination of an appointment before the end of the specified term may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency which threatens the survival of the Law School and cannot be alleviated by less drastic means. Before Faculty are terminated for financial exigency, the Board of Trustees must declare that a financial exigency exists. Prior to declaring a state of financial exigency, the Board of Trustees shall explore all reasonable alternatives.
- c. The termination of an appointment for medical reasons will be based upon clear and convincing medical evidence that a Faculty member is or will be unable to perform the terms, conditions, and normal duties of the appointment for a period of at least one year.
 - (1) The decision to terminate for medical reasons will be made only after there has been appropriate consultation with the Faculty member or his/her representative and/or his/her physician. At a Faculty member's request, within twenty (20) working days of the notice of termination, the matter may be reviewed by the Retention, Promotion and Tenure Committee. In any such case of termination, the Law School will work

within the disability program to ease the financial burden on the affected Faculty member.

- (2) Faculty whose positions have been terminated due to prolonged illness will be given preference should a position for which they are suited becomes available after their recovery.
 - d. When discontinuance of a program, financial exigency or the contraction of enrollment necessitates the termination of Faculty, an effort will be made by the Law School to assist such Faculty in finding employment elsewhere. No replacement will be hired within a period of two (2) years unless the terminated Faculty member has been offered reappointment and been given at least one (1) month after written notice of the offer of reappointment within which to accept the reappointment. It shall be the duty of terminated Faculty to keep the Law School informed of his/her current address for this purpose. Notice shall be sent to the last known address by certified mail.
 - e. Where terminations are necessary for discontinuance of a program, financial exigency, or contraction of enrollment, academic quality and program integrity are factors which must be considered in all such decisions. Based on these guidelines, and assuming that all other factors are equal, the following order of termination priority and conditions shall apply:
 - (1) Prior to terminating Faculty, the Law School will attempt to reduce Faculty through voluntary programs including retaining all Faculty with reduced salaries and work loads and/or voluntary, early or phased retirements.
 - (2) Term appointments, including visitorships.
 - (3) Tenure Track, based on years of service.
 - (4) Tenured Faculty, based on years of service.
5. Dismissal for Cause

The Law School may terminate the appointment of any Faculty member for adequate cause. Adequate cause shall be determined by the Dean and President in accordance with this section. This section shall not be used to restrain a Faculty member's academic freedom. The burden of proof that adequate cause exists rests with the Law School.

- a. Adequate cause sufficient for dismissal may be based on any one or more of the following grounds:
 - (1) Incompetency;

- (2) Moral turpitude;
 - (3) Consistent neglect of duty;
 - (4) Serious misconduct, including professional misconduct;
 - (5) Conduct directed at individuals and/or the general University population which is offensive or disruptive to the quality of academic life and includes, but is not limited to, public drunkenness, lewdness, vulgarity, unreasonably interfering with an individual's work performance, or creating an intimidating or hostile environment.
- b. The conviction for a felony or the violation of state or federal law involving moral turpitude create a rebuttable presumptions of adequate cause for dismissal.
 - c. Dismissal for cause may be preceded by a written admonition by the Dean describing the alleged problem and warning that the Faculty member's appointment status is in jeopardy. The warning should also stipulate the period of time within which correction of the alleged problem is expected. If the Faculty member fails to correct the alleged problem, dismissal action may be instituted.
 - d. Internal review procedures. The employment status and rights of a faculty member "dismissed for cause" are as described in the following subdivisions. Failure of the dismissed faculty member to take advantage of any of these procedural rights shall be considered a waiver of any such procedure or right.
 - (1) Upon dismissal, the aggrieved faculty member shall be relieved of all teaching and other responsibilities unless and until any later reinstatement occurs.
 - (2) Within 10 days of the dismissal, the Law School shall mail to the faculty member a complaint setting forth in reasonable detail one or more of the specified grounds for dismissal specified in "a" of this subdivision.
 - (3) The aggrieved faculty member may demand a hearing by so notifying the Dean in writing. The Law School must hold the hearing within 40 days of demand unless more time is requested by the faculty member.
 - (4) A "Complaint Review Committee" ("CRC") shall be the adjudicator/decision-maker at the hearing. The CRC shall be comprised of the chairperson of the RPT Committee plus two other RPT members, one to be chosen by the RPT Chair and one to be chosen by the

aggrieved faculty member. Any RPT member who also holds an administrative position shall not be eligible to sit on the CRC.

