

## **University of Kansas School of Law Criteria and Procedures for Tenure and Promotion**

In recognition that a high-quality faculty is essential to its mission of furthering the knowledge and understanding of the law and legal system through a balanced and integrated program of teaching, scholarship, and service, the University of Kansas School of Law has adopted these criteria and procedures for promotion and tenure of faculty. In furtherance of that mission, it is the purpose of these criteria and procedures to promote the rigorous and fair evaluation of candidates for promotion and tenure. These criteria and procedures supersede and replace all standards, guidelines, criteria, procedures, or practices previously adopted by the School of Law.

### **I. Introduction**

The School of Law serves its students, the legal profession, the state, and the broader university and academic community by developing and sharing expertise on a wide variety of legal topics, with the ultimate aim of making a significant contribution to the administration of justice in the state, the region, the nation, and the international community. The distinctive role of the School of Law has important implications for its teaching, scholarship, and service missions.

As the law school for the flagship university of the State of Kansas, the School of Law provides professional training for future lawyers, judges, and political leaders in the state and beyond. It must thoroughly prepare its students for a life in the legal profession, not only teaching them the substance of the law, but also training them in essential legal skills, such as critical analysis, specialized research, legal writing, and oral advocacy. As a consequence, the School of Law's teaching mission necessarily entails a variety of approaches and styles, including some that require close supervision of students and substantial commitments of time.

The nature of legal scholarship also reflects the distinctive role of a law school at a major state university, which has a special obligation to serve the legal profession in the state. Legal scholarship requires the analysis of an ever-growing and ever-changing body of cases, statutes, regulations, and other sources of law from both academic and professional perspectives. It may take a variety of forms and be directed at a variety of audiences, including not only other scholars but also the bench and bar.

Finally, the critical role of law in society imposes on law school faculty a heightened service obligation, not only within the university, which often draws upon the legal expertise of the law faculty, but also to society at large.

In light of these considerations, the faculty of the School of Law includes not only tenure track teaching faculty, but also clinical teaching faculty and library faculty. Each component of the law school faculty has distinctive characteristics that reflect the unique role of the law school of a state's flagship university. The career path of a typical tenure track teaching faculty member at the School of Law differs from that of other academic disciplines. New members of the faculty ordinarily come to the School with substantial prior experience in the legal profession and start at

the level of associate professor (without tenure). Tenure and promotion to full professor are then considered simultaneously no later than the sixth year, consistent with the practice at a substantial majority of law schools in the United States.

As part of its obligation to train students for the legal profession and in accordance with accreditation requirements, the School of Law provides substantial skills training in clinical and other settings. Much of this training is provided by clinical teaching faculty, who are unclassified academic staff holding the title of assistant, associate, or (full) clinical professor. Because of the distinctive features of clinical supervision and skills training, clinical faculty engage primarily in teaching activities and professional performance related to teaching, with limited scholarship and service obligations. Clinical professors typically have substantial practical experience and join the faculty at the level of associate clinical professor, receiving job security with the first non-probationary appointment, usually after three years. This process is internal to the School of Law. Promotion to the rank of (full) clinical professor requires consideration by both the School of Law and the University Committee on Promotion and Tenure.

Library faculty at the School of Law also have characteristics that distinguish them from library faculty elsewhere in the University. Legal research is central to the practice of law and the development of legal research skills is a basic element of legal education. A university law library is therefore a teaching library, and many library faculty members have significant teaching responsibilities. In addition, a university law library serves not only students and faculty, but also the bench and bar as a repository of critical legal materials, a function that is especially important for the law library at a state university. Given the essential relationship between legal research and the practice of law, members of the library faculty at the School of Law often have degrees in law (J.D. or its equivalent) as well as in library science.

## **II. Academic Freedom and Tenure Policy**

These standards and procedures are adopted pursuant to and shall be construed in conformity with the policies of the Kansas Board of Regents concerning promotion, tenure, and non-reappointment. Recommendations concerning promotion and tenure shall be made solely in accordance with the standards and procedures in Faculty Senate Rules and Regulations Article VI. The University of Kansas School of Law subscribes to the 1940 American Association of University of Professors (AAUP) statement on Academic Freedom and Tenure and/or any amendments or revisions to that statement adopted by the Kansas Board of Regents.

Pursuant to these policies and statements, all faculty members, regardless of rank, are entitled to academic freedom in relation to teaching and scholarship, and the right as citizens to speak on matters of public concern. Likewise, all faculty members, regardless of rank, bear the obligation to exercise their academic freedom responsibly and in accordance with the accepted standards of the discipline. Tenured faculty members may be dismissed only for adequate cause, in cases of program discontinuance, or under extraordinary circumstances caused by financial exigency. Clinical faculty with job security (non-probationary appointments) may be terminated only for adequate cause, including budgetary constraints or program elimination.

### **III. Expectations**

The School of Law expects its faculty to make high quality contributions in each of the areas of teaching, scholarship, service, and (where applicable) professional performance. In evaluating tenure track teaching faculty for promotion and tenure, teaching and scholarship are given the greatest weight (40% each) and service is given lesser weight (20%). Differential allocation of effort may be permitted in individual cases pursuant to university policies and procedures. In evaluating clinical faculty for nonprobationary appointment and promotion, teaching and related professional performance are given primary weight (80-90%) and scholarship and service are given some weight (5-10% each). For library faculty, primary weight (80-90%) is given to professional performance, including teaching responsibilities, while some weight is given to scholarship and service (5-10% each). Differential allocation of effort may be provided for in the job description of a particular clinical or library faculty position.

#### **A. Teaching**

High quality teaching is serious intellectual work grounded in deep knowledge and understanding of the field and includes the ability to convey that understanding in clear and engaging ways. Evaluation of teaching in the School of Law reflects the importance of a legal education as the gateway to entry in the legal profession. Law graduates pursue diverse careers, including the private practice of law, service as judges, legislators or administrative policy makers, and careers outside the legal profession. Law, lawyers, and lawmakers have a profound effect on everyone in society, which depends on the legal system to protect families, commercial relationships, property, and basic liberties. Thus, law teachers have a special responsibility to their students to provide as full, rich, and challenging a professional education as is possible and to instill values of professionalism and professional ethics. The School of Law views its teaching mission as a matter of fundamental importance that requires major commitments of time, effort, skill, and intellect.

