

Proposed revisions to Composition of the Committee...

1. The Vice President of the University Faculty Senate will serve as the chair of the Committee.

This proposal is based on an apparent misunderstanding. The EC's rationale says that "faculty beyond just those serving on the committee should have input into the appointment of the FWP chair." Unless things have been changed since I was last appointed, they presently do. Although the Senate's language may be ambiguous ("This committee shall consist of seven faculty members, one of whom shall be designated chair..."), under current practices, COCAN designates the chair (see the attachment for **Confirmation of Appointments** in the May, 2009, Senate agenda). Committee members have nothing to do with it.

The apparent confusion may be the result of the fact that, some years ago, when FW&P chair, Klaus Theopold, resigned from the committee in mid-year in order to become Chemistry Chair, committee members asked COCAN to appoint me. That was only a request. COCAN made the decision.

To avoid the ambiguity and possible confusion, the Procedures need state only, "*The Committee on Committees and Nomination will designate the chair.*"

I have serious concerns about the likely effects of the proposed change in selecting the chair.

First, it's vital to have an FW&P chair with a strong interest in matters apt to come before the committee. No one would want a chair of Graduate Studies, for example, who had no particular interest in graduate studies. The same is certainly true of FW&P. Not all faculty members have the necessary interest, and there's no guarantee that the Vice President of the University Faculty Senate would have it. In years when there have been uninterested chairs, the committee has been useless. In a number of instances, it failed to protect faculty who deserved protection.

Moreover, the chair's work is often very difficult and very time-consuming. This year has certainly showed that. Adding the chair's work to the VP's work would be a real burden on the VP. The double-duty would likely make more difficult attracting faculty to serve in that office and very likely weaken the performance of both responsibilities. Again, faculty protection—and faculty governance—would be harmed.

In addition, by removing the important designation from COCAN, the change would weaken that committee.

The proposed change would weaken FW&P—and faculty protection—in a number of other ways, as well.

Faculty members usually find it very hard to bring complaints to the FW&P chair. It's often a wrenching human drama. Faculty are particularly afraid of retaliation, especially in complaints against administrators. Typically, after going through the trouble that they're complaining about, they also tend to think that the deck is stacked against them. Faculty therefore want to be assured that the committee is independent, that it can be trusted to be fair, and that it can maintain confidentiality.

Having the Senate VP serve as chair would compromise the trust that's needed by making FW&P at least appear to be a sub-committee, and under the control, of the Executive Committee. It doesn't help that, besides the on-going contacts between the EC and the administration, a number of administrators have sat on the EC (including as VP) and a number of members of the EC have soon afterwards become administrators. Whether or not justified, in matters like this perceptions are extremely important, and both the FW&P and the EC—and the Senate as a whole—would be diminished.

There are other serious problems, too. Institutional memory is crucial to the work of FW&P (just ask Karren). Under the proposed change, however, the administration would become the leading and perhaps the sole authority on institutional history and would be able easily to control the committee on any number of vital matters. And, in addition to controlling the history of past practice on particular points, as we saw with the General Counsel office's attempt this year, the administration could rather easily transform the fundamental character of FW&P, from a faculty committee to a quasi-legal body. That would be the death of effective faculty oversight of faculty complaints and of faculty protection.

Let me add a personal note: Nothing that I did this year was any different from what's been done many times over the last two decades (the time of Maxine Colm's tenure as VP for Administration). The only differences this year were the new VP for Administration and the new General Counsel office. Inexperience may have been part of the difficulty ("Who's Maxine?" Laure Ergin [Deputy General Counsel and Respondent's Advisor] replied when I mentioned her name). But the alleged problems were manufactured by the General Counsel office their own purposes. They were based on gross distortions as well as unfamiliarity.

Nevertheless, my concern is not in defending myself, but in trying to avert a serious Senate mistake. I can state unequivocally that I would not ever want to serve as chair without the support of the EC. If, for whatever reason, the EC doesn't want me appointed again in the future, just tell me and I'll not serve. My great fear is that the EC may propose a damaging revision in the designation of chair in an effort to prevent my serving or to spare my feelings. There's no need for that. And there's every reason to avoid it.

2. Only tenured faculty members are eligible to serve on the Committee.

I fully support the proposed change. The present arrangement is a holdover from 70s, I think. It's never made any sense to me.