- (5) The “prosecutor” for the hearing shall be appointed by the Dean from Administrative personnel including associate deans.
- (6) Upon demand by the aggrieved faculty member, the hearing must be closed except to its direct participants and persons operating audio-recording equipment at the hearing. The aggrieved faculty member and Administration may each have a third person present at the hearing to operate their respective audio-recorders even if the hearing is otherwise “closed.”
- (7) The aggrieved faculty member may be represented by counsel throughout the proceedings.
- (8) At the hearing, the aggrieved faculty member shall be entitled: to testify in his/her own behalf; to cross-examine witnesses called against him/her; to introduce any evidence relevant to the issues presented by the complaint; to make a closing statement.
- (9) Hearsay shall be admissible at the hearing, but shall be accorded appropriate weight.
- (10) Within 10 days of the conclusion of the hearing, the Complaint Review Committee must issue written findings of fact and conclusions regarding whether dismissal of the faculty member has been sustained by clear and convincing evidence.
- (11) If dismissal of the faculty member is sustained, the faculty member may appeal the sanction (the dismissal, not whether its factual basis was shown by clear and convincing evidence) to the President of the University who may delegate the matter to an appropriate designee for review.

G. Temporary Exclusion

If a Faculty member's continued presence at the Law School represents a risk of substantial harm to persons, including the Faculty member, or to equipment or other property, the Faculty member may be temporarily excluded from all Law School and campus facilities. The compensation of a Faculty member temporarily excluded shall not be discontinued. Exclusion exceeding two (2) weeks may be reviewed by the Faculty at the Faculty member's request.

H. Internal Review Procedures

Internal review procedures provided within this Governance Document are mandatory, and failure to take advantage of these administrative remedies shall be considered concurrence in a dismissal for cause or other actions taken pursuant to provisions of this Governance Document.

ARTICLE VIII: PROCEDURES FOR PROMOTION AND TENURE

A. General Procedures

A recommendation with regard to promotion or the award of tenure is based on the judgment of the Retention, Promotion and Tenure Committee and the Dean as to whether or not the Faculty member meets established criteria and the relationship between the Faculty member's expertise and the Law School's educational needs. Final decisions concerning promotion and the award of tenure at the Law School are delegated by the Board of Trustees to the President.

1. Effective Date for Promotion and Tenure

When applications for promotion and tenure are approved by the Board of Trustees, such promotion and/or tenure becomes effective with the beginning of the academic year following the year in which the decision is rendered.

2. Notice

- a. The Dean shall, no later than September 1st of each year, send a notice to all Faculty indicating eligibility for promotion and/or tenure, and the deadline for notification of intent to apply and the deadline for making application.
- b. A Faculty member must notify the Dean by September 15th of her/his intent to apply for either a promotion or tenure, and include a list of potential experts-for outside review of scholarship.

3. Application

Application for a promotion or for tenure must be made to the Dean by a candidate by October 1st of the academic year in which s/he seeks the review. The Dean will forward the application to the Retention, Promotion and Tenure Committee on or before October 15th of the same year.

4. Failure to Apply or to Apply in a Timely Fashion

Absent good cause determined by the Dean, the failure to apply in a timely fashion for promotion will be deemed a waiver of the Faculty member's right to such a review until the following academic year. Absent good cause, the failure to apply in a timely fashion for tenure in the Faculty member's mandatory tenure year has

the same effect as the denial of tenure as provided for in section G. of this Article. The determination whether good cause exists shall be solely within the discretion of the Dean.

B. Evaluation of Application for Promotion or Tenure

The RPT Committee is responsible for evaluating candidates for promotion or tenure. In cases involving an application for promotion to full Professor only tenured, full Professors shall make the determination.

C. Evaluation File

A candidate's evaluation file consists of two parts. The first part is the application prepared by the candidate. It must contain a letter specifying the purpose for which the review is requested, a detailed table of contents, a current curriculum vitae, evidence of teaching proficiency (including student evaluations, course syllabi, and instructional materials prepared by the Faculty member), evidence of scholarship (including reprints, photocopies, or citations to articles and other scholarly materials), evidence of community service, and other evidence indicating compliance with the criteria and standards for promotion and tenure.

The second part of the evaluation file includes the reports prepared or received by the RPT Committee, as well as reports prepared by or obtained by prior RPT committees. Customarily, this part will include written reports prepared by members of the Committee who visit the candidate's classes and written evaluations of the candidate's scholarship prepared by Committee members and outside reviewers. Copies of all materials included in the second part of the evaluation file must be made available to the candidate and must include all materials considered by the Committee.

1. Confidentiality

The material contained in the evaluation file may be made available only to the Board of Trustees, the President, the Dean, the members of the RPT Committee, and the candidate. The candidate is not bound to keep the information contained in the file confidential.

