

SECTION 604 NON-REAPPOINTMENT REVIEW CHECKLIST

This checklist is designed to provide guidance to the Chair of the Review Panel and other Panel members for a Section 604 Non-reappointment Review.

Review Panel Formed/Chair Appointed

The Chair of the 604/607 Committee will form a sub-committee (Review Panel) by appointing a (non-voting) Committee Chair and three (3) additional Review Panel members from the 604/607 Committee. The Chair of the 604/607 Committee will also contact the Office of General Counsel to request that counsel be assigned to assist the Review Panel. The Chair of the 604/607 Committee shall also schedule the Initial Meeting.

Initial Meeting of Review Panel

___ The Chair of the Review Panel (“Chair”) shall conduct the Initial Meeting of the Review Panel (may be in person or via conference call). Minutes from the meeting should be kept, noting the date of the meeting, the meeting participants, and generally what was discussed.

___ The Chair shall remind all members of the Panel that the review process is confidential.

___ The Chair shall remind all members of the Panel that no *ex parte* communications shall take place.

___ Legal counsel for the Review Panel should be consulted regarding any procedural issues or questions involving standards for determining jurisdiction. (The Panel may find it helpful for counsel for the Panel to participate in the initial Panel meeting.)

___ The Panel reviews the petition for review and any request to dismiss to determine if the petition was (1) timely filed—see POL 05.25.1-Section 3.3; (2) if the petitioner has met the pre-requisites for filing a petition (i.e., meeting with department head and/or dean—see POL 05.25.1-Section 3.3), and (3) if the petitioner has stated proper grounds under Section 604 of the UNC Code and NC State POL 05.25.1—see Section 3.2.

Ask the following questions to determine if the petition presents a reviewable issue:

- Does the petition allege that the non-reappointment decision was based on one or more of the following:
 - + The procedures to reach the decision materially deviated from prescribed procedures such that doubt is cast on the integrity of the decision;
 - + Violation of the faculty member’s rights guaranteed by the First Amendment to the U.S. Constitution or by Article I of the North Carolina Constitution;
 - + Discrimination based on the faculty member’s race, color, sex, religion, creed, national origin, age, disability, veteran’s status, genetic information, sexual orientation; or
 - + Personal malice meaning dislike, animosity, ill-will or hatred based on personal characteristics

that are not relevant to valid university decision-making

___ If there is no jurisdiction over the petition, the Chair shall compile the record and submit a report to the Chancellor recommending dismissal of the petition (copies of report go to the parties and to the 604/607 Chair). [Disregard remainder of this checklist; use official record checklist for compilation of record and 604 Review Report template to write report.]

___ If there is jurisdiction over some or all of the petition, the Chair of the Review Panel will notify the parties in writing of the jurisdictional decision, and shall notify the respondent(s) to file a written response to the petition with the Chair within five (5) business days of respondent's receipt of the decision on jurisdiction.

___ Work with panel members to come up with possible dates and times for pre-hearing meeting

___ The Chair of the Review Panel should communicate the proposed dates and times of the pre-hearing meeting to the parties (petitioner and respondent(s)) and arrive at a firm date and time for the pre-hearing meeting.

___ The Chair of the Review Panel should ask the grievant whether he/shee will bring an observer to the pre-hearing meeting, and, if so, whether the observer will be an attorney. (If grievant brings an observer, so may respondent(s); if observer is an attorney, respondent's observer may be an attorney.)

___ The Chair of the Review Panel should request that the parties bring their calendars for scheduling purposes and to submit a proposed list of witnesses at the pre-hearing meeting; such proposed witness list should include a brief description of what each witness will be expected to testify to and an estimated time for each witness's testimony.

___ After time and date of pre-hearing meeting is confirmed, the Chair of the Review Panel makes arrangements for reserving a room for the pre-hearing (*contact Faculty Senate Office*) and for obtaining a court reporter (*contact Office of General Counsel*)

Pre-Hearing Meeting

___ The Chair should identify the petition before the Panel and ask the parties and Panel members to identify themselves for the record

___ The Chair should inquire as to any new potential conflicts of interest on the part of the Committee members (Committee members should disclose any personal interests or knowledge of the case or relationships to witnesses who may testify)

___ The Chair shall confirm with each party whether he/she will be having an observer at the hearing and, if so, whether the observer is an attorney

___ The Chair shall identify a number of potential hearing dates and times for which all Review Panel members and parties are available for the hearing (The identified dates should encompass several

days and several weeks.)

___The Chair shall inquire of the parties whether there are any facts or other information that may be agreed upon and reduced into written stipulations signed by the parties

___The Chair shall instruct the parties to exchange a copy of the proposed exhibits (with a copy to the Chair) at least ___ days prior to the first date set aside for the hearing [*Note: exchange date should be at least three (3) business days prior to the hearing*]. Proposed exhibits may be provided in hard copy or in another format agreeable to the parties and the Chair (i.e. diskette, pdf version sent over e-mail, etc.)

