

SECTION 607 GRIEVANCE HEARING CHECKLIST

This checklist is designed to provide guidance to the Chair of the Grievance Panel and other Panel members for a Section 607 Grievance.

Grievance Panel Formed/Chair Appointed

The Chair of the 604/607 Committee will form a Section 607 Grievance Panel by appointing a (non-voting) Panel Chair and three (3) additional Grievance 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 Grievance Panel. The Chair of the 604/607 shall also schedule the initial meeting of the Grievance Panel.

Initial Meeting of Grievance Panel

___ The Chair of the Grievance Panel (“Chair”) conducts the Initial Meeting of the Grievance 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 grievance process is confidential.

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

___ Legal counsel for the Grievance 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 grievance and any request to dismiss to determine if the grievance was: (1) timely filed—see POL 05.25.1-Section 4.4; (2) if the grievant has met the pre-requisites for filing a grievance (i.e., meeting with department head and/or dean—see POL 05.25.1-Section 4.4); and (3) if the grievance has stated proper grounds under Section 607 of the UNC Code and NC State POL 05.25.1—see Section 4.2.

* General Section 607 Grievances:

Ask the following questions to determine if the grievance is filed against a proper party and presents a grievable issue:

- Is the grievance filed against an administrator?
- Does the grievance challenge a decision made by the administrator that has adversely affected the faculty member’s professional or academic capacity?
- Does the grievance allege either that the administrator’s decision violated a university policy, regulation or rule and/or that the decision was otherwise unlawful and/or violated commonly shared understandings within the academic community about rights involving university employment?

*Post-Tenure Review Grievances

Ask the following questions to determine if the grievance is filed against a proper party and presents a grievable issue:

- Was the Post-Tenure review decision one of “does not meet expectations”?
- Was the decision based on one or more of the following:
 - +The procedures followed to reach the decision deviated materially from prescribed procedures such that doubt is cast on the integrity of the PTR decision?
 - +A violation of a faculty member’s rights guaranteed by the First Amendment to the U.S. Constitution or Article I of the North Carolina Constitution?
 - +Discrimination based on a faculty member’s race, color, sex, religion, creed, national origin, age, disability, veteran’s status, genetic information or sexual orientation?
 - +Personal malice meaning dislike, animosity, ill-will or hatred based on personal characteristics not relevant to valid university decision-making

___ If there is no jurisdiction over the grievance, the Chair shall compile the record and submit a report to the Chancellor and to the 604/607 Chair recommending dismissal of the grievance (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 the record and 607 Grievance Report template to write report.]

___ If there is jurisdiction over all or part of the grievance, the Chair of the Grievance Panel will notify the parties *in writing* (memo or letter form is preferred over an informal e-mail) of the jurisdictional decision, provide a copy of the grievance to the respondent(s) and notify the respondent(s) to file a written response to the grievance 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 Grievance Panel should communicate the proposed dates and times and location of the pre-hearing meeting to the parties (grievant and respondent(s)) and arrive at a firm date and time for the pre-hearing meeting.

___ The Chair of the Grievance Panel should ask the Grievant whether he/she 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 attorney.)

___ The Chair of the Grievance Panel should request that the parties bring their calendars to the pre-hearing meeting 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 the pre-hearing meeting is confirmed, the Chair of the Grievance Panel makes arrangements for reserving a room for the pre-hearing meeting (*contact Faculty Senate Office*) and for obtaining a court reporter (*contact Office of General Counsel*)

Pre-Hearing Meeting

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

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

___ The Chair of the Grievance Panel 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 Grievance Panel members and parties are available for the hearing (The identified dates should encompass several days.)

___ The Chair shall instruct the parties to exchange one 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 either in hard copy or in another format as long as agreed upon by the parties (i.e. diskette, pdf version sent over e-mail, etc.)

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

___ The Chair shall ask the parties whether there are any factual or other items that can be agreed upon and reduced to written stipulations signed by the parties

___ 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 party (i.e. "Grievant Exh. 1" or "Respondent Exh. 1").

___ The Chair shall address any procedural issues at the pre-hearing meeting (i.e. limitations on 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 Grievance 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 the Grievance 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 grievance and the respondent's response

____ A "General" section 607 grievance must be based on an administrator's decision that adversely affected the faculty member in a professional or academic capacity and violates a law, university policy, regulation or rule, or commonly shared understandings about the rights, privileges and responsibilities attending university employment.

____ A "Post Tenure Review (PTR)" grievance must be based on a PTR decision of "does not meet expectations" based on a) procedures that materially deviated from prescribed procedures such that doubt is cast on the integrity of the PTR decision; b) the exercise of rights under First Amendment or Article I, section 19 of the NC Constitution; c) the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran's status, genetic information or other discriminatory bases prohibited under UNC or BOT policies; or d) personal malice. 'Personal Malice' means dislike, animosity, ill-will, or hatred based upon personal characteristics, traits, or circumstances of an individual. See Section 101.3.1 II.B of the UNC Policy Manual for details.

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

____ The grievant 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 grievant chooses to testify or speak on his/her behalf,

respondent(s) may cross-examine the grievant. If witness testimony is offered, the respondent(s) may cross examine the grievant's witnesses if they choose to. ***The Panel may also pose questions directly to witnesses and the parties.***

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

____ If the grievant has not met his/her burden, then the Grievance Panel shall notify the parties and terminate the proceedings (such a determination would result in a dismissal of the grievance). The Chair shall compile the Official Record and submit a report to the Chancellor recommending dismissal of the grievance (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 grievant 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 grievant's allegations. If the respondent(s) choose to testify, the grievant may cross-examine the respondents. The grievant 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 grievant shall make a closing statement first following by the respondent(s)' closing statement.

Closed Session

____ At the conclusion of the Grievance Hearing, the Chair shall dismiss all others present and the Grievance Panel shall meet in Closed Session to deliberate to reach their determination.

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

____ The Grievance Panel shall make findings of fact on the allegations presented in the grievance and the responses thereto and make recommended conclusions on whether the grievant has proven the allegations in the grievance by the preponderance of the evidence. If the Grievance Panel finds the grievant has met his/her burden, the Grievance Panel may recommend an adjustment by the appropriate administrator.

____ 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 as follows:

- In cases where the Panel does not find in favor of the grievant and/or does not recommend an adjustment, the Panel Report should be provided to the Chancellor, with a copy to the parties and the 604/607 Chair. The Official Record should be provided to the

Chancellor, with a copy to be maintained in the Faculty Senate Office.

- In cases where the Panel finds in favor of the grievant and recommends an adjustment, the Panel Report should be provided to the parties and to the administrator with the authority to make an adjustment (if not already a party). If, within 14 business days from receipt of the Panel Report the administrator does not make the recommended adjustment or the matter is not otherwise closed to the grievant's satisfaction, the Chair shall provide the Official Record and the Panel Report to the Chancellor (with a copy to the 604/607 Chair). In cases where the administrator makes the recommended adjustment or the matter is otherwise closed to the grievant's satisfaction, the Chair shall forward the Official Record to the Office of General Counsel to be maintained.