2. Use of Student Evaluations

Student evaluations are an appropriate item to be used in evaluating a candidate's teaching proficiency, but shall be used cautiously. Student evaluations shall never substitute for classroom visits conducted by Committee members.

3. Outside Review

The RPT Committee will solicit review of a candidate's scholarship from experts outside the law school. The Committee will send a candidate's scholarship to two

reviewers, one selected by the Committee and a second selected by the Committee from a list of no less than three potential reviewers submitted by the candidate, if she/he so chooses.

D. Committee Recommendation

After the evaluation is completed, the RPT Committee must prepare a written recommendation to the Dean, stating the reasons which support the recommendation. The written recommendation must be conveyed to both the Dean and the candidate by the last day of January in the year of review. The recommendation to the Dean must be accompanied by the complete evaluation file including written reports prepared or received by the Committee. The candidate may submit to the Dean a written response to the Committee's recommendation no later than February 15th in the year of review.

E. Dean's Recommendation

Following receipt of the Committee's recommendation, the Dean must prepare an independent recommendation in writing for transmittal to the Provost. The Dean's report shall also be communicated to the candidate in writing by the last day of February of the year of review.

F. Review by the Provost

The Provost of the University reviews the recommendations of the Committee and the Dean and makes a final recommendation to the President.

G. Effect of Denial of Tenure

A Faculty member who fails to receive tenure before the end of the mandatory tenure year will receive a terminal appointment for the following academic year.

**ARTICLE IX: CRITERIA & STANDARDS FOR RETENTION
PROMOTION AND TENURE**

A. General Statement on Promotion and Tenure

Promotion in academic rank and tenure are the means by which the Law School encourages, recognizes and rewards Faculty members for excellence in the performance of their duties. Tenure is also recognized as promoting favorable conditions for the exercise of academic freedom and for the orderly development of the Law School as a community of teachers and scholars. Faculty members are evaluated on the basis of professional conduct, teaching, scholarship, and service to the community, profession and school. Faculty are expected to promote the mission of Barry University and the Law School.

B. Annual Evaluations

The probationary period which precedes the granting of tenure and the time in rank which precedes promotion give individuals time to demonstrate their ability and also give their colleagues time to observe and evaluate them on the basis of their performance as a member of the Faculty. During this period, a Faculty member has the same academic freedom as a tenured Faculty member and non-reappointment cannot be based on reasons which involve a violation of academic freedom. Termination, dismissal, or suspension of a probationary Faculty member can occur only in accordance with the provisions of Article VII of this Governance Document. Faculty members holding probationary appointments are evaluated for reappointment on a yearly basis.

C. Criteria for Promotion and Tenure

The criteria stated in this Article apply to any Faculty member for purposes of awarding promotion or granting tenure. These criteria shall be used by the RPT Committee in determining whether a Faculty member should be promoted or tenured.

1. Doctrinal Law, Legal Writing and Clinical and Skills Faculty

a. Professional Conduct - The criteria for professional conduct include the following:

- (1) compliance with the ethical standards of legal education, the Law School, and the profession of law. Faculty members should be familiar with the ABA Model Rules of Professional Responsibility and the AALS Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities.
- (2) compliance with the Law School's academic rules and policies;
- (3) compliance with the laws of the United States of America and the individual states;
- (4) maintenance of regular office hours and availability to students outside of class;
- (5) punctuality and consistency in meeting academic obligations;
- (6) ability to cooperate and work constructively with administration, staff, and Faculty;
- (7) for faculty members on the Legal research and Writing track, provision of appropriate individual consultation and supervision to students in preparing their writing requirements;

(8) for faculty members on the Clinical and Skills track, the quality of supervision exercised over students in clinical programs.

2. Teaching Proficiency. The criteria for teaching proficiency include the following:
 - a. knowledge of the subject matter;
 - b. ability to induce and stimulate critical, thoughtful analysis of problems;
 - c. effective classroom presentation including the ability to communicate clearly;
 - d. enthusiasm for the subject matter, including the ability to stimulate and maintain student interest;
 - e. innovation and imagination in the presentation of materials;
 - f. maintenance of discipline, control, and professional decorum in the classroom; and
 - g. use of a meaningful, fair, and demanding standard for evaluating student performance
3. Scholarship is represented by research resulting in quality publications which are original, analytical and which make a contribution to the existing body of legal scholarship; faculty members on the Legal Research and Writing and Clinical and Skills tracks may engage in scholarship in their respective teaching areas in addition to substantive areas of the law.
4. Service-The criteria for service include the following:
 - a. service to the Law School and University;
 - b. service to the legal academy and the profession;
 - c. service to the community.

