

PERSONNEL POLICIES AND PROCEDURES
FOR CLINIC FACULTY OF THE
UNIVERSITY OF MINNESOTA LAW SCHOOL

(As Adopted By the Law School Faculty On October 11, 1983)

[With Technical Amendments drafted December 1984]

1. Preamble

Clinical programs of the Law School presently are directed by tenured or tenure-track faculty. These faculty coordinate the work of clinic teachers who supervise student casework, teach most of the clinical courses, and otherwise generally function as teachers in the Law School's clinical programs. Clinic teachers do not have tenure-track appointments. They presently are employed on an annual contract basis. Each year the Dean decides ad hoc whether or not to renew their contracts.

A de jure form of job security should be provided clinic teachers. They are teachers who, like any member of an academy, must not fear a connection between their employment and their methods, ideas or opinions. Clinic teachers also are practicing lawyers. Job security will guarantee freedom in their selection of cases to advocate and also will guarantee their independence in advising clients. Moreover, providing job security for clinic teachers will foster careers in clinical legal education and so will insure that the Law School's clinics can be staffed with teachers who, through experience, are proficient in clinical teaching and who, by profession, are committed to it.

The purposes of this document are to create a system which makes possible job security for clinic teachers and also to address other matters concerning their employment.

The pattern for this document is the University of Minnesota's statement of "Academic Staff Professional and Administrative Personnel Policies and Procedures," which recognizes a distinct personnel category for professional and administrative staff. In the spring, 1983, the Dean of the Law School placed clinic teachers within this personnel category for University purposes.

II. Titles Of Clinic Faculty: Definitions

A. For University purposes:

1. Clinic teachers with continuous appointments are senior clinic attorneys.
2. All other clinic teachers are clinic attorneys.

B. For Law School purposes:

1. Senior Clinic attorneys with continuous appointments are professors of clinical instruction.
2. Clinic attorneys with probationary appointments are associate professors of clinical instruction.
3. Clinic attorneys with fixed ten appointments are visiting associate professors of clinical instruction.

C. For purposes of this document:

1. Clinic teacher means any person appointed to teach in the Law School's clinical programs without regard to the type of appointment the person holds, except that the ten does not include adjunct teachers.
2. Clinic faculty means the group of persons who hold continuous or probationary appointments in the Law School's clinical programs but who are not members of the tenured/tenure— track faculty.
3. Tenured/tenure—track faculty means the group of persons who hold regular faculty positions at the Law School and who now enjoy indefinite tenure in their positions or are eligible for indefinite tenure under the University of Minnesota's "Regulations concerning Faculty Tenure" and the Law School's "Law Faculty Procedures And criteria For Tenure."
4. Combined faculty means the collective of the tenured/tenure-track faculty and the clinic faculty.
5. University's Policies means the University of Minnesota's policies and procedures governing the employment of academic staff professional and administrative personnel.

III. Types of Appointments To The Clinic Faculty

- A. University equal employment opportunity policies and procedures, including the filing and posting of vacancies, and affirmative action procedures shall apply to clinic teacher appointments.
- B. Appointments of clinic teachers shall be fixed ten, probationary, or continuous.

1. A fixed term appointment is for a period not exceeding two years and carries no expectation of employment beyond this period. An appointment of less than two years may be extended by the Dean to a period of two years. A fixed term appointment may

be renewed by the Dean, but in no case shall a person hold a series of fixed term appointments which together exceed four years. A fixed term appointee is eligible for a probationary appointment or a continuous appointment under the procedures prescribed in § IV infra for making such an appointment.

Notwithstanding the foregoing paragraph or any other provision of this document, where a position is funded by a grant which may not be continuing, the combined faculty may authorize the Dean to fill the position by making a fixed term appointment exceeding two years, by extending a fixed ten appointment to a period of more than two or four years, or by making a series of fixed ten appointments together exceeding four years.

2. A probationary appointment is for a term of three years and is renewable for one additional term of three years. The expectation is that a probationary appointee will earn and so be awarded a continuous appointment.

