



**MEMORANDUM**

**To:** Donna E. Shalala, President

**From:** Richard L. Williamson  
Chair, Faculty Senate

A handwritten signature in black ink, appearing to read 'Richard L. Williamson'.

**Date:** November 17, 2011

**Subject:** Faculty Senate Legislation #2011-23(D) – Amend the *Faculty Manual* Section B4.9  
“Committee on Professional Conduct”

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At its November 16, 2011 meeting, the Faculty Senate unanimously approved the supplementary guidelines to the *Faculty Manual* Section B4.9 “Committee on Professional Conduct”. The mandate of the Committee on Professional Conduct (“CPC”) is contained in Section B4.9 of the *Faculty Manual*. Section B4.9(r) provides:

- (r) The Senate shall adopt and publish written procedures as Class D legislation for:
  - (i) Filing and processing complaints;
  - (ii) Appointment of investigators and hearing panel members;
  - (iii) The conduct of hearings; and
  - (iv) Consideration of censure and related matters by the Senate.

Pursuant to Section B4.9(r), the Senate adopts the guidelines through its Class D legislation procedures.

The supporting materials are enclosed for your reference.

This legislation is sent for your information.

RW/rh

Enclosure

cc: Thomas LeBlanc, Executive Vice President and Provost  
David Birnbach, Vice Provost, Faculty Affairs  
Members of the Ad Hoc Committee to Draft Class D Legislation for B4.9:  
Stephen Schnably, Chair, Professor of Law  
Panagiota Caralis, Professor of Medicine  
Ann Olazabal, Professor of Business Administration

## GUIDELINES FOR CPC COMPLAINT PROCEDURES

**Background:** The mandate of the Committee on Professional Conduct ("CPC") is contained at Section B4.9 of the Faculty Manual. Section B4.9(r) provides:

- (r) The Senate shall adopt and publish written procedures as Class D legislation for:
  - (i) Filing and processing complaints;
  - (ii) Appointment of investigators and hearing panel members;
  - (iii) The conduct of hearings; and
  - (iv) Consideration of censure and related matters by the Senate.

In the event of a conflict between those procedures and this section, this section shall prevail.

Pursuant to Section B4.9(r), the Senate adopts these guidelines through its Class D legislation procedures.

No attempt is made in these Guidelines to summarize the provisions of Section B4.9. The Guidelines relate only to those subsections of Section B4.9 as to which Class D legislation will be helpful. No inference should be drawn from the absence of Guidelines relating to a particular subsection of Section B4.9, or, where a subsection *is* covered in the Guidelines, from the absence of any comment on a particular aspect of that subsection. The examples in footnotes are illustrative or informational only.

### § 1. Faculty Manual B4.9

1. Any requirement under Section B4.9 or these Guidelines that a document be transmitted in writing:
  - (a) is satisfied by the submission of:
    1. paper documents, or
    2. documents in a commonly used digital format (*e.g.*, e-mail, Word, .pdf).
  - (b) does not preclude the addition of related documentation in non-written form (*e.g.*, photographs, videos, audio recordings), which may also be submitted in digital form so long as the documentation is in a commonly used format (*e.g.*, .jpg, .mpeg, .mp3).
2. Paper documents must be submitted to the Secretary of the Senate either by hand or by certified mail.
3. Documents submitted in a digital format must be sent to the Secretary of the Senate at the Senate Office e-mail address, unless they would exceed University e-mail size limits, in which case they must be submitted by hand or by certified mail on a tangible medium such as a CD or DVD.
4. Submission of documents or supporting documentation in digital form is encouraged but not required, except that a hearing panel may, as part of the rules and procedures it adopts, require the submission of materials in digital format. (See "§ 5. Faculty Manual B4.9(j), (k), (l), (m), item 11," p. 5 below.)
5. Any person using e-mail to submit a complaint or other materials related to a complaint and any official process following a complaint shall do so by encrypted

e-mail. Any e-mails sent from the Senate Office e-mail account concerning a complaint or relating to any official process following a complaint will be encrypted.<sup>1</sup>

6. The Senate Office will answer any questions about e-mail size limits, encryption, or digital formats in which materials may be submitted. The Senate's location, mailing address, phone number, and e-mail address can be found on the Faculty Senate Home page (<http://www.miami.edu/fs/>).

