

If the provost believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a major sanction, such as suspension from service for a stated period, the provost may institute a proceeding to impose such a major sanction pursuant to the procedures outlined in Section 21e of this *Manual*.

If the provost believes that the conduct of a faculty member justifies the imposition of a minor sanction, such as a reprimand, the provost shall notify the faculty member of the basis of the proposed sanction and provide him/her with an opportunity to persuade the provost that the proposed sanction should not be imposed. A faculty member who believes that a minor sanction has been incorrectly imposed under this paragraph may petition the Committee on Faculty Equity and Grievances for such action as may be appropriate.

h. Terminal Salary or Notice

If the appointment is terminated, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by January 31 (or three months prior to the expiration) of the first year of probationary service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of probationary service; at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure. This provision for terminal notice or salary need not apply in the event that there has been a finding that the conduct justifying dismissal involved conviction of a felony.

22. Termination for Reasons of Financial Exigency

The University reserves the right to terminate an appointment with continuous tenure when the Board of Trustees determines that there is financial exigency.

a. Procedures for Determination of Financial Exigency

Since it directly affects the educational policy of the institution and the status of members of the faculty, the decision that a state of financial exigency exists is of such consequence, since it directly affects the educational policy of the institution and the status of members of the faculty, that the broadest possible consideration of the matter within the University community is essential. Thus, the determination of bona fide financial exigency should be analyzed and discussed by the administration, faculty, and students of the University.

After consultation by the provost and president with the Board of Trustees, a determination is made that a condition of financial exigency may exist, or is imminent, the provost shall submit to the Faculty Senate and the Committee on Instructional Budget and Benefits of the Faculty Senate the financial and programmatic information on which the determination was based. The Faculty Senate and the Committee on Instructional Budget and Benefits shall consider whether the condition of financial exigency is

supported by the material submitted by the provost and shall report to the provost, not later than forty-five calendar days from the date of the determination, their findings and recommendations. In making a final recommendation to the president and Board of Trustees, the provost shall take into consideration the findings and recommendations of the Faculty Senate and the Committee on Instructional Budget and Benefits, and if the provost recommendation is at variance with the recommendation of the Faculty Senate and the Committee on Instructional Budget and Benefits of the Senate the reasons therefor.

Once a final determination has been made by the Board of Trustees that a condition of financial exigency exists, the provost, within forty-five calendar days, shall seek and obtain the advice of the appropriate deans and the Faculty Senate and the Committee on Instructional Budget and Benefits to determine what course of action the University should pursue in response to the state of financial exigency. Consideration shall be given to what services, programs, or units will be affected, the need for faculty reduction or redistribution, and the future development of institutional policy. In particular, consideration will be given to what other measures short of terminating tenured faculty can be taken. Should termination of tenured faculty be required, the provost shall so notify the Committee on Faculty Relations, which shall have the responsibility for reviewing the identification of individual faculty members whose appointments are to be terminated in accordance with the provisions of Section 13 of this *Manual*, and which shall make its recommendation to the provost within thirty days. With respect to matters affecting faculty reduction or redistribution, consideration shall be given to academic criteria, affirmative action compliance requirements, and the length of service of the faculty member so affected.

The University, with faculty participation, will make every effort to place a faculty member who has been recommended for termination in another suitable position within the University. In the event of termination of a tenured member of the faculty, the University will not, at the same time, make a new appointment in such faculty member's department or unit except under extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure except under extraordinary circumstances where a serious distortion of the academic program would otherwise result.

Final determination of these matters shall rest with the Board of Trustees.

b. Financial Exigency Termination Review Procedures

In the event that it becomes necessary for the University to terminate a tenured member of the faculty, the affected tenured faculty member shall have the right to a formal hearing, provided he/she submits a request in writing to the provost within thirty days of receipt of notice of proposed termination. Within ten days of receipt of such request, the provost shall submit to the University Faculty Hearing Committee as provided in Section

21 of this *Manual* a notice of proposed termination with supportive documentation for formal hearing.

A matter forwarded to the Faculty Hearing Committee for the formal hearing shall be heard within thirty days by a panel consisting of five members of the hearing committee selected at random by lot. The panel shall select one of its members to serve as chair. Members deeming themselves disqualified for bias or interest shall remove themselves from consideration of the matter, either at the request of the faculty member in question or on their own initiative. The Faculty Hearing Committee shall replace any member so disqualified in the same manner as the original selection process.