3. A continuous appointment is for an indefinite term. A continuous appointment typically is awarded to a person who has been a probationary appointee; but, pursuant to the procedures prescribed in § IV infra for making initial appointments of clinic instructors, a person can receive a continuous appointment without first having a probationary appointment.

C. To be eligible for a probationary or continuous appointment, a person must work at least nine months a year.

D. Regardless of the type of appointment, neither the agreed upon percentage of time worked nor the number of months worked each year may be changed without the appointee's consent unless the appointment is terminated for cause or unless the appointment is terminated or reduced under § IX infra.

IV. Making Initial Appointments Of Clinic Instructors

A. Fixed ten appointments are made by the Dean upon approval of a committee consisting of the clinic faculty and members of the tenure/tenure-track faculty involved in clinical programs.

B. Probationary and continuous appointments are made in this manner:

1. The Dean shall appoint a Clinic Appointments Committee including two members of the clinic faculty, a member of the tenured/tenure-track faculty who has clinic responsibilities, the director of the clinical program where the vacancy occurs, and a student director of a clinical program.

a. Committee members, including the student, shall have equal votes on all matters.

b. The student director who serves on the Committee shall

be the consensus nominee of the student directors of all the clinical programs whose nomination has been approved by the President of the Law Council and the Dean.

c. The Dean may participate as an ex— officio member of the committee.

2. The Committee shall interview selected applicants and provide adequate opportunity for each interviewee to meet with all of the clinic faculty and student directors of clinical programs.

3. The Committee shall recommend to the combined faculty whom to appoint. In the case of a continuous appointment, the Committee's recommendation shall include the views of a Review Committee provided for in I VI infra which will consider if the applicant qualifies for a continuous appointment in light of the factors listed in § IV(B) (2) infra.

4. The combined faculty shall act on the Committee's recommendation.

C. Upon the appointment of a clinic teacher, the Dean shall execute a letter of appointment specifying the terms and conditions of employment including where appropriate:

- a. Type of appointment and title;
- b. Term of appointment;
- c. Salary;
- d. General position responsibilities;
- e. Length of probation;
- f. The date by which a decision on renewing a probationary appointment will be made;
- g. A statement that the appointment is conditioned on approval by officials of the University of Minnesota;
- h. Enclosure of relevant Law School, Academic Staff and other University policies and procedures.

V. Renewing Probationary Appointments

A probationary appointment may be renewed upon the affirmative recommendation of the Dean and the director of the clinical program in which the appointee works. They should renew the appointment if the appointee is making good progress in satisfying the criteria which are considered in awarding a continuous appointment. Their decision must be made on or before

the pertinent date specified in the appointee's letter of appointment but in no event later than five months before the end of the first ten of the appointment. A decision not to renew a probationary appointment is appealable to the combined faculty and, if the faculty affirms, the decision is a proper subject of grievance under § X infra.

VI. Awarding A Continuous Appointment To A Probationary Appointee

A. During the sixth year of a probationary appointment, the appointee shall be considered for a continuous appointment. If a continuous appointment is not granted in such a case, the appointee is entitled to a terminal appointment of one year after which time the person's employment as a clinic instructor shall cease. A probationary appointee can request at any time an early award of a continuous appointment, and nothing herein shall bar such an award where appropriate.

B. The procedure for awarding a continuous appointment is as follows:

1. The Dean shall appoint a Review Committee whose purpose is to recommend to the combined faculty whether or not a continuous appointment should be awarded. The Committee shall include the faculty directors of clinical programs in which the appointee works or has worked within the preceding two years and other members of the combined faculty.

a. In every case the Committee shall include at least two members of the tenured/tenure-track faculty, but members of the clinic faculty (preferably members having continuous appointments) shall constitute a majority of the Committee.

b. The Committee will not include a student or students.