## § 2. Faculty Manual B4.9(d), (e), and (f)

1. The Senate Chair is available to consult with a potential or current complainant or accused faculty member as to procedures under Section B4.9 or these Guidelines. Consultation is encouraged but is not required.
2. The Secretary of the Senate will provide the complainant with a prompt written acknowledgement of receipt of the complaint.
3. A complaint must satisfy the following requirements:
  - (a) The complaint must be in writing, addressed to the Senate Chair, and marked "confidential."
  - (b) The complaint must state that it is submitted as a complaint that a faculty member has engaged in unprofessional conduct.<sup>2</sup>
  - (c) The complaint must contain a statement of the conduct complained of.
    - (i) Where a complaint is filed by the University under Section B4.9(c)(i), the complaint must contain a complete statement of the matters covered by the University in its thorough investigation, together with all supporting documentation. Alternatively, the University may submit a complaint in more summary form, but must explain why a more complete statement with documentation is not reasonably possible under the circumstances. Nothing in this requirement precludes the University from submitting additional evidence if a hearing panel is appointed.
    - (ii) Where a complaint is filed under Section B4.9(c)(ii), the complaint should provide as much detail and documentation as is reasonably available to the complainant, keeping in mind that it may not be possible for an individual faculty member to provide the kind of detail and documentation that the University is in a position to provide after a thorough investigation.<sup>3</sup> At the very least, the com-

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<sup>1</sup> Information on encrypting e-mail can be found through the University's Information Technology website (<http://www.miami.edu/it/>). As of October 1, 2011, the specific URL for information on how to encrypt e-mail was [http://www.miami.edu/it/index.php/services/email\\_encryption/](http://www.miami.edu/it/index.php/services/email_encryption/).

<sup>2</sup> For example, it would suffice to say, "This letter [or memorandum] is submitted to the Chair of the Faculty Senate as a complaint that [name] has engaged in unprofessional conduct."

<sup>3</sup> For example, the complaint might state, "On at least four occasions beginning in the Fall of 20XX Prof. Y has published papers in medical journals utilizing research by colleagues, without acknowledging their work and implying that the research was his own." A full listing of the journals, their dates of publication, the researchers whose work was appropriated, the list of witnesses to the fact that Prof. Y had obtained access to the research results of others by utilizing a key that was not issued to him, etc. would be unnecessary to meet this requirement, though it would be helpful to include such documentation if available.

plaint must provide enough detail to permit the Senate Chair to identify what conduct is at issue. Among other things:

- a) The complainant ordinarily must have personal knowledge of at least some of the allegedly unprofessional conduct. If that is not the case the complaint should provide an explanation for the lack of personal knowledge, keeping in mind that mere rumor will not suffice.
  - b) The complainant does not need to have personally suffered harm by the actions of the accused. Unprofessional conduct by any faculty member harms all faculty members.
- (d) The complaint must state why the complainant believes the conduct is unprofessional.
- (i) Where a complaint is filed by the University under Section B4.9(c)(i), the complaint must give a complete explanation as to the basis of the belief that the conduct is unprofessional, including citing relevant standards. Alternatively, the University may submit a more summary explanation, but must explain why a more complete explanation is not reasonably possible under the circumstances. Nothing in this requirement precludes the University from submitting additional arguments if a hearing panel is appointed.
  - (ii) Where a complaint is filed under Section B4.9(c)(ii), the same level of detail in the explanation of the basis for the belief that the conduct is unprofessional is not required as in the case of a complaint filed under Section B4.9(c)(i), though it is permitted and is helpful to the extent possible. At the very least the complaint should provide enough detail to permit the Senate Chair to ascertain what is alleged to be unprofessional about the conduct.<sup>4</sup>
- (e) The complaint must include either a brief description of attempts at informal resolution and their exhaustion or a statement explaining why it would not have been reasonable to make informal attempts at resolution.
4. Where the Senate Chair finds a complaint deficient in one or more of the requirements of Section B4.9(d), the Secretary of the Senate will so notify the complainant in writing, including a brief statement as to the deficiency. Any such notice is without prejudice to refiling the complaint with the deficiency corrected.
5. Except as provided in Sections B4.9(f) and (h), the duty of the Chair under Section B4.9(e) to appoint a hearing panel where the requirements of Sections B4.9(c) and (d) are met is non-discretionary.