The panel chair shall notify the provost and the faculty member of the time and place at which the hearing is to be held. Service of notice of the hearing shall be made at least ten days prior to the date of the hearing. The faculty member may waive the hearing or submit a statement in writing at any time before the hearing.

The issues in his/her hearing may include:

13. The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.
14. The validity or the educational judgment and the criteria for identification for termination, but the recommendation of a faculty body on these matters will be considered presumptively valid.
15. Whether the criteria are being properly applied in the individual case.

The panel may invite persons to give testimony relevant to the matter, and either the provost or the faculty member may request that the panel invite such persons. University personnel will make every effort to cooperate with the panel in securing witnesses and making available documentary and other evidence.

A tape recording will be made of the hearing and will be available, together with any documents introduced at the hearing, for copying at the requesting party's cost. The faculty member shall have an opportunity at the conclusion of the hearing to file a written closing statement based on the record.

After an opportunity has been given to the faculty member to review the record of the hearing and to submit a closing statement, the committee, no more than ten days following the conclusion of the hearing, will prepare findings and recommendation which shall be reported to the provost with a copy furnished to the faculty member. The provost, within ten days of receipt and review of the report, shall issue a statement to the committee and the faculty member indicating the action which will be taken, and if such action is at variance with the recommendation of the committee, the reasons therefore.

c. Appeal

A faculty member with tenure whose appointment is terminated for reasons of financial exigency may, within ten days of issuance of the statement of the provost, appeal that action to a panel of the Executive Committee of the Board of Trustees, to be appointed by the chair of the board, such panel to consist of from three to five members. The panel's review will be based on the record considered as a whole, and it will provide opportunity for oral and written argument by the parties or their representatives. The decision of the faculty hearing panel will either be sustained or the proceeding remanded to the hearing panel with specific instructions. Within twenty days of such remand, the faculty hearing panel will then reconsider, taking into account the stated objection and receiving new evidence if necessary. The Executive Committee panel will make a final decision only after study of the hearing panel's reconsideration.

d. Terminal Salary or Notice

If the appointment is terminated, the faculty member with tenure will receive salary or notice of at least one year.

e. Reinstatement Rights

In all cases of termination of an appointment with tenure because of financial exigency, the position of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and a reasonable time in which to accept or decline it.

23. Professional Standards

a. Employment of Relatives

The policy of the University is that all personnel decisions should be made on their merits, uninfluenced by personal relationships. As a general principle, individuals who are relatives³ or who have a personal living relationship should not participate in the decision of any matter which may affect directly the appointment, tenure, promotion, salary, or other employment status or interest of a close relative or of someone with whom the faculty member has a personal living relationship.

b. Outside Professional Activities

Occasionally, questions arise about the extent of a faculty member's involvement in or the appropriateness of certain activities. Conflict of interest should be avoided in all instances of outside professional activities. A conflict of interest means outside activity

³ A relative means a person who is related, such as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepsister, stepbrother, half brother, half sister, grandparents, grandchildren or any person an individual has responsibility to support as a dependent.

which intrudes upon the academic functions of teaching, scholarly activities, and service to the institution. This section, although not inclusive, is meant to serve as a guideline for determining when such activities conflict with a full-time faculty member's responsibilities at the University.

Teaching at another college or university at any time requires advance written approval of the college dean and the provost.

Increasingly, the private and public sectors are relying on faculties of universities for advice and guidance. This recognition of the contribution that institutions of higher education can make to the non-academic world has provided many faculty members with the opportunity to use their knowledge and talents constructively and profitably and to strengthen their competence through a greater variety of professional experience.

Paid outside consulting may be performed outside a Law Library faculty member's work week. Special arrangements may, however, be made if an unusual consulting opportunity becomes available to a Law Library faculty member, provided that normal law library operations can be maintained.

This privilege is not extended to research faculty members who are paid wholly from research grants or contracts.

Payments for such consulting are negotiated by the faculty member directly and do not involve the University. The University assumes no responsibility or liability for private professional services rendered by members of its faculty, and it must be made clear to any client that the work has no official connection with the University.