2. A continuous appointment shall not be awarded on the basis of years of experience as a clinic teacher but on the basis of demonstrated effectiveness in the following factors areas which the Committee shall consider in formulating its recommendation:

Quality of teaching classroom components of clinical programs;

Quality of supervision of students in the handling of actual cases;

Participation in the management and operation of clinical programs and in the making of policy which affects these programs; and,

Contributions to the development of the law and legal education.

Note: While the role of clinic faculty does not entail traditional scholarship of the kind and extent expected of tenured/tenure-track faculty,

clinic faculty presumably will be interested in the development of their fields of law, their legal specialties, and legal education; and published contributions to that development beyond the specific performance of their clinic duties will be credited, but such contributions are not required for a continuous appointment.

In taking account of these factors, relevant specific considerations include, but are not limited to, the following:

Quality of materials prepared for classroom or clinic use;

Quality of the preparation of students for trials and hearings;

Quality of the preparation of students for negotiations with adverse parties;

Quality of the preparation of students for meetings with clients, where applicable;

Quality of critiques of students' performances in trials, hearings, negotiations and meetings with clients;

Quality of one-on-one tutorial teaching in the context of after-interview conferences and other meetings with students;

Quality of supervision of students during trials and hearings;

Timeliness of responses to work submitted by students;

Availability to meet with students when they have questions or need assistance, taking into account the extent to which the clinic instructor is required to be out of the office on Law School business (including trials and hearings) and taking into account whether the clinic teacher is a part-time employee;

Patience and courtesy with students; Encouragement of independent thought and effort on the part of students;

Making all efforts to insure that students handle their cases in a professionally -responsible manner;

Insuring that students handle their cases in a zealous, prompt and thorough manner, to the extent possible;

Degree of mastery of those skills and subject matter which the clinic teacher teaches students;

Active attendance at necessary meetings of clinic faculty and personnel (such as directors; meetings in the Civil Clinic);

Willingness to bear a fair share of the work load in the clinical programs;

Contributions to the development of the clinical curriculum;

Contributions to the development of better clinical teaching methods;

Development of one's clinical teaching skills;

Attendance at meetings of the tenured/ tenure-track faculty;

Active attendance at Law School committee meetings of which the clinic teacher is a member;

Performance of extra curricular Law School duties, such as serving as advisor to students or student organizations;

Contributions to the efficiency of clinic offices;

Encouragement of good relations between Law School's clinical programs and the courts, the bar, local agencies and the public; and

Involvement in professional and public service activities outside of the Law School.

3. At least thirty days before the Review Committee meets to consider whether or not to recommend awarding a continuous appointment, the chair shall notify the probationary appointee in writing of the meeting. The appointee may review all documents and materials which the Committee will consider in connection with the appointee's case; may add additional relevant written materials; and may appear personally with representatives and observers of the appointee's choosing at the -evidence/assessment portion of the meeting during which all evidence pertaining to the appointee's case shall be presented. The deliberative portion of the meeting will involve Committee members only; nevertheless, should new evidence pertaining to the appointee's case be presented during the Committee's deliberation, the appointee shall be given an opportunity to respond. The Dean and members of the Review

Committee may disclose the substance of Review Committee deliberations in accordance with the standards of section 10 of the Law Faculty Procedures and Criteria for Tenure.

4. Within thirty days after meeting to consider awarding a continuous appointment, the Review Committee will forward a report, including findings and a recommendation to the combined faculty and also to the appointee.

5. Within a reasonable time of receiving the Review Committee's report, the combined faculty shall act on the Review Committee's recommendation.

6. The recommendation of the combined faculty, along with the report of the Review Committee, shall be conveyed to the Vice President for Academic Affairs. The Vice President will notify the Dean of his or her concurrence or disagreement with the recommendation.

C. A decision of the combined faculty not to award a continuous appointment to a probationary appointee is a proper subject of grievance under § X infra.

VII. Reviewing The Performance Of Clinic Faculty

The professional performance of each clinic teacher having a probationary or continuous appointment shall be evaluated annually by the Dean and the director of the clinical program in which the instructor works. The teacher must seasonably receive a written summary of the evaluation.

