



**Date:** May 16, 2016

**Memo to:** David W. McLaughlin, Provost

**From:** Fred Carl  
Chairperson, C-Faculty Senators Council  
A/Y 2015-2016

**Subject:** Recommendations of the C-FSC regarding NYU School of Law Policy on Continuing Contract Faculty Appointments

At the May 12, 2016 meeting of the C-Faculty Senators Council, the attached recommendations were approved.

**cc:** Katherine Fleming, Deputy Provost and Vice Chancellor  
Carol Morrow, Senior Associate Provost/Chief of Staff to the Provost  
Trevor W. Morrison, Dean, School of Law  
Peter Gonzalez, Assistant Provost for Academic Appointments

*C-FSC Steering Committee Members:*  
Randy Mowry, C-FSC Vice Chairperson  
Joseph Borowiec  
David Elcott  
Mary Killilea  
Susan Stehlik  
Patrick Ying

John Halpin, C-FSC Personnel Policies & Contract Issues Committee Chair

**Recommendations of  
The Continuing Contract Faculty Senators Council  
In Regard To:**

**School of Law  
Policy on Continuing Contract Faculty Appointments**

**Background**

From a letter dated November 23, 2015, sent by Provost David McLaughlin: “Dean Trevor Morrison has submitted to me the School of Law Policy on Continuing Contract Faculty Appointments...The Law School worked together with my office and the Office of the General Counsel to edit the document to ensure consistency with University Guidelines for Full-Time Non-Tenure Track/Contract Faculty Appointments. As part of the process of now finalizing the policy, I now invite the T-FSC and the C-FSC to provide comments from a University-wide perspective.”

The following document consists of recommendations made by the C- FSC Personnel Policies & Contract Issues Committee in an effort to improve the *NYU School of Law Policy on Continuing Contract Faculty Appointments* document and to ensure its compliance with the *University Guidelines For Full-Time Continuing Contract Faculty Appointments*.

**Major Substantive Recommendations**

**Policy Section: Preamble (page 1)**

**1. Comment**

The policy should follow the letter and the spirit contained in the New York University *Guidelines for Full-Time Continuing Contract Faculty*, issued June 12, 2014, revised December 15, 2015, page 1, Section II. Formulation of School Policies, paragraph 2, sentence 1, which state:

“In response to these guidelines and as appropriate thereafter, schools shall formulate or amend their policies in accordance with existing school governance processes and with the expectation that FTCCF shall participate in formulating and/or amending the school policy to the extent and manner in which school governance policies permit.”

**Recommendation**

Mechanisms for the following should be included and stated explicitly: timely distribution to the faculty of any Policy amendments; faculty discussion of those revisions; and the ability for

faculty to present new amendments, make recommendations to, and vote on the Policy in a regularly scheduled faculty meeting which follows procedures outlined in the school's governance structure.

## **Policy Section: I. Definition of Continuing Contract Faculty (page 1)**

### 2. Comment

Because CCF are exclusively non-tenured, add language describing the differences between tenured faculty expectations and non-tenured faculty expectations. This is important because in some schools, CCF primarily have teaching responsibilities, while in other schools CCF are expected to maintain an active scholarly, research, creative and/or professional life. Because the Law School requires active scholarship and professional development, the Definition of CCF should outline the ways in which the CCF lines differ from tenure lines.

### Recommendation

Include the following language in Paragraph 1.

“Continuing Contract Faculty lines are typically multiyear and differ from tenure lines at the School in the following ways: *[list those differences in responsibility]*.”

### 3. Comment

The final sentence (“The fact that an individual holds a non-tenure position listed in Bylaw 89 as cited in the Faculty Handbook does not conclusively establish that the person is a CCF”) creates ambiguity around the definition.

### Recommendation

Suggested revision: “Though an individual may hold a non-tenure position listed in Bylaw 89 as cited in the Faculty Handbook, s/he will only be considered CCF if his/her appointment meets the criteria outlined in the previous paragraph.”

## **Policy Section: II. Responsibilities of CCF (page 1-2), Bullet Points 4 and 5 [“Actively pursue scholarly work...” and “Maintain their stature...”]**

### 4. Comment

Given that faculty responsibilities include active pursuit of scholarly work and professional development in the form of conference attendance, publication (etc.), and that these responsibilities may have an impact on reappointment or promotion, professional development funds, research leave, or sabbatical should be provided to further support these pursuits.