The School of Law values a diversity of teaching approaches and methods among its faculty because exposure to diverse teaching approaches and methods is an essential component of a well-rounded legal education. Some faculty will emphasize learning vast and complex bodies of doctrine; some will focus on skills training in legal research and writing, oral advocacy, or legal analysis; and others will focus on theoretical or interdisciplinary approaches. Many will try to incorporate multiple approaches and perspectives into their teaching. There is no single model of effective teaching. Because of the importance of helping students develop skills in legal analysis, many accepted teaching methods, such as the traditional “Socratic method,” are intended to force students to read, analyze, and synthesize cases themselves, and may frustrate some students because the teacher does not provide clear answers.

To evaluate teaching, the School of Law generally considers syllabi, course materials, peer and student evaluations, and a candidate’s own statement of teaching philosophy and goals. It may also consider public representations of teaching (if any), and other accepted methods of evaluation, such as external evaluations. Student evaluations, including statistical analysis of numerical ratings on the Law School’s approved student evaluation forms and any written comments

included in the evaluations, may be helpful in identifying particular strengths and weaknesses and in assessing overall student-teacher rapport, but they constitute only one means of determining teaching quality. Peer reviews of a faculty member's teaching are a critical means of supplementing student perspectives, as well as a useful tool for mentoring new faculty. A faculty member's own statements of teaching goals, approaches, and philosophy also provide important insights into a faculty member's teaching. The faculty member's course materials provide further information relevant to teaching, and may reflect substantial innovation or creativity. The School of Law will also consider teaching activities outside the classroom, such as student mentoring and advising, and the supervision of student research.

## **B. Scholarship**

The evaluation of a faculty member's scholarly activity reflects the recognition that legal scholars employ a variety of methodologies, have different scholarly agendas, and appeal to different audiences. Legal scholarship serves legal academicians and other disciplines by advancing our understanding of the law, legal institutions, and the role of law in society. In addition and equally important, legal scholarship serves the bench, bar, and broader public by organizing, synthesizing, and clarifying the law; by proposing legal reform or assisting in law reform efforts; and by informing the public of their legal rights and responsibilities. A diversity of scholarly approaches and perspectives is an essential component of a vibrant and successful scholarly community within the School of Law. No single approach or perspective towards legal scholarship is privileged over the others.

The diversity of scholarly approaches and audiences means that it is critical to evaluate the scholarly product and agenda of a faculty member within the particular setting of his or her scholarship. There are no restrictions on the form that scholarly publications may take and there is no expectation that candidates will engage in all forms of scholarship. Most publications will likely appear in law reviews, but publication in other kinds of journals, in scholarly monographs, casebooks and instructional texts, and in other media is also acceptable.

Because the nature of legal scholarship and its publication differ markedly from that of other disciplines, a word about this distinctive character is appropriate. Legal scholarship involves the collection, synthesis, and analysis of numerous, lengthy, and complex judicial decisions, statutes, and other legal authorities. A typical article is lengthy and extensively footnoted. Major articles generally are at least 25-30 pages long and often are two or three times that length, and may include hundreds of footnotes. Thus, legal scholarship cannot be measured by number of publications alone. In addition, within the field of law, co-authorship of articles is common and encouraged, and the end result is often a truly collaborative product for which isolation of independent contributions by individual authors may not be possible.

Most legal scholarship appears in law reviews, which may be general interest in character or focused on particular specialties, including legal education and law librarianship. Faculty may publish in either, depending on the nature of the work and the desired audience. Unlike journals in most other disciplines, law reviews usually are not refereed. Journals are published by and identified with particular law schools and are managed by students, who select and edit articles.

Within this context, invited participation in a symposium may reflect evidence of substantive scholarly achievement because such invitations are normally issued based on the faculty member's reputation. The quality of an article's placement must be evaluated in light of the distinctive practices of legal scholarship. It is common practice in law to submit articles to multiple publications for simultaneous review. Placement in a "top" general interest journal is extremely difficult, as these journals publish relatively few articles (given their typical length), receive thousands of submissions every year, and give preference to faculty from "top" schools. For scholarship directed at legal issues in the State of Kansas, which is an important part of the school's scholarly mission, there may be limited outlets for publication.

Within the field of legal scholarship, scholarly monographs, treatises for the bench and bar, and casebooks are also important and valued forms of scholarship with high intellectual content, although it will be relatively rare for faculty to publish such works prior to promotion and tenure. Indeed, publication of treatises and casebooks—which unlike most law review articles are often reviewed by peers before publication—is generally an indication that the authors are recognized as leaders in their fields.

It is the responsibility of the faculty of the School of Law to evaluate and assess a faculty member's published work, scholarly agenda, and related activities to determine whether it demonstrates an established scholarly career, which is evaluated in light of various factors, including a substantial and ongoing pattern of publication, positive external reviews of the candidate's work by eminent scholars or practitioners in the field, the candidate's national or international reputation, or other relevant evidence of an active and productive scholarly career. The principal focus of the evaluation is whether the candidate has a substantial and ongoing pattern of high quality publications indicative of a successful and established scholarly career. To facilitate this assessment, the school solicits evaluations from respected and eminent outside reviewers familiar with the candidate's area of scholarship. Because most works of legal scholarship are quite lengthy, it is generally impossible to find reviewers who will examine a candidate's entire body of work. Reviewers therefore receive a copy of the candidate's full C.V. and have access to the candidate's entire body of scholarship, but will typically focus on one or two articles or their equivalent. A national or international reputation is generally established by participation in the broad scholarly dialogue on issues of national or international concern in the law through activities such as scholarly publications and presentations. In the final analysis, while the faculty values the opinions of outside reviewers and evidence of reputation in evaluating scholarship, it is the responsibility of the faculty to assess a candidate's scholarship and, especially, to determine whether the candidate has established a successful career.