VIII. Dismissal For Cause

A. Any clinic teacher can be dismissed for good cause. Allegations concerning the conduct of a clinic teacher which, if verified, would suggest grounds for dismissal under this section should be brought to the attention of the Dean and the director of the clinical program in which the teacher works.

B. The clinic teacher shall have fair notice of the allegations and an opportunity to respond, and where appropriate the Dean shall make every effort to resolve the matter informally among the affected parties.

C. If the matter is not resolved among the affected parties, the Dean shall conduct an informal or formal investigation which in the Dean's discretion may involve a hearing. During this investigation, the clinic teacher's salary in every case shall continue; and the clinic teacher shall continue to perform on his or her regular duties unless doing so poses a threat of substantial harm to a-client, the Law School or any other person.

D. If the matter is not resolved through an investigation conducted by the Dean and if the Dean determines that the allegations are supported by convincing evidence, the Dean [, with the prior approval of the Vice President for Academic Affairs,] shall dismiss the teacher by written notice which states the specific reasons for and the effective date of the

dismissal. Otherwise, the teacher is exonerated, and the Dean shall promptly notify the teacher in writing of exoneration.

E. The dismissal of a clinic teacher for cause is a proper subject of grievance under § X infra.

IX. Termination Or Reduction Of Clinic Faculty Appointments Due To Budget Or program Decision.

A. Appointments of clinic teachers may be terminated entirely or reduced in terms of percentage of time worked or the number of months worked each year when such action is deemed necessary due to a budget or program decision requiring discontinuance, curtailment, modification, or redirection in Law School clinical activities or in some aspect of these activities; but no appointment can be terminated or reduced under this section unless;

1. The budget or program decision which is the basis for the termination or reduction has been approved by the combined faculty; and,

2. In approving the budget or program decision the combined faculty was aware that the termination or reduction of one or more clinic teacher appointments was a possible consequence of the decision.

Furthermore, no continuous appointment will be terminated or reduced due to a budget decision unless the University has declared a financial exigency; and no probationary appointment will be terminated or reduced during its term due to a budget decision unless the Law School has declared a financial exigency.

A decision is not a budget decision solely because financial or budgetary considerations are a part of it.

B. Law School consultative policies and procedures which apply when program or budget decisions may affect tenured/tenure—track faculty shall be followed before a decision is made to terminate or reduce the appointment of any clinic teacher. In addition, the Dean shall consult with the whole of the clinic faculty concerning- programming and budgetary matters which may affect the appointments of clinic teachers.

C. Whenever the termination or reduction of one or more clinic teacher appointments is required because of a program or budget decision:

1. Appointments will be terminated or reduced in an order which respects both academic rank based on type of appointment and seniority within appointment categories, except where the need for expertise or the requirements of a funding source dictate otherwise.

2. Written notice of a decision to terminate or reduce an

appointment shall be given by the Dean to the person whose appointment is affected; and, except where the University's policies clearly provide for longer notice periods, the following notice periods shall be observed unless there are compelling reasons to shorten or dispense with them:

- a. Probationary appointees with three or more years of service and continuous appointees shall be notified of termination or reduction twelve months prior to the effective date of the termination or reduction.
- b. Probationary appointees with less than three years of service shall be notified of termination or reduction at least six months prior to the effective date of the termination or reduction.
- c. Fixed term appointees shall be notified of termination or reduction at least three months prior to the effective date of the termination or reduction.

3. A decision to terminate or reduce an appointment because of a budget or program decision is the proper subject of grievance under § X infra.

D. If a continuous appointment is terminated because of a program or budget decision, no person may be employed in the Law School during the ensuing three years to perform duties closely comparable to those performed by the person whose appointment was terminated unless the position is offered first to this person who declines the offer after having had a reasonable time to consider the offer. This provision does not apply, however, if:

1. The person whose appointment was terminated fails to notify the Dean by March 1 of each year of his or her address, employment status, and desire to retain this reappointment right; or,
2. The person accepts a continuous appointment at this Law School with duties comparable to those previously performed under the continuous appointment that was terminated.