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<sup>4</sup> For example, a statement that "In four published papers the accused plagiarized the work of other researchers, which constitutes unprofessional conduct" would constitute a "concise statement." Of course, even if the "concise statement" requirement is met, the Chair may decline to appoint a hearing panel under B4.9(f). For example, a complaint that a senior professor was so aloof in dealings with a junior colleague as to be uncollegial, would not, without more, allege conduct that a reasonable hearing panel could construe as unprofessional. See Faculty Manual Section B4.9(f)(i).

### **§ 3. Faculty Manual B4.9(g) and (h)**

1. Where the complaint would in the Senate Chair's view clearly be more appropriately brought before one of the other bodies listed in Section B4.9(h), the Senate Chair may decline to appoint a hearing panel. Any such decision is subject to the appeal procedure set out in Section B4.9(g).
2. If the Chair decides not to appoint a panel pursuant to Section B4.9(h), but later decides that appointment of a panel would be appropriate, the Chair may appoint a Hearing Panel without the refiling of the complaint, though the Chair has the discretion to make that a condition of appointing a Hearing Panel if in the Chair's view a refiling would be helpful.

### **§ 4. Faculty Manual B4.9(i)**

In selecting panel members, the Senate Chair will seek to constitute a panel which has relevant expertise and experience (taking into account factors such as prospective panel members' seniority and experience in the general kind of scholarly or clinical work done by the accused) and which reflects the diversity of the university faculty. The only requirements as to the composition of a panel, however, are those listed in Section B4.9(i).

### **§ 5. Faculty Manual B4.9(j), (k), (l), (m)**

1. The Secretary of the Senate will maintain a complete set of official records of any complaint and any subsequent processes relating to it.
2. In the interest of preserving privacy and confidentiality, all records relating to a complaint, including the work and records of investigators and hearing panels, will not be open to the University community or the public, except as provided otherwise pursuant to Section B4.9(p).
3. No party shall seek to initiate contact with any investigators or hearing panel members except through the Secretary of the Senate.
4. The term "party" or "parties" as used in this section of the Guidelines refers to the complainant and the accused. The provisions in this section of the Guidelines applicable to parties also apply to any counsel representing the complainant or accused, and to the University General Counsel if the General Counsel decides under Section B4.9(l)(vi) to participate in a hearing brought under Section B4.9(c)(ii).
5. The Secretary of the Senate will include in the notice required in Section B4.9(j) a reference to
  - (a) the right to counsel (Faculty Manual Section B4.9(k)(iii) in the case of a complaint filed under Section B4.9(c)(i), or B4.9(l)(vi) in the case of a complaint filed under Section B4.9(c)(ii)), and
  - (b) the availability on request of the list of Academic Counsel (Faculty Manual C20.3).
6. The Senate Office will provide administrative support to investigators and hearing panels, such as assistance in scheduling meetings, reserving meeting rooms, and logging and copying documents. If investigators or hearing panels need additional

- administrative support, the Senate Chair will seek to obtain it from the Administration.
7. If investigators or hearing panels need any additional assistance (*e.g.*, in securing an interview with or testimony by an individual, or in obtaining documents or information from an individual or the University), the Senate Chair will seek to provide that assistance, including seeking the assistance of the Administration. If that effort is not successful, a hearing panel may ask one or both parties (a) to comment on the unavailability of the testimony, documents, or information, the reasons why the testimony, documents, or information is unavailable, and the significance of the testimony, documents, or information for the issues before the panel, and (b) to propose any inferences (including inferences adverse to the opposing party) to be drawn. In deciding upon its recommendations in the case, the hearing panel may draw inferences from the unavailability of testimony, documents, or information as it deems appropriate."
  8. Investigators presenting findings to the hearing panel under Section B4.9(l)(iii) shall present a written report to the hearing panel, submitted through the Secretary of the Senate. The investigators will meet with the hearing panel unless the hearing panel determines that no such meeting is necessary. The investigators' written report will be available to the members of the hearing panel and no one else.
  9. The provision in Section B4.9(k)(iii) regarding academic or legal counsel will be applied in conformity with section C20.2 of the Faculty Manual ("Eligibility to Serve as Counsel").
  10. The Secretary of the Senate will provide to a hearing panel a set of sample rules and procedures for conducting its work and the parties' participation in it. These sample rules and procedures will be maintained by the Senate Chair and may be modified by the Senate Chair in light of experience. The only requirement of this Class D legislation is that there be sample rules and procedures; their content is not adopted as part of this legislation.
  11. The hearing panel may revise the sample rules and procedures in whole or part before adopting rules and procedures to govern its work. Once it has adopted rules and procedures, the Secretary of the Senate will provide the parties with a copy of the rules and procedures in writing. The hearing panel retains discretion throughout its work to issue additional rules and procedures as necessary and to modify rules already adopted. The hearing panel may in its discretion give the parties the opportunity to comment before adopting or changing its rules and procedures, though ordinarily it would not do so in light of the time constraints faced by the hearing panel. The hearing panel may delegate to the Chair responsibility for determining and applying its rules and procedures.