The responsibility for adhering to the limit on outside consulting lies first with the individual faculty member. Faculty members are expected to resolve all questions and/or ambiguities with their department chair or dean before the fact, so that the University community is not injured by their actions. Faculty members have an obligation to report fully the level of their consulting activities when asked to do so by the University so that it may be determined whether the principles set forth herein are being adhered to. The University will protect its interest from losses due to excessive consulting and will require the faculty member to stop any consulting activity if it is inconsistent with this policy.

Faculty members must ensure that outside activities do not conflict with responsibilities assigned them within the University and do not lead to fundamental conflicts of interest. Such conflicts include situations where a research or service activity that could and ordinarily would be carried on with the University is conducted elsewhere to the disadvantage of the University and its legitimate interests; situations where consulting or other services are provided to an organization that would put the University at a competitive disadvantage; involvement in a relationship that might enable (or appear to enable) the faculty member to influence the University's dealings with an outside organization in ways leading to personal gain or to other conflicts of interest.

In cases where questions arise regarding potential or apparent conflict between consulting activities and the faculty member's University duties, the faculty member shall disclose, upon the specific request from the appropriate dean, the provost, or the president, the names of clients for whom the faculty member consults, the general nature of each consulting agreement (as opposed to detailed technical aspects), and the number of days committed per consulting agreement.

In order to avoid conflicts between the obligations of a faculty member to the University and the terms of consulting or other agreements with a third party, the following (or similar) clause should be included in such agreements:

The parties to this agreement acknowledge that the primary duty of the Consultant, who is an American University faculty member, is to American University; the Consultant is subject to American University's policy on outside consulting activities of its faculty; and, the Consultant may have obligations to American University by reason of agreements between American University and external organizations for research or other activities performed in part by the Consultant in fulfilling his/her duties to the University. The parties agree that such American University policy and obligations of the Consultant to the University shall prevail in the event of conflict with this agreement.

Several kinds of faculty activity, other than regular University duties, are not considered as outside consulting. These are:

1. Publication

Scholarly communications in the form of books, movies, television productions, art works, and other genres, though frequently earning financial profit for a faculty member and for another party (e.g., a publisher), are not considered outside consulting.

2. Professional Service

Professional service includes participation on national commissions and professional associations, governmental agencies and boards, granting agency peer group review panels, visiting committees or advisory groups to other universities, and analogous bodies. The fundamental distinction between these activities and consulting is that they are public or University service. Although an honorarium or equivalent sometimes is forthcoming, these professional service activities are not undertaken for personal financial gain. Therefore, such service does not fall within the definition of outside consulting.

c. Use of University Facilities

The use of University facilities for outside remunerative employment is prohibited, unless authorized by the school or college dean and the provost. University facilities include, but are not limited to, the physical facilities, electronic mail, photocopying, telephone use, and letterhead. This prohibition also extends to the use of the University's address as the faculty member's business address.

d. Sexual Harassment Policy

American University community values the individual's right to live, work, and study without fear of intimidation, coercion, or exploitation. Sexual harassment creates an environment which is intolerable and incompatible with the mission and goals of the university. Sexual harassment is a form of discrimination and is illegal.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Such harassment is personal. What may be perceived as sexual harassment by one person may not be so perceived by another. Sexual harassment can range from sexual humor and innuendo to physical threats and sexual assaults. It includes: direct or subtle pressure for sexual activity; physical aggression, such as pinching or patting; sexist jokes or remarks; obscene gestures or comments; unwelcome brushes or touches; inappropriate sexual innuendo; sexual assault.

This definition of sexual harassment is not meant to restrict academic freedom as described in Section 5 of this *Manual* and it applies to language, activities, and actions inappropriate to the content of a course or other academic activity.

The Sexual Harassment Advisory Committee (SHAC) was established to assist in preventing and addressing problems of sexual harassment campus-wide; to provide information and education on sexual harassment and related University policies to members of the campus community; to serve as primary contacts for members of the community who believe they have experienced sexual harassment and wish to report it or wish further information; to refer reports of sexual harassment to the proper channels for investigation; and to develop and review materials regarding sexual harassment as required.