D. Evaluation Standards for Promotion and Tenure - The criteria contained in Article **IX. C.** shall be applied as follows:

1. Promotion to Associate Professor

An eligible Assistant Professor shall be recommended for promotion to Associate Professor if the RPT Committee finds that the Assistant Professor is making satisfactory progress toward tenure and further promotion and meets the following:

- a. professional conduct;

- b. demonstrated teaching proficiency which promises excellence in classroom teaching;
- c. scholarship that promises high achievement as a legal scholar, as demonstrated in his or her written work which is published or has been accepted for publication. Although scholarship that has been reviewed for promotion from Assistant to Associate Professor may also be considered when seeking tenure or promotion to the rank of full professor, standing alone, such scholarship shall not satisfy the scholarship requirements for such subsequent promotion or tenure review; and;
- d. substantial service to the Law School, the University, the legal profession, and the community.

2. Promotion to Professor

Professor is the highest academic rank that the Law School can bestow. It is reserved for those individuals who have distinguished themselves as legal educators. Associate Professors at that level of achievement will be recommended for promotion to Professor, if RPT finds that the Associate Professor meets the following:

- a. professional conduct;
- b. demonstrated excellence in classroom teaching;
- c. excellence as a legal scholar, as demonstrated in his or her written work which is published or has been accepted for publication. Although scholarship that has been reviewed for tenure may also be considered when seeking promotion to the rank of full professor, standing alone, such scholarship shall not satisfy the scholarship requirements for such subsequent promotion; and
- d. substantial service to the Law School, the University, the legal profession and the community.

3. Tenure

An eligible probationary appointee shall be recommended for tenure if the RPT Committee finds the probationary appointee meets the following:

- a. professional conduct;
- b. demonstrated excellence in classroom teaching;
- c. high achievement as a legal scholar, as demonstrated in his or her written work

which is published or has been accepted for publication; and

- d. substantial service to the Law School, the University, the legal profession and the community.

4. Evaluation Standards for Five-Year Review of Tenured Faculty

- a. Purpose of Five-Year Evaluations: Five-Year Evaluations are performed primarily for determining whether the faculty member continues to demonstrate a reasonable standard of professional performance. Therefore, a simple satisfactory/unsatisfactory standard will be used.

Definition of "unsatisfactory:"

- (1) severe inadequacy in currency in several aspects of the faculty member's stated area of expertise and/or effectiveness in teaching methods; or
 - (2) less than competent teaching; or
 - (3) lack of professional productivity; the failure to author or co-author at least one published work during the evaluation period shall create a rebuttable presumption of absence of professional productivity.
- b. Five-Year Evaluations: Each Five-Year Evaluation will be performed by a separate ad hoc committee of tenured faculty of equal or higher rank than the faculty member evaluated appointed by the Dean for that purpose.
 - c. Discussion of Draft Report: The Committee will share a draft of its report with the faculty member evaluated. If the Committee and the faculty member evaluated agree on the report, it will be forwarded to the Dean. If the Dean and the faculty member evaluated disagree, the faculty member evaluated may then ask the full RPT committee to review his/her performance.
 - d. RPT Review: In the event, the matter is referred to the RPT Committee. That committee, after whatever investigation and consultation it deems appropriate, shall prepare a report for discussion. After discussion of the report by the full RPT committee, only tenured faculty members of equal or higher rank than the faculty member evaluated may vote on the report. After discussion and voting, the tenured Faculty of equal or higher rank than the faculty member evaluated will write a report.
 - e. The report shall include recommendations developed in consultation with the faculty member reviewed. The reviewed faculty member shall be entitled to include a response to the report.
 - f. The report and any recommendations made shall be forwarded to the Dean who shall also meet with the reviewed faculty member to discuss the report and any

recommendations made; but in no event shall the tenured faculty member be removed except for cause under Article VII: F. 5 of this Governance Document.

E. Eligibility for Promotion and Tenure

Faculty members are eligible for promotion or tenure in accordance with the schedule described below, unless otherwise modified in writing by the Dean.

1. Promotion to Associate Professor

An Assistant Professor of Law shall apply for promotion to Associate Professor no earlier than during the third year and no later than during the fourth year of teaching as an Assistant Professor. However, an assistant professor may not apply for promotion in the initial year at the law school. An assistant professor who fails to receive promotion to associate professor by the end of the fourth year will receive a terminal appointment no later than the sixth year.

2. Promotion to Professor

An Associate Professor of Law may apply for promotion to Professor no earlier than during the fourth year of teaching as an Associate Professor or two years subsequent to the award of tenure, provided that at least two years of teaching have been at the Law School. An Associate Professor need not apply for promotion to Professor when first eligible, but may defer application to a succeeding year.