### Recommendation

A description of eligibility for professional development funds, research leave, and/or sabbatical, and the process governing this eligibility, should be added to the Policy, possibly in the final paragraph of this section.

### **Policy Section: Responsibilities of CCF (page 1-2), Final Paragraph**

#### 5. Comment

Regarding the final paragraph, “This list is illustrative and not exhaustive. CCF at the Law School may be called upon to provide a wide range of services to the Law School...”: Faculty should have a reasonable understanding of the extent and substance of their expected service.

### Recommendation

We recommend adding the following language (in italics):

“This list is illustrative and not exhaustive. CCF at the Law School may be called upon to provide a wide range of services to the Law School, its students, the legal community, and the University at large. *The expectations for each faculty member will be specified in his or her contract.*”

### **Policy Section: III. Appointment and Reappointment of CCF (pages 2-4), a. Titles**

#### 6. Comment

Regarding contract terms (“On a going-forward basis, a two- three- or five-year term will be standard for faculty in both clinical and practice titles...”), we recommend reducing reliance on two-year contracts to prevent the establishment of a permanent group of continuing contract faculty on shorter-term appointments.

### Recommendation

We recommend the policy establish a time frame for limiting reappointment for two-year appointments, allowing those faculty who successfully complete a formal review on two-year appointments to transition to three-year appointments. For example: “Faculty members on continuous two-year appointments who successfully complete a second formal review shall move to at least a three-year appointment.” If the Law School has a formal policy for promoting from two-year to three- or five-year appointments, the promotion criteria and procedures (for all ranks) should be outlined in a section related to promotion.

### 7. Comment

Regarding the final sentence of paragraph 1 (“...these terms of appointment typically correspond to rank”), the Policy should outline those ranks and titles which correspond with particular appointment terms.

### Recommendation

Provide a table which outlines the relationship between rank/title and appointment term.

## **Policy Section: Appointment and Reappointment of CCF (pages 2-4), c. Criteria for Reappointment**

### 8. Comment

Regarding the final sentence of the paragraph (“Even in those cases in which a candidate satisfies the appropriate standards of achievement, the decision to reappoint or promote may be impacted by curricular and structural changes and improvements in academic programs”), the policy should indicate that curricular or structural changes do not automatically warrant a denial of reappointment. Instead, the denial should have a rational basis, and it should include a process for determining whether the professor can or cannot teach under the new curriculum or structure.

### Recommendation

Add the following language (paraphrased from the *Tisch Arts Professor Policy*, 2013, the *Tisch Teach Policy*, 2014, and the *Gallatin Contract Faculty Policy*, 2015), “In such an event, the review would focus on whether the faculty member would be able to teach in the revised curriculum and/or new academic structure and, if so, in what capacity.”

## **Policy Section: III. Appointment and Reappointment of CCF (pages 2-4), d. Procedures for Appointment & Reappointment, Paragraph 1**

### 9. Comment

The selection process for and the composition of the Contract Faculty Personnel Committee (CFPC) are unclear.

### Recommendation

Specify the selection process and composition. We recommend that the majority of the committee should be made up of elected, not appointed, members; the majority of the committee should be made up of continuing contract faculty members, where possible.

### 10. Comment

CFPC processes regarding organization, voting, and reporting are not specified.

## Recommendation

We recommend specifying the CFPC's processes for organization, voting, and reporting, as outlined below:

### *Organization and Process*

The Committee should choose its own chair, who then coordinates the creation of the committee's report and recommendation for reappointment, which is then submitted to the Law School voting faculty. The duties of the chair should be included in this paragraph, as well as the process of evaluating the review material. The process of the creation of the committee's report should be explicitly stated with language similar to the following (adapted from the FAS Website, "Recruitment of New Faculty, Section 1.7, Clinical Assistant Professor, Clinical Associate Professor, Clinical Professors, Overview," <http://as.nyu.edu/object/aboutas.pp.assocdean.recruitment.html>):

"The committee will prepare a written review for the Law School voting faculty evaluating and summarizing the evidence of accomplishment, noting areas that require improvement, and making a recommendation regarding reappointment and contract length (when applicable)."

### *Voting*

Specify that a majority vote of the CFPC shall be required for a successful review for a recommendation for reappointment, and that all votes shall be by secret ballot. In the case of a split opinion, the minority opinion should also be included in the report as an appendix.