#### **§ 6. Faculty Manual B4.9(o), (p)**

1. The Hearing Panels will reach decisions by consensus if possible, otherwise by majority vote. The reports referred to in Section B4.9(o) and (p) may include a dissenting opinion if there is not a unanimous vote.

2. Censure

- (a) If the hearing panel recommends censure by the Senate, there will be proceedings before the General Welfare Committee (GWC) and the full Senate as set out in this paragraph 2 of § 6 of the Guidelines.
- (b) A Senator who is a complainant or accused or counsel for a complainant or accused has all the rights under the complaint process that any other a complainant or accused or counsel has. However, a Senator who is:
- (i) a complainant or accused or counsel for a complainant or accused, or
  - (ii) a Relative or Domestic Partner of a complainant, of an accused, of counsel for a complainant or accused, or,
  - (iii) in the case of a complaint filed by the University under Faculty Manual Section B4.9(c)(i) a Relative or Domestic Partner of an individual who holds an office described in that Section.

must recuse him- or herself from all involvement in the Senate proceedings (and GWC proceedings if a GWC member). For purposes of this paragraph (2)(b):

- the term "Senator" includes an Alternate,
- the term "counsel" includes academic and legal counsel.
- the terms "Relative" and "Domestic Partner" refer to relatives and domestic partners as defined in the Senate Legislation on Employment of Relatives (Nepotism).<sup>5</sup>

- (c) If the hearing panel recommends censure by the Senate, the Chair will first bring the report before the GWC as quickly as feasible, if necessary in an extraordinary session.

- (i) The hearing panel's report will be available to GWC members for review in the Senate Office at times set by the Senate Chair, or will be made available to GWC members immediately prior to the GWC meeting, for review in a room at or adjacent to the room where the GWC meeting takes place. In either case copies will also be available to GWC members in the GWC's meeting room during the meeting.

- a) Prior to distribution to GWC members, the report of the hearing panel will be redacted to protect the privacy of third parties, or as is otherwise necessary.
- b) The report will be made available only in paper form. All copies of the hearing panel's report will be collected upon the conclusion of the GWC meeting.
- c) The members of the GWC will treat the report as confidential, not to be discussed with anyone not a member of the GWC (or with any GWC member disqualified under paragraph 2(b) above) until the Senate meeting. In any discussion of the matter by one GWC member with another, care shall be taken to maintain confidentiality.

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<sup>5</sup> Faculty Senate Legislation #2004-2(B) – Nepotism Policy.

- (ii) The portion of the GWC meeting relating to the hearing panel's report will be open only to the elected Senate officers, the other members of the GWC, and the Secretary of the Senate. However, the chair or a representative of the Hearing Panel may be present if requested by the Chair of the Faculty Senate. In particular, absent extraordinary circumstances as determined by the Senate Chair, the complainant, the accused, any counsel representing either one, and the University General Counsel's representative may not be present at the GWC meeting or submit any written statements or other materials to the GWC.
  - (iii) After consideration of the hearing panel's report, the GWC will make a recommendation as to the disposition of the hearing panel's recommendation of censure.
    - a) Whatever the GWC's recommended disposition may be, the hearing panel's report and recommendation will be brought before the Senate, along with the GWC's own recommendation.
    - b) In all cases, the GWC will prepare the text of a formal resolution of censure for consideration by the Senate. The resolution will include the word "censure" or other words of rebuke.
  - (iv) The GWC may make other recommendations to the Senate relating to the hearing panel's report.
  - (v) The Order of Proceedings of the Senate will normally be as specified in paragraph 2(d)(iii) below, but the GWC may modify or amplify that agenda.
- (d) After the GWC concludes its consideration of the matter, the Chair will bring the hearing panel's report and the GWC's recommendation before the Senate as quickly as feasible, if necessary in an extraordinary session. If at all possible, Senate consideration will be limited to a single session, but one or more additional sessions may be held if necessary. The Secretary of the Senate will notify the complainant and the accused and any counsel of the time and date of the Senate meeting at which the matter will be considered, and also inform the complainant and the accused of the provisions regarding participation set out below in sections 2(d)(ii) and 2(d)(iii). The Secretary of the Senate will provide notice in writing to the accused and complainant of any deadlines the Senate Chair may have set for the accused to notify the Secretary of the Senate in writing as to the accused's wish to appear before the Senate (personally or through counsel or both), and for the complainant to request in writing, through the Secretary of the Senate, that the Senate Chair determine that there are extraordinary circumstances under paragraph 2(d)(iii)c).
- (i) The hearing panel's report will be available to Senators for review in the Senate Office at times set by the Senate Chair, or will be made available to Senators immediately prior to the Senate meeting, for review at or adjacent to the chamber where the Senate