3. Tenure

An Associate Professor of Law shall apply for tenure no earlier than during the second year of teaching as an Associate Professor. The probationary period for a Faculty member who has served only at the Law School shall not exceed six years and a terminal year. Failure to obtain tenure after the sixth year will result in a terminal contract for the seventh year.

An application for tenure may be submitted at any time after the third year of teaching. Regardless of the year of application, an applicant who has been denied tenure at the Law School shall be given a terminal contract for the year following the unsuccessful application.

No one is eligible for tenure prior to serving three (3) years at the Law School.

F. Standards for Continuous Appointment (Tenure) in the Law School Library

A continuous appointment is considered the most significant regard which the University and Law School can bestow on a Faculty member. High standards of integrity, academic responsibility and professional development relating to the candidate's position are essential to receive a continuous appointment.

The basic quality which must be evident for a continuous appointment is the ability to perform at a high professional level in such areas as reference service, collection development and bibliographic organization and control so as to contribute to the educational, extension and research functions of the Law School. The criteria for any individual candidate are to be applied in relation to the candidate's specific responsibilities in the candidate's job descriptions.

The annual performance valuations, though they may be favorable, cannot be considered a binding prediction that the candidate will be recommended for continuous appointment. The candidate may be evaluated as a specialist, as an administrator, or as both. In recommending a candidate for continuous appointment, the criteria listed below should be considered.

- a. Understanding of the various policies, procedures, and services of the Law School Library and a demonstrated ability to serve the Law School Library's clientele through interpreting these policies and procedures and assisting them in the use of available materials.
- b. Demonstrated effectiveness in applying bibliographic techniques to the development, acquisition, organization and interpretation of the collections.
- c. Demonstrated specialization. Outstanding performance in an area of library service requiring knowledge of special library techniques or expertise in a specific subject discipline, e.g. performing highly valuable service as a bibliographer, as a cataloger of library materials, as a reference librarian, as an archivist, etc.
- d. Demonstrated supervisory and administrative expertise. Demonstrated effectiveness and ability to train, coordinate and supervise personnel in the performance of specific functions essential to the operations of the School of Law Library.

Law Library Faculty

- a. Professional Conduct. The criteria for professional conduct include the following:
 1. compliance with the ethical standards of legal education, the Law School, and the profession of law. Faculty members should be familiar with the ABA Model Rules of Professional Responsibility, the AALS Statement of Good Practices by Law Professors, and the AALL Competencies of Law Librarians in the Discharge of their Ethical and Professional Responsibilities;
 2. compliance with Barry University Dwayne O. Andreas School of Law academic rules and policies and with Law Library rules and policies;
 3. compliance with the laws of the United States of America and the individual states;
 4. punctuality and consistency in meeting academic obligations;
 5. ability to cooperate and work constructively with students, administration, staff, and Faculty.

- b. Teaching Proficiency. To the extent that librarians teach, the criteria for teaching proficiency include the following:
 - 1. knowledge of the subject matter;
 - 2. ability to induce and stimulate critical, thoughtful analysis of problems;
 - 3. effective classroom presentation including the ability to communicate clearly;
 - 4. enthusiasm for the subject matter, including the ability to stimulate and maintain student interest;
 - 5. innovation and imagination in the presentation of materials;
 - 6. maintenance of discipline, control, and professional decorum in the classroom.
- c. Scholarship. Scholarship is represented by research in quality publications which are original and analytical and which make a contribution to the existing body of legal literature. Faculty members on the Law Library track may engage in scholarship in their respective teaching areas or areas of responsibility in addition to substantive areas of the law.
- d. Service. The criteria for service include service to:
 - 1. the law library, law school, and university;
 - 2. the legal academy and the professions;
 - 3. the community.

G. Procedures for Recommendations for Promotion in Rank and Continuous Appointment

- 1. Recommendations concerning promotion in rank or continuous appointment for members of the School of Law Library Faculty shall be made to the Dean of the School of Law by a Committee consisting of (a) all members of the School of Law Faculty with continuous appointments, and (b) all members of the School of Law Library with continuous appointments holding a rank higher than that of the individual considered.
- 2. Any member of the School of Law Library Faculty who wishes to be considered for promotion in rank or for continuous appointment may submit a letter requesting such action to the Dean of the School of Law. The Dean of the School of Law shall determine the deadline date and announce it a reasonable time in advance. The Dean of the School of Law may also request that the Committee make a recommendation concerning promotion or continuous appointment of an individual

who has not so requested; the Dean of the School of Law shall promptly notify the individual of such action.