### **C. Service**

Although the nature of service activities will depend on a candidate's particular interests and abilities, service contributions are an essential part of being a good citizen of the School of Law and the University. Law faculty may engage in service to the School of Law, the University as a whole, or the legal profession or academy at the local, state, national, or international levels. As members of the legal profession, faculty also may provide service through pro bono and public

interest legal services for indigent or deserving clients and through educating the general public about the law and the legal system.

#### **D. Special Considerations for Clinical Faculty**

Clinical teaching focuses on the application of legal doctrine and theory in a practical setting. Clinical faculty teach in clinics with actual clients, field placement programs, or courses that provide extensive training in particular practical skills needed to work effectively with clients. The priority that clinical teaching gives to one-on-one instruction, supervision, and direction of students makes clinical teaching vastly more time consuming than traditional classroom teaching. Clinical teaching generally requires production and tailoring of teaching materials specific to the course, preparation for classroom presentations on particular skills that students need when working with clients, and multiple opportunities for individualized feedback. When clinical faculty are involved in the supervision of students who work with actual clients, they bear a professional responsibility to all the clients served and must ensure that the work product of students meets the high standards of the profession. In addition, clinical faculty in supervisory roles have administrative responsibilities that include managing what functions as a law office or guiding and coordinating the work of staff attorneys. Clinical faculty engaged in simulation and associated skills training regularly perform some or all of the following activities: preparing hypothetical problems; arranging for faculty and practitioners' participation in simulations and workshops; creating and administering detailed student assessment rubric; and administering competitions.

Demonstrated scholarship is required for promotion, and it is desirable, although not mandatory, for a decision on the first non-probationary appointment. Because of their important and time-consuming teaching and professional obligations, clinical faculty may publish in different forms and fewer publications are expected. For purposes of fulfilling the expectations of scholarship for clinical faculty, scholarship encompasses any work of a creative, analytical, critical, or explanatory nature, which is designed to and does contribute to the understanding, interpretation, development or reform of the substantive or procedural law, the administration of justice, or legal education, including works concerning clinical and skills pedagogy.

Scholarship that is primarily descriptive or explanatory is permissible under this standard, and because clinical teachers are often immersed in the day-to-day workings of courts and other institutions, clinical teachers may be in an especially advantageous position to produce this descriptive or explanatory work. It is not necessary that clinical faculty publish articles and books for traditional scholarly outlets, and they may direct their scholarship to practitioners, judges, legislators and members of the public, as well as other members of the academy. Clinical scholarship can include (1) preparation of teaching and simulation materials, including locally published materials that involve significant writing, editorial, or other effort; (2) preparation of reports submitted to and for governmental agencies, non-governmental organizations, and bar association groups concerning the operation, evaluation, or improvement of the law; (3) reports or materials submitted to legal education organizations, in the United States or abroad, concerning the content or methods of clinical and skills education; and (4) preparation of briefs or other documents for submission to courts or other government bodies (other than those produced as a part of the class responsibilities of the clinical teacher).

Like other members of the faculty, clinical faculty members have an obligation to engage in service. This service obligation, however, is substantially reduced because of the nature of the clinical faculty member's teaching and related professional performance obligations. In addition, because clinics with actual clients are engaged in service activities, the line between professional performance related to clinical teaching and service may be a difficult one to draw. When service is part of a faculty member's responsibilities as a supervisor of a clinic with actual clients, that service will be evaluated as professional performance related to teaching. The evaluation of a clinical faculty member's service for purposes of nonprobationary appointment and promotion will focus on service that is independent of or in addition to his or her clinical teaching and professional performance obligations.

### **E. Special Considerations for Library Faculty**

The primary consideration for promotion and tenure of library faculty is professional performance, the precise nature of which varies considerably with the faculty member's particular duties and may include substantial teaching obligations. Although their primary responsibility is professional performance, library faculty are also expected to engage in scholarship and service to the profession.

As specialists in providing access to information, library faculty are involved in the development of library resources, collections, and information systems; bibliographic control and organization; information literacy instruction; reference and outreach services; and administration and planning. For library faculty in the School of Law with law degrees, professional performance may include a significant teaching component, including work with the School of Law's lawyering program and freestanding skills or substantive courses, and are accordingly evaluated for their teaching effectiveness. While no single definition or standard of excellence can adequately address all aspects of law librarianship, effective librarians will need to demonstrate competence, currency in their areas, creativity, and initiative.

Library faculty are expected to engage in research and scholarly activity. Because of the ongoing requirements of professional performance and the demands of 12-month appointments, the expectations of scholarship for library faculty are substantially less than for tenure track teaching faculty, and there may be significant variation in the kinds and amount of scholarly or creative activities in which they engage. Expectations for scholarship may vary depending on the individual faculty member's responsibilities as reflected in the position description and are generally greater for library faculty with law degrees. A law library faculty member's scholarship may focus on the field of librarianship or some aspect of law or legal education.

Evidence of scholarly activities may manifest itself in both print and electronic form and these creative and scholarly activities may include not only traditional forms of legal scholarship, such as books, book chapters, and journal articles in traditional law reviews or library journals, but also reports, annotated bibliographies and web indexes, presentations at professional meetings, exhibitions, software development, position papers, poster sessions, and fellowships or grants. While librarians are encouraged to develop programmatic research sustained and strengthened

over time, the rapidly changing nature of librarianship may lead to new areas of research that may be reflected in the librarian's research program.

A strong service profile is highly valued among library faculty. Librarians should demonstrate service beyond the assigned area of responsibility to the law library. Evidence of service may include, but is not limited to, actively participating in library committees and task forces; participating in university committee work; serving as a chair or member of a committee, or as an officer of a local, state, regional, national, or international professional organization; editorial board service; participating in community projects or activities; and uncompensated consulting in a professional capacity.