meeting takes place. In either case copies will also be available to Senators in the Senate's meeting chamber during the meeting.

- a) What is distributed to Senators will be the same redacted version of the report as was made available to GWC members.
  - b) The report will be made available only in paper form. All copies of the hearing panel's report will be collected upon the conclusion of the Senate meeting.
  - c) Senators will treat the report as confidential, not to be discussed with anyone not a Senator (or with any Senator disqualified under paragraph 2(b) above) until after the Senate meeting and then only in conformity with Senate disposition of the matter. In any discussion of the matter by one Senate member with another, care shall be taken to maintain confidentiality.
- (ii) Except as specified below, the portion of the Senate meeting relating to the hearing panel's report and the GWC's recommendation will be open only to the elected Senate officers, other members of the Senate, and the Secretary of the Senate. The complainant, the accused, any counsel retained by either one, and the University General Counsel may not submit any written statements or other materials to the Senate.
- (iii) Copies of the Order of Proceedings will be made to all Senators and to any others having a right to be present (as specified below) prior to the Senate meeting. The order of events of the Senate session will be as follows unless previously modified by the GWC:
- a) The Senate Chair will explain what the Senate is charged with doing and the procedures to be followed, stressing the importance of confidentiality and answering any questions about procedures from the floor.
  - b) At the request of the accused, the accused or counsel for the accused or both will then be admitted to the Senate chamber.
  - c) Absent extraordinary circumstances, neither the complainant nor any counsel for the complainant will be admitted to the Senate chamber or otherwise be allowed to participate.
  - d) The Chair of the hearing panel, or the Chair's designee, will present the case and the panel's conclusions and its recommendation to the Senate.
  - e) If the accused has so requested to the Senate Chair, the accused or the counsel for the accused (but not both) may then present a brief statement on the merits and on the issue of the appropriateness of the sanction, and may provide any explanation of any matters in mitigation.
  - f) The accused (and counsel for the accused, if present) will then leave the room.

- g) The Senate will then discuss and vote on (by secret ballot) the following motion: "The Senate accepts the recommendation of the Committee on Professional Conduct that [the accused] be censured for unprofessional conduct."
  - (1) A negative vote on this motion concludes the Senate's consideration of the matter.
  - (2) If the vote on the motion is positive, the Senate will then discuss and vote upon the GWC's draft censure resolution according to its usual procedures, including procedures governing amendments from the floor. The final vote on the text, though not votes on any proposed amendments, will be taken by secret ballot. If the GWC's draft text (as modified by any amendments the Senate may have adopted) does not secure the Senate's approval, the resolution previously approved (*i.e.*, that the Senate accepts the CPC's recommendation that the accused be censured) will stand as the Senate's action on the matter.
- h) The Senate will then discuss and vote upon the disposition of the text of the resolution adopted pursuant to paragraph 2(d)(iii)g) above. The disposition of the text includes the following matters:
  - (1) to whom it will be sent,
  - (2) how it will be published if at all,
  - (3) how long it should remain on the Senate website if at all, and
  - (4) whether it is to be placed in the personnel file of the faculty member.
- (e) After the Senate has acted, the Secretary of the Senate will make appropriate notifications to the parties, the President, the General Counsel's office, and other relevant officials in accordance with the Senate's decision. It will also distribute and publish the resolution in keeping with the decisions listed above regarding the disposition of the text.