3. The individual to be considered shall assemble, or assist in the assembling, any supporting material to be presented to the Committee. The Dean of the School of Law and the Law Library may include such additional material in the file as they deem proper; the file shall ordinarily include the following material:

- (a) Performance evaluations for a reasonable period of time, including evaluations for previous positions, where relevant;
- (b) Current curriculum vitae; and
- (c) Job description, including previous positions, where relevant;

The individual to be considered may inspect all materials in the file.

4. Recommendations of the Committee shall be made known promptly to the individual concerned.

ARTICLE X: PROFESSIONAL LEAVE AND SABBATICALS

Professional leaves and sabbaticals are negotiated agreements whereby Faculty members are absent from their regular duties of appointment for one or more semesters for professional reasons. Faculty who are on approved leave are guaranteed the right to return to their former position. Previously earned benefits and seniority are not lost.

- A. A paid leave or sabbatical means that the Law School will pay all or part of the Faculty member's regular salary and fringe benefits. An unpaid leave means that the Law School pays no part of the Faculty member's regular salary and fringe benefits.
- B. Professional leaves of two (2) or more semesters generally do not count for promotion or tenure unless otherwise specified in writing prior to the date on which the leave commences. Leaves for one semester generally count toward promotion or tenure unless otherwise specified in writing prior to the date on which the leave commences.
- C. Professional leaves, with or without pay, are for a definite period, normally for a single semester or an academic year. Under unusual circumstances, leaves may extend to as many as two (2) academic years. Leaves are to be requested in writing to the Dean in time to allow for administrative planning. The written request must specify the purpose, plans, and length of the leave. The final decision will be made by the Dean.
- D. Unpaid leaves of absence may be requested at any time after the Faculty member has completed two (2) years of service to the Law School. The Law School does not provide fringe benefits to Faculty who are on unpaid leave. However, Faculty members may continue to receive fringe benefits by arranging to reimburse the Law School for the cost.

- E. Eligibility to apply for paid leaves or sabbaticals is limited to Faculty members who, at the time that the award begins, have been awarded tenure, have completed at least six (6) years of service at the Law School excluding credit granted for service at other accredited institutions, and have not been the recipient of a sabbatical award during the prior six (6) years. The major purpose of a sabbatical award is to provide the Faculty member with a definite period of time for uninterrupted scholarly research or intellectual development. The proposed research project may be judged either on its potential contribution to the body of legal scholarship or on its contribution to the sabbatical candidate's teaching. Sabbatical awards may not be used for paid employment elsewhere. Faculty members wishing to take temporary positions elsewhere should apply for an unpaid leave rather than a sabbatical award.
1. Candidates for sabbaticals must prepare and submit an application to the Dean by December 15 of the academic year which precedes the sabbatical leave. Sabbaticals will be awarded competitively by the Dean. The sabbatical application should contain two parts: a standard *curriculum vitae* and a research proposal.
 2. Sabbatical awards provide payment of full salary for one semester or half-salary for two semesters. Fringe benefits, including University contributions, remain in effect during the period of the sabbatical award. Should the Faculty member, during the sabbatical leave, receive earned income or a grant or fellowship, the amount of the sabbatical award will be reduced proportionately. This policy provision is applicable only to the living expenses part of grant income and not to funds specifically granted for travel, equipment, or salaries of research assistants.
 3. Faculty members awarded a sabbatical are required to return to Barry for at least one academic year following the year in which the sabbatical is taken. Failure to do so creates an obligation on the part of the sabbatical recipient to repay the amount of salary received during the sabbatical.

ARTICLE XI: PROHIBITED CONDUCT, SEUAL HARASSMENT AND DISCRIMINATION

The Law School is committed to providing a work and learning environment that is free of discrimination, and harassment, and other prohibited conduct. This policy applies to all employees, administrators, instructors, students, and any other person who does business with the Law School. This policy includes, but is not limited to, the relationship between instructors and students.

A. Discrimination and Sexual harassment

It is a violation of this policy for any administrator, instructor, or other employee and/or student to engage in or condone harassment or acts of unlawful discrimination.

It is the responsibility of every employee to recognize acts of harassment and take every action necessary to ensure that the applicable policies and procedures of this institution are implemented.

Any person who believes he or she has been the subject of harassment or discrimination has the right to file a complaint and to receive prompt and appropriate handling of the complaint. Further, all reasonable efforts shall be made to maintain the confidentiality and protect the privacy of all parties.

The Dean's Designee shall be responsible for assisting employees and students seeking guidance and/or support in addressing matters relating to sexual harassment or inappropriate behavior of a sexual nature or any other forms of harassment. If the complaint is against the Dean's Designee, then the complaint should be made to the Dean.