#### **IV. Criteria for Promotion and Tenure**

Pursuant to standard university practice, in awarding promotion and tenure the School of Law rates a faculty member's teaching, scholarship, service, and (where appropriate) professional performance as excellent, very good, good, marginal, or poor. These ratings reflect the judgment of the faculty of the school of law as to whether the faculty member has met the criteria for tenure and promotion.

##### **A. Teaching**

Under the University standards for tenure, a tenure track teaching faculty member's record must demonstrate effective teaching, and for promotion to full professor the record must demonstrate continued effectiveness and growth. Because the School of Law considers tenure track teaching faculty simultaneously for tenure and promotion to full professor, it evaluates their record for evidence of continued effectiveness and growth as a teacher. Teaching effectiveness means providing students with the knowledge, understanding, skills, and professionalism that are required for a successful career in the legal profession. Teaching effectiveness is measured in light of such factors as mastery of the subject matter, strong classroom teaching skills, an ongoing commitment to student learning, and active involvement in providing advice and support for students outside the classroom. Because there is no preferred method or approach to teaching in the School of Law; each faculty member's teaching must be considered in the context of the particular subjects being taught and the particular goals for the course.

The law school evaluates teaching effectiveness using multiple sources of information, including but not limited to student evaluations, peer evaluations, a candidate's own statement of teaching goals and methods, course materials, and other assessment tools and indicators. This list is not exhaustive and no one source of information is given conclusive weight. In evaluating the effectiveness of teaching:

- "Excellent" means a faculty member has demonstrated outstanding commitment, ability and merit in assisting students to acquire knowledge, understanding, skills, and professionalism.

- “Very good” means a faculty member has demonstrated mastery of the subject matter and highly effective use of appropriate methods to assist students in acquiring knowledge, understanding, skills, and professionalism.
- “Good” means a faculty member has demonstrated command of the subject matter and generally effective use of appropriate methods to assist students in acquiring knowledge, understanding, skills, and professionalism.
- “Marginal” means a faculty member has demonstrated knowledge of the subject matter and thoughtful use of teaching methods, but has not been wholly effective in assisting students to acquire knowledge, understanding, skills, and professionalism.
- “Poor” means a faculty member has demonstrated insufficient knowledge of the subject matter, inadequate preparation, or general ineffectiveness in assisting students to acquire knowledge, understanding, skills, and professionalism.

## **B. Scholarship**

Under the University standards for tenure, a tenure track teaching faculty member’s record must demonstrate a successfully developing career as a scholar, and promotion to full professor requires that the record demonstrate an established scholarly career. Because the School of Law evaluates tenure track teaching faculty for tenure and promotion simultaneously, it evaluates a faculty member’s record of scholarship for evidence of both an established career as a scholar and future promise of scholarly productivity. In view of the variety of forms of legal scholarship, a faculty member’s work is to be evaluated in light of its goals and of the expectations for that particular type of scholarship. Relevant factors include a substantial and ongoing pattern of publication activity; external reviews of the candidate’s work by eminent scholars or practitioners in the candidate’s area of scholarship; citations to the candidate’s work by scholars, judges, and practitioners; and other evidence of an active and productive scholarly career. A successful scholarly record reflects participation through publications or presentations in the broad scholarly discussion of issues related to the candidate’s field.

Consistent with expectations in the discipline, in the typical case three major publications and one minor publication, or the equivalent, of good or higher quality will be sufficient to meet the scholarship requirements for tenure and promotion to full professor, although the number may vary depending on the circumstances. This expectation is expressed in terms of a number of major articles because that is the most common type of publication for law faculty, but should not be construed or applied in a manner that disadvantages faculty who publish other kinds of scholarship, such as books or interdisciplinary articles of shorter length. For purposes of this discussion, a major article is generally 25-30 pages or more in typical law review format and includes thorough references to relevant authority, although shorter works may be considered major if the nature of the work, the context of publication, or the significance of the content warrants it. The numerical description of expectations for scholarly publications in this paragraph is intended only to provide guidance and does not mean that meeting this description creates any entitlement to promotion and/or tenure. The ultimate question is whether the candidate’s publications reflect the

establishment of a successful scholarly career and the promise of future growth. In evaluating the success and promise of a faculty member's scholarship:

- “Excellent” means a faculty member has made a significant contribution to academic or professional scholarship, reflecting an outstanding and creative intellectual endeavor as part of a well-developed and flourishing research program.
- “Very good” means a faculty member has made a valuable contribution to academic or professional scholarship, reflecting a high level of scholarly achievement as part of a strong and ongoing research program.
- “Good” means a faculty member has made a meaningful contribution to academic or professional scholarship, reflecting scholarly achievement as part of a promising research program.
- “Marginal” means a faculty member has made some contribution to academic or professional scholarship, but that the quality or quantity of that scholarship is currently insufficient to reflect a successful career or to confirm the promise of scholarly growth.
- “Poor” means a faculty member has made little or no contribution to academic or professional scholarship, raising substantial doubts of future scholarly productivity.

### **C. Service**

All faculty members are expected to be contributing members of the School of Law, the university community, and the legal profession. Under the university standards for the award of tenure, a tenure track teaching faculty member's record must demonstrate a pattern of service to the School of Law, the University, the legal profession (including the legal academy), and/or to the local, state, national, or international communities. For promotion to the rank of professor, the record must demonstrate an ongoing pattern of service reflecting substantial service to the School of Law, the University, the legal profession (including the legal academy), and/or to the local, state, national, or international communities. The particular forms of service rendered by a faculty member may vary according to his or her areas of interest or expertise. In evaluating service:

- “Excellent” means a faculty member has rendered and seems likely to continue to render service to the School of Law, the University, the legal profession (including the legal academy), and/or to the local, state, national, or international communities of very high quality and outstanding value above and beyond the expectations of a contributing member of School of Law faculty.
- “Very good” means a faculty member has rendered and seems likely to continue to render service to the School of Law, the University, the legal profession (including the legal academy), and/or to the local, state, national, or international communities of high quality and significant value, easily meeting or exceeding the expectations of a contributing member of the School of Law faculty.

