

From: Pollack, Sheldon

Sent: Fri 4/22/2011 10:12 PM

To: Jan Blits; Yda Schreuder; erhayes; DeMicco, Fred (Mail Forward); Jeffrey James Jordan; Xinqiao Jia

Cc: Karren Ann Helsel

Subject: RE: reply to EC

Jan:

Thanks for your thoughtful discussion of the proposed changes to the FW&P committee. Here are my thoughts on the issues you raised.

First, I agree that the employees in the General Counsel's office should not participate as advisers in any FW&P hearing. Likewise, I agree that non-tenured faculty should not serve on the committee.

I know of no legal requirement that there be a special procedure and a designated dean for sexual discrimination and harassment cases. Who knows why they once decided to have a special procedure? If someone knows of a good reason for a special procedure, fine. Otherwise, let's drop it.

I also agree that the respondent should give a fuller version of their response (something more than just a denial) prior to the hearing. That is required of the Initiator; however, I must admit that the Initiator did not give a very detailed statement of her complaint in the case we heard this winter. Perhaps in the future, we should demand a clearer statement of the initiator's case against the other party.

On the two more difficult issues, I have mixed emotions. At the very least, we should clarify that COCAN should designate the chair of FW&P committee (not the committee itself). I am not sure that I see any compelling reason to have the VP chair the committee, although I do not see that doing so will impinge upon the independence of the committee or compromise the functioning of the committee. So if the EC has a good reason for the change, I would go along with that. The VP really does not have much of a role. At the very least, the VP could serve as an ex officio member of the committee.

I think that we all agree that the chair of the committee should not serve as the mediator. Presently, the chair appoints a mediator, and that implies that someone else serves in such role. I also agree that if a committee member serves as the mediator, such person cannot participate in the hearing. Perhaps the best reason to have someone who is not on the committee serve as the mediator is to preserve the confidentiality of the settlement negotiations. One of the parties may feel that even if the mediator will not be serving on the hearing panel, if he or she is a member of the committee, then confidentiality may be breached. On the other side, it may be hard to find someone who is not on the committee to volunteer to serve as mediator. So in the end, I would agree with Jan that the mediator can come from the committee, but he or she cannot serve on the hearing panel or communicate with any member of the committee with respect to the case. In other words, if the mediator comes from the committee, he or she must promise confidentiality and not communicate with the chair or other committee members about the case – and certainly not serve on the hearing panel.

Sheldon

SHELDON D. POLLACK

Professor of Law & Legal Studies