This policy and procedure covers all allegations of harassment or discrimination even when such allegations may impact on other areas covered by this Handbook such as tenure or promotion. In all instances, it is anticipated that the University will make a determination under this policy and procedure regardless of any filing of complaints with external agencies or courts.

B. Prohibited Conduct

1. Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when directed toward an employee, student or applicant particularly when one or more of the following circumstances are present:
 - a. Toleration of such conduct is made either explicitly or implicitly a term or condition of the individual's employment, admission or academic evaluation;
 - b. Submission to or rejection of such conduct is used as the basis for employment decisions or academic evaluation affecting such individuals;
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working or learning environment.
2. Other unlawful harassment is verbal or physical conduct that denigrates or shows hostility towards an individual because of that individual's race, color, religion, gender, national origin, age, sexual orientation or disability when it has the purpose or effect of:
 - a. Unreasonably interfering with an individual's work performance; or
 - b. Creating an intimidating or hostile environment.

C. Unprofessional Conduct

Unprofessional conduct is conduct which is directed at individuals and/or the general University population and is a violation of the Model Rules of Professionalism in the jurisdiction in which the professor is licensed to practice law or, if not licensed, the violation of the ABA Model Rules.

D. Procedure for Investigation of Charges

1. Filing

- a. Any student, employee or applicant who feels that he or she has been subjected to sexual harassment, discrimination or other prohibited conductor other forms of harassment has the right to file a complaint with the appropriate complaint manager. If the original complaint is oral, the complaining party shall be asked to put the complaint in writing. A written complaint shall include the following: (1) the name of the complaining party; (2) the name(s) of the alleged offender(s); (3) the date(s) of the offense(s); (4) the location(s) of the offense(s); (5) a description in as much detail as possible of the incident(s), including any statement made by either party; and (6) a list of all known witnesses.
- b. Any conduct which could reasonably be perceived as retaliatory, such as accosting, calling or writing the complainant outside the course of normal investigation, or encouraging third parties to harass the complainant because of her/his complaint shall be considered a separate violation of this policy.

E. Investigation

1. Complaints filed pursuant to this policy shall be promptly and thoroughly investigated by the appropriate complaint manager or individual designated by the complaint manager.
2. All circumstances of the situation shall be considered in the investigation of possible harassment incidents. In determining whether the alleged conduct constitutes harassment, consideration shall be given to the totality of the circumstances, including the context in which the alleged incident occurred.
3. Upon completion of the investigation, the complaint manager shall prepare a written report including the following: (1) the date(s); (2) the name of the complainant; (3) the name (s) of the alleged offender (s); (4) a summary of the factual allegations that allege harassment; (5) the name (s) of all potential witnesses; (6) a summary of the steps taken to complete the investigation; (7) a summary of all witness statements with copies of the actual statements attached; (8)

a listing of any physical evidence available; (9) a factual summary of all the evidence that either supports or refutes the allegations of harassment; and (10) a statement from the alleged offender. NOTE: The investigation report is a statement of fact and should not reach any conclusion.

4. The investigation shall be completed within thirty (30) days after the complaint is filed.

F. Complaint Review Committee

1. The Complaint Review Committee shall consist of one member each from the RPT Committee, the Faculty Effectiveness Committee, and the Academic Standards Committee to be designated by the Chair of the respective committees, and each designee shall have no knowledge of and/or involvement in the alleged incident.
2. The Complaint Review Committee reviews the investigation report and attempts to determine the merits of the complaint. If a clear finding can be made unanimously by the Committee members, the Committee will transmit a finding
3. If the Complaint Review Committee cannot reach a decision based upon the investigation report within ten (10) days of receiving the report, the Complaint Review Committee shall set a hearing date.

G. Hearings

1. Hearings shall be held in accordance with procedures as set forth in the Florida Administrative Code (FAC).
2. All hearings will be closed to the public to maintain the confidentiality and protect the privacy of all parties.
3. All accused employees and/or students will receive written notice of the hearing and copies of allegations at least ten (10) days prior to the hearing date. The accused employee(s) and/or student(s) will be entitled to attend the hearing and to testify in his or her own behalf; be entitled to confront or cross-examine the complaining party and other witnesses who are called; be entitled to call witnesses in his or her own behalf; and be allowed to introduce evidence which is relevant to the issues presented by the complaint and the investigative report. Neither the complaining party nor the accused party is permitted to have an attorney present at the hearing.

H. Written Decisions

1. Within ten (10) days of the conclusion of the hearing, the Complaint Review Committee shall issue a written statement that:

2. Includes findings of fact and conclusions explaining how those facts establish a violation or non-violation of the harassment policy; and
3. In the case of a finding that the policy was violated, a recommendation of appropriate sanctions to be imposed by the complaint manager.