The principle of this provision (IX.D.) applies in the case where a continuous appointment is reduced because of a program or budget decision.

X. Grievance Procedure

A. A grievance is any action designated in this document as a proper subject of grievance and also any other action or matter of a type which is appealable or grievable by an academic staff member to or through the Academic Staff Advisory Committee or a University official under any provision of the University's policies. The term includes not only complaints arising out of personnel problems, but also disagreement with decisions not to renew a probationary appointment, not to award a continuous appointment, to dismiss for cause, or to terminate or reduce an appointment because of a budget or program decision.

B. A clinic teacher should pursue a grievance (as defined broadly herein) by exhausting any applicable procedures provided for in this document and, if the grievance persists, by following the rules and procedures of the University's policies governing the resolution of "employment related grievances" as amplified by the "Rules of Procedure for Grievance Appeals" promulgated by the University of Minnesota Academic Staff Advisory committee. The Law School interprets the University's procedures for resolving "employment related grievances" as applicable widely to any kind of complaint by a clinic teacher alleging that his or her appointment or employment has been affected adversely in any respect by any violation or breach of law, contract or policy, and thus the Law School interprets the procedures as applicable to any grievance as that term is defined in § X(A) supra of this document.

C. Whenever a hearing panel is appointed under the University's policies to consider a clinic teacher's grievance, the Law School assumes that the panel's members will constitute an appropriate peer group of persons whose professional responsibilities are comparable to those of the instructor who is both a teacher and a lawyer. The Law School also assumes that the role of the panel and any other University group or person in reviewing the grievance of a clinic teacher is to determine (1) if due procedures were followed in taking the action about which the instructor complains and (2) if the action is supported by the evidence.

XI. Academic Freedom And Professional Responsibility

Any statements of the Board of Regents and the University Senate regarding academic freedom or academic responsibility which apply to members of the tenured/tenure-track faculty apply equally as well to clinic teachers.

Moreover, the professional duties of clinic teachers to their clients are recognized and shall be protected. No one should interfere with the performance of these duties or attempt to impair the independent judgment of clinic teachers in handling their clients' cases.

XII. Participation Of Clinic Faculty In Decisions Affecting Them

Members of the clinic faculty shall join in meetings of the tenure/tenure-track faculty and at these meetings may participate in all discussions and shall have their votes counted on all matters that are decided by the tenured/tenure-track faculty, except that clinic faculty shall not vote on (1) the appointment, promotion, tenure or any other matter affecting the employment of tenured/tenure-track faculty, or (2) any other matter of whatsoever nature not directly affecting clinic teachers or any of them or clinical programs of the Law School. Nothing in this section shall be construed to deprive clinic faculty of the right to vote on a matter which this document describes as a matter to be decided by the combined faculty.

Note: Extending this limited voting privilege to clinic faculty requires amending the Law School Constitution. In two successive faculty meetings, on October 25, 1983, and November 8, 1983, after proper notice had been given, an absolute majority of the faculty approved amending the

Law School Constitution by adding this paragraph to Art. IV, 4.2:

The preceding paragraph and every other provision of this Constitution notwithstanding, clinic faculty holding continuous or probationary appointment may vote at Faculty meetings on matters directly affecting clinic instructors or any of them and on matters directly affecting clinical programs of the Law School. The Presiding Officer shall define these matters as parliamentary questions of order -subject to appeal to the assembly, except that these matters do not include (a) the appointment, promotion, tenure or any other matter affecting the employment of tenured/tenure— track faculty; (b) appeals from decisions of the Presiding Officer, including definitions of matters directly affecting clinic instructors or any of them and matters directly affecting clinical programs of the Law School; and (c) amendments to this constitution.

Because this amendment has been approved twice by an absolute majority of the faculty, it will become effective when approved by the University's Board of Regents. Upon the Board's approval, clinic faculty may vote in accordance with the Law School's constitution as amended.