Proposed revisions to the Termination and Complaint Procedures...

1. No member of the Committee may serve as a mediator in a Complaint.

I'm well aware of the difficulties that this proposal is meant to prevent. I think there's a better way to do it.

Our Procedures are rather fuzzy on a key step. When a faculty member comes with a complaint, the obvious first step for the chair is to hear the other side of the story (speak to the other party)—to see what the problem is and what the real differences are, see if there really is a complaint. Unfortunately, our Procedures are silent on this step. It would be good to include it as a function of the chair and distinguish it from Mediation.

From what I can tell, the EC's proposed revision would be unworkable. In practice, the steps in a complaint are not so clearly demarcated as the Procedures suggest. The chair's informal discussions with the parties, including seeing whether there's a possible basis for an informal resolution, is absolutely necessary. In my experience, with the exception of this year's case, that's all that's ever been needed. This year's Hearing was the first for a non-termination case in at least a decade.

I therefore propose the following revision (sentence 2) for Procedures for Mediation (B.2.b):

b. An Initiator(s) begins the Mediation process by communicating a Complaint to the Chair of the Committee. If the Initiator approves, the Chair may discuss the matter with the other party in order to judge the merits of the Complaint. If, after discussion with the Chair, the Initiator(s) decides to withdraw the Complaint, or if the Initiator(s) and the Chair mutually agree to drop the Complaint, then the matter is closed and no record of the Complaint is kept.

Sometimes is very hard to find an outside Mediator. We had this difficulty last summer. A faculty member, who had signed a long-term early retirement agreement, thought the wording of the agreement allowed her to complete her work on an NSF grant. Her chair, with whom she had been fighting for years, thought otherwise. In mid-summer, the chair ordered the faculty member to vacate her lab space right away. She was afraid that if she did, he'd assign the space to someone else (as he said he would), and she'd never get it back and never be able to complete her work for the grant. Especially in mid-summer, there wasn't enough time to recruit someone else as a Mediator (or even to have the full committee approve me as Mediator). The chair needs reasonable flexibility. (I'm glad to report that the Engineering Dean Michael Chajes thanked me warmly, more than once, for resolving the matter that he had not been able to resolve.)

As is true for FW&P chair, institutional history is very important for a Mediator. An effective Mediator needs to know how similar cases were dealt with in the past and be familiar with the workings of the committee. In addition to other benefits, that sort of knowledge adds to the confidence the parties can have in the Mediator's judgment. It also helps preserve consistency and continuity in handling complaints. The AAUP's practices confirm this.

I therefore propose the following rule, which I think addresses the EC's concern: *No Mediator may serve on the Hearing Panel considering the Complaint or discuss the case with those members of the committee who serve on the Hearing Panel.*

2. Any employee of the University of Delaware, except those employed in the Office of the General Counsel, may...

I fully agree.

Faculty Handbook:

1.3.9, FACULTY WELFARE AND PRIVILEGES, COMMITTEE ON

see above

I have a recommendation on a new point: C.1.b (Written Response):

There is presently no requirement that the Respondents ever respond before a hearing with more than a denial. There's no required expanded written response, as there is for the Initiator. That makes it very hard for the Initiator to prepare for a hearing. In my view, it's good to avoid surprises. A good hearing—one in which both parties make their best case—is one in which both parties come fully prepared, including knowing the other party's basic line of argument. I would therefore revise C.1.b as follows: *Within ten Working Days after the date that the Initiator(s) file(s) a Complaint, the Respondent(s) shall file with the Committee a Response that indicates whether the Respondent(s) deny the Complaint and, if so, that reviews the evidence and specifies the Respondent(s)' defense.*

Re. C.2.a.i and C.6.a: they're fine.

Re. C.7: No one with whom I've ever spoken has the slightest idea why sexual discrimination and harassment complaints involve a special procedure and a Designated Dean. Unless someone can provide a good reason for the special provision (which, I think, has never been used), I'd urge its elimination (the opening clause in C.7 and all of 7.b). You would also need to remove "Designated Dean" from the Definitions (II.A).

I hope these comments help. I am seriously concerned that the EC's two major revisions would greatly undermine faculty protection. I look forward to discussing the Procedures with the EC on the 28th.

Many thanks.

--Jan