I. Appeals

1. The decision of the Complaint Review Committee may be appealed to the Board of Trustees or its designate. The Board of Trustees or its designate, after reviewing the results of the investigation and hearing, may adopt, reject, or modify the decision.

J. Sanctions

1. When the offender is a staff employee or instructor, discipline shall be taken commensurate with the offense and may range from a written reprimand to termination, as recommended by the Complaint Review committee and determined by the complaint manager.
2. When the offender is an officer, administrator, or director, discipline shall be taken commensurate with the offense and may range from a written reprimand to termination or removal from office, as recommended by the Complaint Review Committee and determined by the complaint manager.

ARTICLE XII: LAW SCHOOL FACULTY & LAW LIBRARY FACULTY GRIEVANCE PROCEDURE

This procedure is intended to provide a means for immediate resolution of such disputes thereby reducing the necessity for more formal administrative proceedings. Faculty members are required to exhaust the administrative remedies embodied within this procedure before proceeding with other administrative and/or legal remedies.

- A. The Faculty member(s) seeking redress for a concern or complaint shall file a written request for explanation and clarification with the Dean. Said request shall clearly state the Faculty member's concern and shall provide sufficient detail to facilitate a response. Said written request shall be dated.
- B. The Dean shall respond, in writing, to said written complaint not later than ten (10) business days from receipt of said complaint. The Dean may, upon written notification to the Faculty member, automatically extend this response period for an additional ten (10) business days. No further extensions shall be permitted without the express written consent of the Faculty member making the complaint.
- C. The Dean's failure to answer within the time limits set forth in B above shall be deemed an

admission of the accuracy of the faculty complaint.

D. Upon receipt of the Dean's answer, or upon a failure to answer Upon receipt of the Dean's answer, or upon a failure to answer within the time period established in B above, the Faculty member may determine not to proceed further with the matter. If the Faculty member determines to proceed further, the matter must be brought to a Faculty Conciliation Panel for discussion, mediation and possible resolution.

E. Membership on said Faculty Conciliation Panel shall consist of the Chairs of the following Faculty Committees:

Retention Promotion & Tenure Committee
Academic Program Committee
Academic Standards Committee

1. Should any Chair find it necessary to recuse her/himself, the next most senior member of that Committee shall be designated to serve on the Faculty Conciliation Panel for that specific issue.

2. The position as Faculty Conciliation Panel Chair shall rotate among the three Committee Chairs, beginning with the Retention Promotion & Tenure Committee Chair, and moving in the order the Committees are listed above.

F. A Faculty member may convene the Faculty Conciliation Panel by presenting to one of the above identified Committee Chairs, the written complaint and the Dean's written response, or a statement that no response was forthcoming within the time period provided above.

G. The Faculty Conciliation Panel Committee Chair shall be responsible for convening the Conciliation Panel to review the written faculty complaint and the Dean's written response. The Faculty Conciliation Panel will make every effort to facilitate a resolution of the issues presented in these documents. It is anticipated that the concerned Faculty member(s) and the Dean, working through the Conciliation Panel, will make every effort to secure a resolution for the matter before the Panel. The Panel may solicit assistance and information from any persons deemed appropriate to assist in resolving the matter before the Panel.

H. The Faculty Conciliation Panel may act as outlined below:

1. Make a finding of no merit in the faculty complaint and recommend that the matter be dropped;

2. Make a finding of merit in the faculty complaint and request that the Dean revise his/her position/action in said matter;

Should the Dean fail to follow the Conciliation Panel recommendation, the Panel may:

3. Make a finding of merit in the faculty complaint and, subject to consent of the

concerned Faculty member, refer the matter for discussion at a full Faculty meeting;

4. Make a finding of merit in the faculty complaint, and subject to consent of the concerned Faculty member, refer the matter to the President.
- I. The Faculty Conciliation Panel will, in every case, include a written report as to its findings and recommendations, and said report shall be furnished to the concerned Faculty member(s) and the Dean.
- J. The provisions of this Article shall terminate on or about two (2) years from the date of adoption unless amended or re-adopted in whole or in part by the Faculty sitting as a committee of the whole.

ARTICLE XIII: AMENDMENT

This document may be amended by a two-thirds vote of the members present at any regularly scheduled Faculty meeting provided the proposed amendment shall have been submitted in writing to the Faculty at least two weeks prior to the Faculty meeting at which it is to be voted upon.

All amendments, changes and alterations in this Governance Document must be submitted to the Barry University governing body for ratification.

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