

UNC CHARLOTTE HEARING PROCEDURES IN FACULTY DISCHARGE, SUSPENSION OR DEMOTION IN RANK CASES

Revised July of 2013

Pursuant to [Section 8](#) of [University Policy 102.13](#), a faculty member may request a hearing if the University intends to discharge or to impose other serious sanctions (e.g., to suspend or to demote in rank) against that faculty member. The following procedures establish expectations for participants in such a hearing.

1. The hearing shall be on the written specification of reasons for the University's intention to discharge, suspend or demote in rank.
2. At least three members of the Faculty Hearing Committee will make up a panel that will hear the matter. The Hearing Committee Panel (or "Panel") will elect a member to serve as Chair and preside at the hearing.
3. The hearing will be scheduled for, at a minimum, a full day, from 8 a.m. to 5 p.m. The participants will be provided a one-hour lunch break, as well as other breaks the Chair deems appropriate. If necessary, the hearing will continue on a future date that is agreeable to all parties and Panel members.
4. At least one week prior to a scheduled hearing, each party—both the Provost and faculty member requesting the hearing—is required to provide the Hearing Committee Panel Chair with copies of its witness list and exhibits. In addition, each party must provide its witness list and exhibits to the other party at least one week prior to a scheduled hearing.
5. The hearing shall be closed to the public, unless the faculty member requesting the hearing and the Panel agree that it may be open.
6. The Provost, Provost's designee, and/or counsel, may participate in the hearing to present the testimony of witnesses and other evidence, confront and cross-examine adverse witnesses, examine all documents and other evidence, and make argument.
7. The faculty member requesting the hearing shall have the right to counsel, and may personally or through counsel present the testimony of witnesses and other evidence, confront and cross-examine adverse witnesses, examine all documents and other evidence, and make argument.
8. The University has the burden of proof.

9. In evaluating the evidence, the Hearing Committee Panel shall use the standard of clear and convincing evidence¹ in determining whether the University has met its burden of showing that permissible grounds for discharge or other serious sanction exist and are the basis of the recommended action.
10. A written transcript of all proceedings shall be created. The UNC Charlotte Office of Legal Affairs will arrange for a court reporter to be present at the hearing. The court reporter will produce a verbatim record of the hearing testimony and will preserve all documents accepted as evidence at the hearing. The Panel Chair should contact the Paralegal in the Office of Legal Affairs as soon as possible after being selected as Chair to be certain that arrangements are made for a court reporter.
11. Upon request, a copy of the transcript will be provided to the faculty member requesting the hearing at the University's expense.
12. At the hearing, the following process and procedures will be observed:

Call to order. The Chair will call the hearing to order in open session, introduce the members of the hearing panel, introduce the parties and their representative/counsel (if any), and review the hearing procedures. Witnesses must be sequestered outside the hearing room until they are called to testify. The Chair will proceed to closed session by making the following motion: "In accordance with the North Carolina Open Meetings Law, we will now go into closed session to hear this personnel matter."

Opening remarks. Each party has up to five (5) minutes to make uninterrupted opening remarks. The University will be the first party to open, followed by the faculty member. The purpose of opening remarks is to orient the Panel to the nature of the party's case and to the facts the party intends to establish. Opening remarks are not considered evidence. There will be no opportunity for follow up questioning by the opposing party or members of the Panel at the conclusion of opening remarks.

¹ **Clear and Convincing Evidence** – Clear and convincing proof means that the evidence presented must be highly and substantially more probable to be true than not and the Hearing Committee Panel must have a firm belief or conviction in its factuality. To prove something by "clear and convincing evidence," the party with the burden of proof must convince the Hearing Committee Panel that it is substantially more likely than not that the thing is in fact true. (This is a lesser requirement than "proof beyond a reasonable doubt," which requires that the trier of fact be close to certain of the truth of the matter asserted, but a stricter requirement than proof by a "preponderance of the evidence," which merely requires that the matter asserted pass the 50% threshold of being more likely true than not.)

Presentation of University's case. At the conclusion of both parties' opening remarks, the University representative will present the university's case in the following manner:

- Presentation of evidence (witness testimony and documents) in support of the University's position.
- University witnesses shall be questioned first by the University.
- Though formal rules of evidence do not apply, the faculty member may object to any questions and generally any such objections should be based on the relevancy of the question to the issue at hand. The Chair will rule on all objections and the Chair's determination is final.
- University witnesses will next be questioned by the faculty member, and questions must be limited to questions within the scope of the evidence presented during questioning by the University representative; the purpose of this round of questioning is not for the purpose of presenting the faculty member's rebuttal position.
- Finally, the University witness is questioned by members of the Panel.

After all University witnesses have been questioned and the University concludes its presentation of evidence, the Chair will call for a short break, after which the faculty member will present his case.

Presentation of Faculty Member's case. The faculty member or his/her representative will present evidence (witness testimony and documents) in support of the faculty member's position in the following manner.

- The faculty member's witnesses (and, of course, the faculty member may testify on his or her own behalf) will be questioned first by the faculty member.
- Though formal rules of evidence do not apply, the University may object to any questions and generally any such objections should be based on the relevancy of the question to the issue at hand. The Chair will rule on all objections and the Chair's determination is final.
- The faculty member's witnesses will next be questioned by the University, and questions must be limited to questions within the scope of the evidence presented

during questioning by the faculty member; the purpose of this round of questioning is not for the purpose of presenting the faculty member's rebuttal position.

- Finally, the faculty member's witness is questioned by members of the Panel.

After the faculty member concludes his/her presentation of evidence, the Chair will call for a short break prior to the parties' closing remarks.

Closing remarks. The University representative may make closing remarks, followed by closing remarks of the faculty member. Closing remarks may not exceed 15 minutes per side. Because the University has the burden of proof, the University representative may also make final remarks in response to the faculty member's closing. Such final remarks may not exceed five minutes.

Hearing Committee Panel deliberations. After the parties conclude their closing remarks, the Chair will excuse all persons present who are not Panel members² and the Panel will remain in closed session to deliberate. Deliberations are not to be recorded by the court reporter. If the Panel wants to review the transcript, the Chair will move to return to open session, adjourn the hearing, and reconvene the Panel in closed session after the transcript is available. The Panel's decision will be by majority vote. The Chair must make a motion to return to open session prior to adjourning the hearing.

13. General guidance to Panel Members and parties.

- All information and material received in this matter must be treated as confidential personnel information.
- No Panel Member may engage in *ex parte* communications³ with anyone about the subject matter of this case.
- The parties must refrain from engaging in *ex parte* communications with members of the Hearing Committee or Panel. All communications concerning this matter should be directed to the Panel Chair with copies to the other party.

² If the Panel is receiving legal advice from an attorney from the University's Office of Legal Affairs, the Panel may choose to have the attorney present during deliberations.

³ **Ex parte communications** – A communication between a party (and/or their legal counsel) and a Panel member when the other party (and/or their legal counsel) is not present. *Ex parte* communications are prohibited during the pendency of a hearing.

14. The Panel will submit its written recommendations to the Chancellor within 14 calendar days after the hearing concludes or 14 calendar days after a full transcript is received, whichever is later. A minority report may be filed if the Panel members not in the majority so choose, and such minority report must also be filed within 14 calendar days after the hearing concludes or 14 calendar days after a full transcript is received, whichever is later.