The University provides three options for reporting/assistance, any of which may be accessed. (1) information and referral, in which a person may meet confidentially with any member of the SHAC. (2) informal complaint, in which a person may want some form of action other than a formal grievance. Such a complaint is made to a member of the SHAC, which is forwarded to the dean of academic affairs, the Sexual Harassment Officer for the Faculty. (3) formal complaint, in which a formal charge of sexual harassment is initiated. All SHAC members must forward all complaints (informal or formal) to the dean of academic affairs. An aggrieved individual may also file a complaint directly with the dean of academic affairs.

i. Informal Complaint of Sexual Harassment made against a faculty member or an individual carrying out teaching responsibilities

In such cases, usually, the dean of academic affairs will meet individually with the complainant and respondent and any other parties that the dean deems appropriate in an attempt to come to an informal resolution.

ii. Formal Complaint of Sexual Harassment made against a faculty member or an individual carrying out teaching responsibilities.

First, the dean of academic affairs or his/her designee will conduct an inquiry to determine whether the charge appears to have merit. The dean will discuss the matter with the complainant and respondent and any other parties that the dean deems appropriate. This stage will be completed within three weeks of the receipt of the complaint by the dean of academic affairs, except when the university is not in Fall and Spring session.

Second, if the dean of academic affairs or his/her designee concludes that there are sufficient grounds for the complaint, the dean will initiate a hearing in accordance with the Disciplinary Procedures of section 21e.

If the dean of academic affairs or his/her designee concludes that the complaint is not supported by sufficient evidence, the dean of academic affairs will send his/her findings and recommendations in a report to the provost who may affirm, modify, or refer the case in accordance with the Disciplinary Procedures in section 21.

In either case, the provost's decision is final.

e. Violations of Scholarly and Research Integrity⁴

Scholarly/research misconduct is defined as fabrication, falsification, plagiarism or other practices that seriously deviate from those which are commonly accepted within the scholarly community for proposing, conducting or reporting research or scholarly work. It does not include honest error or honest differences in the interpretations or judgments of data.

The University follows the generally recommended procedures developed by the Office of Research Integrity of the U.S. Department of Health and Human Services for investigating charges of violation of scholarly or research integrity. As applied to the governance structure of the university, the following procedures will apply if a possible violation is brought to the attention of the university:

First, the dean of academic affairs or his/her designee will conduct an inquiry to determine whether the charge appears to have merit. The dean will discuss the matter with the complainant and respondent and any other parties that the dean deems appropriate. This stage will be completed within three weeks of the receipt of the complaint by the dean of academic affairs, except when the university is not in Fall and Spring sessions.

⁴ Further details on this issue can be found in the Principal Investigator's Handbook, Attachment II-D.

Second, if the dean of academic affairs concludes that there are sufficient grounds for the complaint, the dean will initiate a hearing before the Faculty Hearing Panel as outlined in the Disciplinary Proceedings in section 21 e.

If the dean of academic affairs or his/her designee concludes that the complaint is not supported by sufficient evidence, s/he will send his/her findings and recommendations in a report to the provost who may affirm, modify, or refer the case in accordance with the Disciplinary Procedures in section 21.

In either case, the provost's decision is final.

24. Miscellaneous Provisions

a. Graduate Study by Faculty

Washington College of Law Library faculty are not prohibited from taking courses in or seeking a degree from the Washington College of Law.

b. Summer Session Teaching Opportunities

The colleges, schools, and departments of the University give preference to full-time members of their faculties who have requested a summer teaching assignment when selecting the instructional staff for the summer sessions.

Whether an individual faculty member can be assigned to courses in any specific summer is determined by the department chairperson and/or dean concerned, and by the appropriate university officer designated by the provost. The decision must be made on the basis of the program planned, the probable student clientele, and the available faculty. The offering of summer courses is dependent on satisfactory enrollments, and it is sometimes necessary to cancel such courses or to change teaching assignments because of insufficient enrollments.

Any faculty member teaching in the summer sessions must be regularly available for consultations with students, for the full period during which his/her courses are scheduled.

c. Death while on Active Service

When a full-time member of the faculty with ten years or more of continuous full-time service to the University dies while on the active rolls of the University, the University will pay a lump sum equal to twenty percent of the calculated base annual salary rate to the representatives of the decedent's estate.