___ The Chair should encourage the parties that it is their responsibility to secure the availability of each party's respective witnesses for the hearing.

___ The Chair shall instruct the parties to bring seven (7) hard copies of all documents to be introduced at the hearing (*at least 1 copy for opposing party, 1 copy for Official Record, 1 copy for each of the Panel Members*). Proposed exhibits should also be numbered sequentially and identified by the party (i.e. "Petitioner Exh. 1" or "Respondent Exh. 1").

___The Chair shall address any procedural issues at the pre-hearing meeting (i.e. limitations on the number of witnesses, time limitations to present case, order of presentation of evidence, etc.)

___ The Chair shall notify the Faculty Senate Office (*will arrange for hearing room*) and the Office of General Counsel (OGC) of hearing date(s) (*OGC will arrange for Court Reporter*) .

Procedure for the Hearing

General Considerations:

___Other than during the Review Hearing itself, Panel members shall not communicate with the parties or prospective witnesses, directly or indirectly, orally or in writing, concerning the merits or substance of the subject case.

___The Chair shall have authority over Review Hearing – (*including but not limited to considering or admitting oral or written evidence, the relevance of particular testimony, immateriality, or unduly repetitious information or evidence*) – the Chair may consult with the Counsel to the Panel on procedural issues or questions regarding the process. Only such evidence as the Chair believes is fair and reliable shall be considered.

___ All documentary evidence must be marked and made part of the Official Record. Evidence excluded from consideration shall be marked as such, maintained and included in the Official Record in a separate section.

___Unless a party to the proceedings, witnesses shall be sequestered and kept from the Hearing Room until called to testify.

Actual Hearing:

____ Hearings shall begin with Chair reading a brief summary of the non-reappointment decision and the faculty member's challenge and bases for the request for a hearing; the petitioner's letter requesting the hearing and the bases for the challenge shall be introduced into the record.

____ The petitioner must demonstrate by a preponderance of the evidence that the non-reappointment was based upon material deviations in the process or was based upon an impermissible reason for non-reappointment (See Section 604 of the UNC Code and NC State POL 05.25.1—see Section 3.2).

____ Both parties are entitled to make an opening statement. The Chair may set a time limit for opening statements by the parties. The petitioner shall make an opening statement first followed by the respondent(s)' opening statement.

____ The petitioner has the burden of proving his/her contentions by a preponderance of the evidence presented (more likely than not). The faculty member shall begin, and present his/her contentions which shall be limited to those grounds specified in the request for a hearing and supported by such proof or evidence as he/she shall provide. If the petitioner chooses to testify or speak on his/her behalf, respondent(s) may cross-examine the petitioner. If witness testimony is offered, the respondent(s) may cross examine the petitioner's witnesses if they choose to. ***The Panel may also pose questions directly to witnesses and the parties.***

____ Following the petitioner's presentation of evidence, the Review Panel shall excuse all others present and shall consider whether the petitioner has established a prima facie case.

____ If the petitioner has not met his/her burden, then the Review Panel shall notify the parties and terminate the proceedings (such a determination would result in a confirmation of the non-reappointment decision). The Chair shall compile the Official Record and submit a report to the Chancellor recommending dismissal of the petition (copies of report go to the parties and to the 604/607 Chair). [Disregard remainder of this checklist; use checklist for compilation of record and template report form.]

____ If the petitioner has met his/her burden, the hearing shall proceed with the presentation of the respondent(s)' rebuttal or explanation.

____ The respondent(s) shall present testimony and evidence as is relevant to rebut or address the petitioner's allegations. If the respondent(s) choose to testify, the petitioner may cross-examine the respondents. The petitioner may then cross examine the respondent's witnesses. Redirect may be conducted; rebuttal and sur-rebuttal are also permitted. ***The Panel may also pose questions directly to witnesses and the parties.***

____ Both parties are entitled to closing statements. The Chair may set a time limit. The petitioner shall make a closing statement first following by the respondent(s)' closing statement.

Closed Session

____ At the conclusion of the Review Hearing, the Chair shall dismiss all others present and the Review

Panel shall meet in Closed Session and deliberate to reach their determination.

____ The Review Panel must decide whether the petitioner met the burden of proof based solely on the evidence presented at the hearing.

____ The Review Panel shall make findings of fact on the allegations presented in the petition and the responses thereto and make recommended conclusions on whether the petitioner has proven by the preponderance of the evidence that the non-reappointment decision resulted from improper grounds as set out in Section 604 of the UNC Code and section 3.2 of NC State POL 05.25.1.

____ Within fourteen (14) business days after the conclusion of the hearing (that is not considered concluded until the final transcript is received from the court reporter), the Chair shall provide the Official Record and the Panel's Report to the Chancellor (with a copy to the 604/607 Chair).