- “Good” means a faculty member has rendered and seems likely to continue to render useful service to the School of Law, the University, the legal profession (including the legal academy), and/or to the local, state, national, or international communities as a contributing member of the School of Law faculty.
- “Marginal” means a faculty member has rendered some useful service, but his or her service has fallen short of the expectations of a contributing member of the School of Law faculty, the university community, and the legal profession.
- “Poor” means a faculty member has rendered little or no useful service and has not been a contributing member of the School of Law faculty, the university community, and the legal profession.

#### **D. Professional Performance**

Because professional performance may take a variety of forms, it is not possible to articulate a single set of standards or criteria for professional performance. Professional performance for a clinical faculty member, for example, occurs as part of the faculty member’s teaching responsibilities and may include such diverse activities as preparation of legal documents for courts and agencies; working with professionals to organize and supervise externships; supervision of administrative, professional, and student staff members; supervising student competitions; participating in skills workshops; hosting skills teaching conferences; and supervising academic support programs. Conversely, professional performance for library faculty may include such diverse activities as providing reference and research support for faculty, students, and the general public; developing, cataloging and maintaining library collections; and teaching in the legal research and writing program or freestanding courses offered for academic credit. Thus, professional performance must be evaluated in light of the specific expectations of a faculty member’s position. In evaluating professional performance:

- “Excellent” means that the candidate has greatly exceeded expectations for professional performance of responsibilities associated with his or her position.
- “Very good” means that the candidate has exceeded expectations for professional performance of responsibilities associated with his or her position.
- “Good” means the candidate has met expectations for professional performance of responsibilities associated with his or her position.
- “Marginal” means that the candidate has failed to meet expectations for professional performance of one or more responsibilities associated with his or her position.
- “Poor” means the candidate has fallen well short of expectations for professional performance of one or more responsibilities associated with his or her position or has failed to meet expectations in multiple areas.

### **E. Special Criteria for Clinical Faculty**

For clinical faculty, the primary consideration for the initial nonprobationary appointment and for promotion in rank is teaching effectiveness, and the law school's general criteria for evaluating teaching effectiveness apply. In addition, the following criteria apply:

- When supervising student work with actual clients, the clinical faculty member's record of professional performance of supervisory, representational, and administrative functions must meet or exceed the legal profession's high standards of professional performance. Clinical faculty who direct students in work other than with actual clients similarly must establish a record of professional performance. This criterion applies to both the first non-probationary appointment and promotion from associate clinical professor to clinical professor. For promotion to clinical professor, the record should reflect growth and development since the first non-probationary appointment.
- Consistent with the expectations of the discipline for clinical faculty, scholarship is not necessary for the first non-probationary appointment, and a major publication of good or higher quality, or its equivalent in other activities with significant scholarly content, is generally sufficient for promotion to clinical professor. This expectation, however, is intended only to provide guidance and does not mean that publication of a major article creates any entitlement to promotion. The ultimate question is whether the candidate has made a scholarly contribution to the profession or the legal academy.
- A clinical faculty member's record must demonstrate meaningful service, beyond professional performance in relation to clinical and skills teaching, to the School of Law, to the University, to the profession or legal academy, and/or to the local, state, national, or international communities. This criterion applies to both the first non-probationary appointment and for promotion from associate clinical professor to clinical professor. For promotion to clinical professor, the record should show ongoing or additional service since the first non-probationary appointment.

### **F. Special Criteria for Library Faculty**

For library faculty, the primary consideration for promotion and tenure is professional performance. For promotion to Associate Librarian and the award of tenure, a faculty member's record must demonstrate professional competence and potential as evidenced by the ability to understand the needs of the Law Library users, to work independently, to make sound decisions, to cooperate with colleagues, and to assume increasing responsibility. For promotion from Associate Librarian to Librarian, a faculty member's record must demonstrate a consistently high level of professional competence, including the ability to manage a sizeable aspect of Law Library operations without supervision. In addition, the following criteria apply:

- When professional performance includes substantial teaching responsibilities, a library faculty member's teaching shall be evaluated using the methods and criteria for evaluation used for other faculty members.

- For tenure and promotion from Assistant Librarian to Associate Librarian, a faculty member's record must demonstrate scholarly contribution to library science or the legal profession through creative activity or research, and for promotion from Associate Librarian to Librarian, the record must demonstrate significant scholarly contribution to library science or the legal profession through creative activity or research. A library faculty member's scholarly contribution will be evaluated in light of his or her particular position and greater scholarly contributions will ordinarily be required of library faculty with law degrees.
- For promotion from Associate Librarian to Librarian, a faculty member must have rendered service to the Law Library, the School of Law, the University, the legal profession or profession of librarianship, or the community. For promotion from Associate Librarian to Librarian, he or she must have rendered substantial service to the Law Library, the School of Law, the University, the legal profession or profession of librarianship, or the community.

## **V. Procedures**

### **1. General Provisions**

*(a) Scope of Provisions.* These provisions apply to all faculty members within the School of Law, including tenure track teaching faculty, clinical faculty, and library faculty.

*(b) Basic Principles.*

*(1) Due Process.* Promotion and tenure decisions affect vital interests of the faculty members involved and should be undertaken in a manner that ensures fundamental fairness. Consistent with the norms of the legal profession, this includes a high degree of transparency and sensitivity to conflicts of interest.

*(2) Confidentiality.* Promotion and tenure and other aspects of faculty evaluation are confidential personnel matters. Information and evaluations generated for or included in the promotion and tenure file shall not be disclosed except to those involved in the decision, the faculty member, and as otherwise required by law.