### *Reporting*

Add language detailing the process governing the creation of the review committee's report, similar to that found on the FAS website, "Procedures for Reappointment and/or Promotion" for clinical faculty (<http://as.nyu.edu/object/aboutas.pp.assocdean.recruitment.html>) adapted as follows:

"The review may be written by one or more members of the CFPC, but all members of the committee should read the review before it is submitted to the Law School voting faculty. The review should represent a collective judgment of the committee or, in the case of a divided opinion, a majority of the committee. If there is a division of opinion, the minority opinion should be appended to the majority review."

## 11. Comment

This section does not make clear the Dean's role in relation to the CFPC/CPC and the full faculty vote. For example, do the CFPC/CPC make a recommendation to the Dean prior to the full

faculty vote? Can the Dean decide in the negative before the full faculty vote? Or can the Dean make an appointment or reappointment decision counter to the full faculty vote?

#### Recommendation

Clarify the Dean's role, if any, in the appointment and reappointment process. Include reporting guidelines for the Dean if his or her decisions figure into final reappointment decision.

### **Policy Section: III. Appointment and Reappointment of CCF (pages 2-4), d. Procedures for Appointment & Reappointment, Paragraphs 2 and 3**

#### 12. Comment

This section does not specify review start notification, contract clock stoppage grounds, and review decision notification deadline.

#### Recommendation

Add language to satisfy each area:

##### *Review start notification*

Add language similar to:

“During the first week of the academic year in the penultimate year of an appointment, the faculty member receives notification that she/he is up for review.”

##### *Contract clock stoppage*

Specify the grounds for and process of stopping the contract clock by adding language satisfying the following from the New York University *Guidelines for Full-Time Continuing Contract Faculty*, issued June 12, 2014, revised December 15, page 6:

“Each school process for review of full-time multi-year contracts of three years or more, including promotion reviews, must include: ... the grounds for stopping the contract clock for reasonable cause, e.g., medical, personal, as primary caregiver for child, spouse, parent, same-sex domestic partner, or by contractual stipulation or negotiation;”

##### *Review decision notification*

Include language specifying the review notification deadline, in accordance with the New York University *Guidelines for Full-Time Continuing Contract Faculty*, issued June 12, 2014, revised December 15, pages 5-6:

For multi-year contracts of three years or more:

“Review for reappointment/non-reappointment is conducted in the penultimate year of the initial term of appointment and shall be completed by the end of that penultimate

year...In the event of a decision to not reappoint, the contract faculty member shall be notified of the intention to not reappoint no later than August 31st of the penultimate year, and shall continue to be under contract for the final year.”

For continuing service on one-year or two-year full-time contracts:

“...all schools shall provide adequate notice for individuals to pursue alternative employment in the event of a negative decision. Normally, a Continuing Contract Faculty must be notified of the intention not to be reappointed no later than March 1st of the final year of the contract, if the appointment is to be terminated on August 31st. Normally, a Continuing Contract Faculty whose period of appointment is due to terminate on a date other than August 31st must be notified of the intention not to be reappointed no later than 180 days prior to the termination date.”

**Policy Section: III. Appointment and Reappointment of CCF (pages 2-4), d. Procedures for Appointment & Reappointment, Paragraph 2**

13. Comment

Regarding the final sentence of paragraph 2: “At the request of a single member of the Committee, the Committee may also undertake a mid-contract review in the second year of the contract term,” the policy does not make clear on what grounds such a review would take place, and the possible results of such a review. In addition, this sentence does not make clear the Committee’s process for responding to such a request, including the ability of the Committee to reject the request.

Recommendation

Add language which clarifies the grounds for and possible results of a mid-contract review, ensuring that this mid-contract review does not contravene the timelines and provisions for reappointment established in this Policy. In addition, add language which clarifies the Committee’s role in relation to such a request. Suggested language: “A majority of the committee may vote to reject a request for such a mid-contract review.”

**Policy Section: III. Appointment and Reappointment of CCF (pages 2-4), d. Procedures for Appointment & Reappointment, Paragraph 3**

14. Comment

The selection process for and the composition of the Clinical Personnel Committee (CPC) are unclear.

Recommendation

Specify the selection process and composition. We recommend the majority of the committee should be made up of elected, not appointed, members; the majority of the committee should be made up of continuing contract faculty members, where possible.

15. Comment

CPC processes regarding organization, voting, and reporting are not specified.

Recommendation

See Recommendation # 10 above for suggested language.

