THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Regents Bylaw 5.09

Regents' Bylaw 5.09 governs the demotion and dismissal of Faculty. Initially adopted at the Regents' meeting exactly 52 years ago this month, Bylaw 5.10 (as it was then) replaced the earlier Bylaw 5.09, which had proved insufficient to safeguard the rights of three faculty members in the anti-communist scare of the early fifties—Chandler Davis, Mark Nickerson and Clement L. Markert—who are now commemorated in the annual lecture on Academic and Intellectual Freedom that was founded in their honor. The importance of the new Bylaw was to establish a procedure that would prevent a rush to judgment by allowing a case against a faculty member to be held outside the faculty members' unit, and for an appeal for a new hearing under the auspices of central faculty governance in case an initial hearing within the unit went against the faculty member. In 1959 the Bylaw was changed to provide for a two stage process within central faculty governance, ordering that SACUA's subcommittee on Tenure would hear the case in the first instance and that SACUA would review the findings of the Tenure committee from a procedural perspective once it had reached its conclusions (SACUA could also decide if procedural appeals by the respondent in the procedure were of sufficient gravity that the Tenure Committee should hold a new hearing). SACUA's role was thus set as ensuring the fairness of the procedure.

The Bylaw would be invoked, then as now, in cases where the administration felt that a prior investigation of a faculty member's conduct raised the question of whether or not that faculty member should be dismissed or demoted. At that point in time the Regents included the following definitions of the penalties that could be imposed:

> "Dismissal within the meaning of this section means the removal of the faculty member from his position in the University before the expiration of his appointment, either determinate or indeterminate. "Demotion" includes reduction in academic rank, reduction in salary, or withholding of salary. Demotion as defined in this section applies to academic rank and the salary paid for academic services. It is not to be construed as a demotion when an administrative officer ceases to hold his administrative position but engages in or continues in academic pursuits with a downward adjustment of salary to a level customarily paid for academic services of the nature he is expected to render. "Terminal appointment" means the granting of an appointment for a limited period with the understanding that, because of academic or other deficiencies, it will not be renewed (*Proceedings of the Board of Regents (1837-2006)*, 867).

This clause was left out of later iterations of the Bylaw as they were revised in 1959, and, later, in 1967, when then Bylaw 5.10 was included within section 5.09. It should be noted that the basic terms of the Bylaw as it now stands are essentially unchanged from 1956 (a correction in 1973 of some careless

drafting in 1967, restored the Bylaw to its 1959 form), which suggests that it has remained the intention of successive boards of regents to retain the formal requirements for an action under Bylaw 5.09.

The due process procedures under Bylaw 5.09 are elaborate; one problem that we have noted is that they are also detached from other processes within the University. There are cases where administrative sanctions may be imposed on faculty that fall short of demotion or dismissal (the denial of merit increases for a number of years, or restriction on access to research facilities), but can still have a serious impact on the effectiveness with which a faculty member can perform his/her duties. Due process—the right to present exculpatory evidence before an impartial hearing committee and to confront accusers whose evidence has been presented in what is often a one-sided fact-finding and decision making process—should be afforded in these cases. As it is now, the only way that a faculty member can ensure that his or her side of the story is heard is through the grievance procedure after the fact. We feel that we need a system short of the 5.09 procedure that also allows for due process prior to the imposition of the sanction. In fact, the more serious the sanction, the greater the need for the protection of due process, if we hope to resolve these disputes within the University community.

Proceedings under Bylaw 5.09 have been very rare, to date, at the University. That is, on the one hand, as it should be: we would expect that faculty at this University would observe the highest standards of deportment in their professional lives so that there would be no need to dust off the discipline process. On the other hand, it is perhaps not ideal that the one process that guarantees due process should be so seldom used, while the grievance procedure is used a great deal more often (the last three years have seen ten grievances filed at the University). It also appears to be the case, after reviewing grievances, that some units are more prone to be involved in the grievance procedure than others, and that rate of involvement is not directly related this to the size of the unit. Rather there appears to be a great deal of variance in the way that Deans in different units perceive their authority. Although we take pride in the decentralized nature of this university, this is an area where greater structure is highly desirable. In particular we feel that "structured decentralization" in matters of discipline can be achieved through routine consultation of the expertise of the General Counsel's office.

We can all agree that faculty have the responsibility to behave professionally towards their students and maintain collegial relations with their colleagues, to show the highest integrity in their research, and to serve the community as a whole. On the whole this is exactly what the faculty do, and the international reputation of the university reflects this. In those rare cases when relationships break down we need to make sure that our institutions permit the fair resolution of the disputes. Bylaw 5.09, although old, was forged in the heat of deeply trying times, and reflects the wisdom of those who were forced to confront the need to guarantee that arbitrary action has no place in the campus community. Despite its age Bylaw 5.09 offers a model upon which to base other procedures that will ensure fair and equitable resolution of conflict.

(Submitted February, 2009)

Regents' Bylaw 4.04. The Senate Assembly shall serve as the legislative arm of the senate…The assembly shall have power to consider and advise regarding all matters within the jurisdiction of the University Senate which affect the functioning of the University as an institution of higher learning, which concern its obligations to the state and to the community at large, and which relate to its internal organization insofar as such matters of internal organization involve general questions of educational policy.