*(3) Conflicts of Interest.* No faculty member shall serve on a promotion and tenure committee, including any committee of the whole, in violation of the conflict of interest rules established by FSRR 6.1.4. Promptly after being notified of the membership of the promotion and tenure committee, a candidate for promotion and tenure may request in writing that one or more members of the promotion and tenure committee or the committee of the whole recuse himself or herself because of a conflict of interest or other good cause, including conflicts not listed in the FSRR. If the member does not recuse himself or herself voluntarily, the matter shall be submitted to the other members of the promotion and tenure committee, which shall decide whether there is cause for recusal. If the promotion and tenure committee cannot resolve a request for recusal, the Dean shall resolve the matter.

Potential conflicts of interest involving the Dean should be referred to the Provost's Office for resolution.

## **2. Pretenure Matters**

(a) *Communication of Expectations.* It is the responsibility of the Dean or the Dean's designee to communicate the expectations of the School of Law to each faculty member when he or she joins the faculty. Each faculty member should be provided a copy of these criteria and procedures as well as any other guidance documents relevant to the promotion and tenure process.

(b) *Mentoring.* In consultation with those involved, the Dean or the Dean's designee shall assign a mentor to each new faculty member without tenure or job security. If possible, the mentor should be an experienced faculty member whose areas of interest overlap with the new faculty member. The mentor will serve as a resource for the faculty member and assist him or her in the development of his or her teaching, scholarship, service, and (where applicable) professional performance.

(c) *Documentation of Record.* During the period before the award of tenure or, in the case of clinical faculty, the attainment of job security, it is important to gather, document, and retain information about a faculty member's teaching, scholarship, service and (where applicable) professional performance. Each faculty member should retain relevant information about his or her activities with an eye toward the preparation of the file for progress toward tenure review, promotion and tenure, and promotion after tenure or the attainment of job security.

(1) *Student Evaluations of Teaching.* For untenured faculty, it is the responsibility of the Dean to provide for the retention of the original student evaluations submitted by students at the end of each semester. Copies of the originals (including written comments) shall be provided to the faculty member at the close of each semester following submission of final grades. A faculty member may distribute and retain supplemental student evaluations for his or her personal use. If the faculty member chooses to include such evaluations in the promotion and tenure record, they must be included in their entirety.

(2) *Peer Evaluations of Teaching.* For tenure track and clinical faculty with teaching responsibilities, the Associate Dean for Academic Affairs shall arrange peer evaluations of teaching. Unless the faculty member requests it, no evaluations will be conducted during the first year, except that this rule does not apply to faculty who have held a tenure track position at a different law school before joining the faculty. Following the first year and until promotion to full professor or equivalent rank, at least two peer reviews shall be conducted each year during which the faculty member has teaching responsibilities, preferably one review each semester. A faculty member conducting a peer review shall meet with the faculty member being reviewed to discuss course objectives and teaching methods, review the course syllabus and other materials provided by the faculty member being reviewed, and observe at least one class session. Instead of a class session, a peer teacher may evaluate a clinician's work with students outside of the classroom setting to

the extent that the evaluation does not compromise privileged communications with clients and is consistent with the rules of professional responsibility. When possible, the reviewing faculty member is encouraged to review student work to assess the quality of student learning. Faculty members who conduct a review shall meet with the faculty member to discuss the results and submit a timely written evaluation to the Associate Dean for Academic Affairs, which he or she shall maintain as part of the documentation of the faculty member's teaching record. A copy of the review will be provided to the faculty member.

(d) *Progress Toward Tenure Review.* In accordance with policies and procedures established by the Provost's Office, the School of Law will conduct a progress toward tenure review at the midpoint of the probationary period, usually the third year of a faculty member's career at the School of Law (unless the faculty member has joined the faculty after holding a tenure track appointment at another law school or the "tenure clock" has been stopped).

(1) *Purpose.* The primary purpose of this review is to provide feedback to the faculty member concerning his or her progress toward tenure, identify strengths and weaknesses in the faculty member's record to date, and address any areas of concern. As required by the University, the review will also result in one of the following recommendations: that the faculty member is making satisfactory progress toward tenure, the faculty member should be reviewed again the following year, or that the faculty member should not be reappointed.

(2) *Conduct of Review.* Progress toward tenure review is conducted by the Promotion and Tenure Committee and should resemble the evaluation of promotion and tenure, including the format of the file, the documentation of the record, and the evaluation of teaching, scholarship, service, and (where applicable) professional performance. However, the School of Law will not seek outside evaluation of the faculty member's scholarship, the committee's recommendations will not be considered by the committee of the whole, and the file will not be forwarded to the University for further review, except as required by the Provost's Office.

(3) *Relation to Tenure and Promotion.* Pursuant to FSRR 6.4.2, the progress toward tenure review is not part of the tenure and promotion process and the results and recommendations of that review shall not be considered in making promotion and tenure decisions. A favorable outcome of this review does not assure a favorable outcome of the tenure and promotion process.

(e) *Job Security for Clinical Faculty.* Clinical faculty are members of the University's unclassified academic staff and as such do not receive tenure. Within the School of Law, however, clinical faculty members receive job security following a probationary period. Non-probationary clinical faculty members may be terminated only for cause, including budgetary constraints and program elimination. Termination for cause must comply with university procedures for such terminations, including appeal to the Faculty Rights Board.

(1) *Probationary Period.* Clinical faculty will normally serve a probationary period of three years following their initial appointment. At the discretion of the Dean, experienced candidates may be initially appointed at the level of associate clinical professor with or without probationary status, provided, however, that an initial appointment without probationary status must be approved by the faculty.

(2) *Non-reappointment of Probationary Clinical Faculty.* Notice of non-reappointment may be given to probationary clinical faculty, and shall be so given if the Dean concludes that his or her work is unsatisfactory. If applicable, the Dean shall consult with the Director of the clinic or skills program in which the clinical faculty member works. A clinical faculty member in his or her first year must receive notice of non-reappointment at least three months prior to the end of the first year; a clinical faculty member in his or her second year must receive such notice at least six months before the end of the second year; and a clinical faculty member in his or her third year or beyond must receive such notice one year before termination. A probationary clinical faculty member must receive an assessment of his or her performance after six months, after one year, and thereafter at the anniversary of appointment.