16. Comment

As stated earlier, we recommend reducing reliance on two-year contracts to prevent the establishment of a permanent group of continuing contract faculty on shorter-term appointments.

### Recommendation

We recommend the policy establish a time frame for limiting reappointment for two-year appointments, allowing those faculty who successfully complete a formal review on a two-year appointment to transition to three-year appointments. For example: “Faculty members on continuous two-year appointments who successfully complete a second formal review shall move to at least a three-year appointment.” If the Law School has a formal policy for promoting from two-year to three- or five-year appointments, the promotion criteria and procedures (for all ranks) should be outlined in a section related to promotion.

### **Policy Section: III. Appointment and Reappointment of CCF (pages 2-4), d. Procedures for Appointment & Reappointment, Contracts Concerning Appointment and Reappointment, paragraph 2**

#### 17. Comment

Regarding this sentence (“Any one-year appointment must be important to meeting programmatic and/or academic objectives and must be so justified at the time the contract is offered”), the recipient of the justification is unclear, and the justification should be offered at the recruitment stage.

### Recommendation

We recommend the following revision (in italics): “Any one-year appointment must be important to meeting programmatic and/or academic objectives and must be so justified *to the relevant appointment committee (CFPC or CPC) during the recruitment phase.*”

### **Policy Section: IV. Grievance Rights and Procedures Related to Reappointment and Promotion of CCF (pages 4-5), Title**

#### 18. Comment

This section’s title includes “Promotion” in its scope, but the Policy does not outline promotion criteria and procedures.

### Recommendation

Remove reference to “Promotion” in this Policy. In the future, the school should amend this Policy, with full faculty review and vote, to include promotion procedures and criteria, and grievance rights and procedures related to promotion.

### **Policy Section: IV. Grievance Rights and Procedures Related to Reappointment and Promotion of CCF (pages 4-5), Paragraph 2**

#### 19. Comment

If a decision was in the negative at any stage of the reappointment process, the faculty member should have access to reports related to the CPFC or CPC decision (including minority decisions); the faculty vote decision; and/or the Dean's decision.

#### Recommendation

We recommend adding the following language: "In all cases of an appeal to a negative decision related to reappointment, the faculty member will have access to the relevant full reports, including recommendations and comments by committee members, or the Dean."

### **Policy Section: IV. Grievance Rights and Procedures Related to Reappointment and Promotion of CCF (pages 4-5), Paragraph 3**

#### 20. Comment

The composition and selection of the Executive Committee is not made clear in this Policy.

#### Recommendation

We recommend that the grievance/appeal process closely follows the principles elaborated in the New York University *Guidelines for Full-Time Continuing Contract Faculty*, issued June 12, 2014, revised December 15, 2015, page 7, Section V. Grievances Related to Reappointment and Promotion of Continuing Contract Faculty, section d., paragraph 2, which state:

"Unless otherwise authorized in the school's policy and approved by the Provost, each school shall either establish a new standing faculty committee for Continuing Contract Faculty grievances, which will include senior Continuing Contract Faculty and T/TTF elected by the voting members of the faculty; or shall expand its existing standing grievance committee for T/TTF to include (elected) senior Continuing Contract Faculty who shall participate in hearing and evaluating only those grievances that are filed by Continuing Contract Faculty."

If the Executive Committee does not meet these criteria, we recommend establishing a new standing faculty committee for CCF grievances following the above.

#### **Minor Substantive Recommendations**

### **Policy Section: II. Responsibilities of CCF, Paragraph 1 (pages 1-2)**

#### 21. Comment

The list ("They teach, take on administrative roles...") is not inclusive of all the categories which follow in the bullet points.

### Recommendation

Expand the list. Suggested additional language:

“They teach, take on administrative roles, run academic programs or centers, *pursue scholarly work, and engage in continued professional development.*”

### **Policy Section: Appointment and Reappointment of CCF (pages 2-4), c. Criteria for Reappointment**

#### 22. Comment

Additional assessment criteria for teaching may be valuable to reappointment review.

### Recommendation

Consider expanding assessment criteria to include other possible measures such as course materials (e.g. syllabi, lecture notes, assignments), course development and innovation, instructor development, samples of student work, and examples of learning beyond the classroom.

### **Editorial Recommendations**

### **Policy Section: III. Appointment and Reappointment of CCF (pages 2-4), a. Titles**

#### 23. Recommendation

Line 10: “faculty members employs” becomes “faculty member employs”