(3) *Non-probationary Appointment.* The first non-probationary appointment requires a vote of the tenured faculty and non-probationary clinical faculty, upon the recommendation of the Dean and, when applicable, the Director of the clinic or skills program in which the clinical faculty member works. Such appointments shall be based primarily on the clinical faculty member's excellence in clinical and skills teaching. Non-probationary appointment does not follow the procedures for consideration of promotion and tenure and is not subject to review by the University Committee on Promotion and Tenure.

### **3. Procedures for Consideration of Promotion and Tenure**

(a) *Initiation of Review.* Pursuant to university wide requirements, the following procedures apply to the initiation of the review process:

(1) *Untenured Faculty.* Untenured faculty will be notified before the beginning of the spring semester of the year before their mandatory tenure review year. For faculty so notified, consideration for promotion and tenure will be initiated automatically. Untenured faculty who wish to be considered for promotion and tenure prior to that time may request early consideration by March 1 of the academic year before the promotion and tenure file would be reviewed. Faculty who apply for promotion and tenure prior to their mandatory review year are held to the same standards of achievement as those who have completed the full probationary period.

(2) *Promotion.* The Dean shall review the qualifications of tenured library faculty and clinical faculty with job security who have not achieved a rank of full clinical professor or librarian as part of the annual evaluation process with a view toward possible promotion in rank and may, in consultation with the faculty member, recommend faculty with suitable

qualifications for promotion. After seven years at a rank of associate clinical professor<sup>1</sup> or associate librarian, a faculty member may request by March 1 of the academic year that he or she be considered for promotion the following year. Because the law school ordinarily awards tenure track teaching faculty promotion to full professor and tenure at the same time, review of faculty qualifications for promotion will be initiated through the same process as initiation of tenure. In the unusual event that a faculty member with tenure has not been promoted to full professor, such as in cases of joint appointment, the procedures in this paragraph for initiating review of promotion shall apply.

(b) *Selection and Composition of the Promotion and Tenure Committee.* The promotion and tenure committee shall be selected as provided below. The promotion and tenure committee shall not include the candidate's mentor or any person with a conflict of interest under 1(b)(3) of these procedures. No students or untenured faculty members, except unclassified academic staff with rank equivalent to or higher than associate professor, shall serve, participate, or observe on any promotion and tenure committee or vote on any recommendation concerning promotion and tenure.

(1) *Tenure Track and Tenured Teaching Faculty.* For teaching faculty, the promotion and tenure committee shall consist of no less than three tenured faculty members holding the rank of full professor. The committee shall be selected by the Dean before the start of the academic year.

(2) *Clinical Faculty.* For clinical faculty, the promotion and tenure committee shall consist of no less than a full clinical professor, a tenured professor, and a member of the Law School's promotion and tenure committee for tenure track and tenured teaching faculty. The clinical promotion and tenure committee shall be selected by the Dean before the start of the academic year.

(3) *Library Faculty.* For library faculty, the Law Library Committee on Promotion and Tenure (LLCPT) shall consist of Library Director and two other tenured law librarians, to be appointed by the Library Director. In the event that there is an insufficient number of tenured library faculty to complete the LLCPT, the Library Director shall, in consultation with the Dean, appoint tenure track faculty members to bring the committee membership to three.

(4) *Multiple Candidates.* If multiple candidates from the same category of faculty are seeking promotion and/or tenure in a given year, the ~~same~~ committee for that category shall consider those candidates. The Dean may add one or more appropriately qualified individuals to a committee that must review multiple candidates from a category.

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<sup>1</sup> When full-time clinical faculty are initially hired without the rank of associate clinical professor, and subsequently receive a change in status to non-probationary associate clinical professor, the time spent teaching the clinical program before the change in status shall count toward the required seven years of service.

(c) *Preparation of File and Committee Recommendations.* A faculty member's record of teaching, scholarship, service, and (where applicable) professional performance shall be compiled in accordance with guidelines established by the University.

(1) *Faculty Member's Responsibilities.* The faculty member, with the assistance of his or her mentor, shall complete those portions of the file for which he or she is responsible, including the preparation of a personal statement of teaching and of scholarship, as well as other information required by university guidelines. Upon completion of the faculty member's portion of the file, he or she shall forward it to the chair of the promotion and tenure committee for completion and evaluation. The committee chair shall review the file to ensure that it is complete and may request additional information or documentation from the faculty member.

(2) *Outside Reviews of Scholarship.* The promotion and tenure committee shall in a timely manner solicit outside reviews of a faculty member's scholarship, with emphasis on securing respected and eminent reviewers in a similar or related field whose academic rank is equal to or greater than the rank for which the faculty member is being reviewed. Except in unusual cases in which the field of potential reviews is quite limited, outside reviewers should not have a close personal or professional relationship with the candidate. The faculty member being reviewed may identify up to two individuals who shall not be asked to review his or her scholarship and may nominate or suggest up to six reviewers for consideration by the committee. No more than half of the reviewers may be taken from the faculty member's list of nominees. Given the length of legal scholarship each reviewer's evaluation may focus on a portion of the nominee's body of work. The letter soliciting outside reviews shall inform the reviewer that the candidate will have access to his or her letter and include a copy of the applicable tenure and promotion criteria for scholarship.

For clinical or library faculty, it is appropriate for the committee to solicit outside reviews of professional performance, in accordance with the same rules for soliciting reviews of scholarship.

(3) *Completion of File by Committee.* Upon receipt of the file from a faculty member, the promotion and tenure committee shall compile the necessary additional documentation of the faculty member's record, including student and peer evaluations of teaching, additional scholarship materials, and any available evaluations of service and (where applicable) professional performance.

(4) *Committee Recommendations.* The committee shall review the completed file and apply the expectations and criteria approved by the School of Law to determine (1) whether to recommend that tenure and/or promotion should be awarded; and (2) recommended ratings of the faculty member's teaching, scholarship, service, and (where appropriate) professional performance. Based on these determinations, the committee shall prepare a draft of the summary evaluation required by FSRR 6.3.4.2 and 6.5.4.3. In the event of

disagreement within the committee, recommendations shall be determined by majority vote, which shall be reflected in the file.

(5) *Review of File by Candidate.* Before the completed file and recommendations of the committee are transmitted for review by the committee of the whole, the candidate shall be given the opportunity to review the draft summary evaluation and the outside evaluation letters, redacted to remove identifying information. The faculty member may include a written response for inclusion in the file transmitted to the committee of the whole.

(d) *Action by the Committee of the Whole.* The committee recommendations and ratings shall be forwarded to the committee of the whole.

(1) *Committee of the Whole.* For tenure track and tenured teaching faculty, the committee of the whole consists of all full time tenured faculty members holding the rank of full professor. For clinical faculty, the committee of the whole shall consist of tenured faculty holding the rank of full professor and clinical faculty holding the rank of full clinical professor. For library faculty, the committee of the whole shall consist of tenured faculty holding the rank of full professor and tenured library faculty. No students or untenured faculty members, except unclassified academic staff with rank equivalent to or higher than associate professor, shall serve, participate, or observe on any promotion and tenure committee or vote on any recommendation concerning promotion and tenure.

(2) *Review of Ratings and Summary Evaluation.* The committee of the whole shall review and discuss the file and the recommendations of the committee, including the ratings and summary evaluation prepared by the promotion and tenure committee. If the committee of the whole approves, by majority vote, the recommendations of the committee, those recommendations shall become the recommendations of the School of Law faculty for purposes of the promotion and tenure process. If the committee of the whole disagrees with some or all of the ratings and summary evaluations prepared by the promotion and tenure committee, the committee of the whole may approve, by majority vote, different ratings or summary evaluations, which shall become the recommendations of the School of Law faculty for purposes of the promotion and tenure process. If the committee of the whole approves different ratings from the promotion and tenure committee, it shall also approve amendments to the evaluations in the promotion and tenure file, including the summary evaluations, consistent with its ratings.

(3) *Recommendations.* The committee of the whole shall vote by secret ballot to recommend whether tenure and/or promotion in rank should be awarded. If both tenure and promotion in rank are sought, a separate vote shall be taken for each. Approval of a majority of the committee of the whole is necessary for a favorable recommendation.

(e) *Action by the Dean.* Following action by the committee of the whole, the file shall be forwarded to the Dean.

(1) *Concurrence or Nonconcurrence.* The Dean shall review the file and recommendations and indicate on the summary evaluation section whether he or she concurs with the ratings and recommendations of the committee of the whole.

(2) *Notification of Results.* The Dean shall promptly notify the faculty member of the results of the tenure and promotion process. The candidate shall receive a copy of the summary evaluation prepared in accordance with university requirements. If the Dean disagrees with a favorable recommendation of the committee of the whole, he or she shall provide the faculty member a written explanation for this disagreement.

(3) *Forwarding File for University Review.* If there is a favorable recommendation by the committee of the whole or the Dean, or if the candidate is in the mandatory review year, the Dean shall forward the completed file, along with a letter of transmittal, to the University Committee on Promotion and Tenure (UCPT). If there is an unfavorable recommendation for a faculty member who is not in the mandatory review year, the Dean shall forward the file to the University Committee on Promotion and Tenure only if the candidate requests.

(f) *University Level Action.* Once the promotion and tenure file has been forwarded to UCPT for review, the record is generally closed. The faculty member and law school may supplement the record or provide additional information or responses as follows.

(1) *Response to Unfavorable Recommendations and Marginal or Poor Ratings.* Pursuant to FSRR 6.7.2.1, a faculty member may submit to the University Committee on Promotion and Tenure (UCPT) a written response to a negative recommendation from the faculty or Dean, or to a final rating of teaching, scholarship, service, or professional performance below the level of “good” included in the summary evaluation section. Procedures for submitting responses are determined by UCPT. If FSRR 6.7.2.1 applies, the candidate shall be given an opportunity to review the promotion and tenure file in order to prepare a response, except that outside evaluation letters shall be redacted to remove identifying information.

(2) *Request for Information.* If UCPT requests additional information pursuant to FSRR 6.7.3, the Dean shall promptly provide a copy of the request to the candidate and to the promotion and tenure committee. The committee shall prepare the law school’s response in consultation with the affected faculty member and the Dean. In preparing the Law School response, the committee represents the Committee of the Whole. The faculty member may submit his or her own response to the request for information.

(3) *University Committee on Promotion and Tenure Recommendations.* The University Committee on Promotion and Tenure and the Provost make recommendations on promotion and tenure to the Chancellor, who makes the final decision. Faculty members will be ordinarily receive written notification of UCPT and Provost recommendations in early March. If either the UCPT or Provost recommendation is negative, under FSRR 6.7.5, the faculty member has a right to file a written response with the Chancellor or to

seek review by the Faculty Rights Board pursuant to FSRR 6.8. The response or request for review must be filed within 10 days of the first Friday in March.

## **History of Revision and Approval**

Adopted May 5, 1978

Revised and approved by the faculty, October 5, 2005

Revised and approved by faculty, September 23, 2008

Revised and approved by the faculty, August 25, 2009

SPPT approved, August 2009

Revised and approved by the faculty, April 7, 2014

- Technical revisions resulting from the conversion of Legal Writing instructors from Lecturers to Clinicians. The 2014 revisions, the bulk of which are in Section III.D with conforming changes throughout the document.

Revised and approved by the faculty, August 22, 2017

- Technical revisions prompted by a change in our American Bar Association accreditation standards. Those revisions appear in section V.2.

SPPT reviewed and requested minor changes before approval, April 9, 2018

Revised and approved by the faculty, August 21, 2018

- Minor changes requested by SPPT were made.

SPPT approved September 19, 2018.