

University of Washington  
Faculty Council on Faculty Affairs  
Tuesday, May 31, 2011, 9:00 a.m.  
26 Gerberding Hall

**Meeting agenda:**

1. Review of Minutes
2. Research Misconduct Issues
3. Clarity in Tenure Clock for Part-Time Assistant Professors
4. Decanal Disciplinary Authority
5. Adjournment

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**Call to Order**

Chair Rich Christie called the meeting to order at 9:09 a.m.

**1. Review of Minutes**

The minutes of the May 3, 2011 meeting were approved with changes.

**2. Clarity in Tenure Clock for Part-Time Assistant Professors**

The council looked into the matter of whether recent Class A legislation that included a change to Section 25-32.A of the Faculty Code made Section 25-32.F, dealing with the accumulation of eligibility for tenure for part-time assistant professors, difficult to understand.

25-32.A. Unless he or she is disqualified under any other provision of this section, a full-time member of the faculty has tenure if:

1. he or she is a professor or associate professor; or
2. he or she has held full-time rank as ~~instructor or~~ assistant professor in the University for a ~~combined accumulation of~~ seven or more years and has not received the prescribed notice terminating his or her appointment.

25-32.F. A part-time assistant professor appointed pursuant to Section 24-45 accumulates eligibility for tenure under Subsection A of this section.

Christie said that the “combined accumulation” phrase removed from 25-32.A referred to instructors and assistant professors, so confusion existed prior to the change and is unchanged by the change.

It was noted that there was confusion between full time and part time. Section 24-41.F states in its last sentence, “A faculty member who is appointed to a position with less than 50% of full-time status shall not accumulate eligibility toward tenure.” Christie said that this section, taken with the two previously referred to sections, has some potential for confusion. However, the interpretation doesn’t have much doubt, as Section 24-45 lists out the various rates of

accumulation. Phillips said that it wasn't contradictory, as one section lays out the tenure eligibility and another lays out the schedule.

The council concurred that no change was necessary.

### **3. Research Misconduct Issues**

Christie said that a combination of factors, including a realization that the Faculty Council on Research (FCR) would likely be interested in the topic of research misconduct, led to an agreement with the FCR chair to form a task force on research misconduct issues. This task force will convene in September, feature representation from both FCFA and FCR, and be commissioned to bring draft code changes and recommendations to changes in Executive Orders to the Senate Executive Committee. FCFA will provide policy guidance to the task force and be informed of its work.

The council made recommendations for the task force:

- Follow a timeline, with a report due by the end of Winter quarter or faster.
- Pay attention to intelligible precision, settling on a common set of definitions. A faculty member reading needs to come away with some sense of its meaning, and the work must be sensitive to the institutional culture. There probably needs to be training as to what constitutes research misconduct that goes along with the recommendations.
- Clarify the rights of the respondent – what are they and how should they be informed.
- Clarify/strengthen the assessment of credibility of allegations of research misconduct at the very beginning of the process.
- Look at whether the policies about faculty are consistent with student research, particularly for those who move into post-doc work. Make sure the Faculty Code is consistent with the Student Code of Conduct.

Christie said that the task force would also be specifically charged with working on the seven open issues as detailed in **Appendix A**.

### **4. Decanal Disciplinary Authority**

Christie introduced the topic of decanal disciplinary authority. He said that four questions that came to the Advisory Committee on Code and Regulations were the result of questions asked in a Senate meeting. Three were motivated by a scientific misconduct case, and the fourth, related to the authority of Deans to impose minor discipline, was not. There is a claim made by a legal representative in a faculty lawsuit, which has been settled, that the university violates the Faculty Code by not using adjudication for any decanal disciplinary process. This person has provided a large set of documents, apparently obtained by discovery, to numerous persons in faculty governance, including the FCFA Chair. These documents relate to the UW legislative process that put into place the current language in the faculty code (25.71D) related to adjudication. Christie said there were two trains of thought that appeared in the documents: one that adjudication only needed to be used for major discipline, which is the view that prevailed, and one that adjudication needed to be used for all discipline.

Christie said that of the analysis of this fourth question issued by the Advisory Committee on Faculty Code and Regulations was a careful compromise that the dean can impose punishment if

the faculty member consented. This could mean that the faculty member agreed the punishment was appropriate, or simply that the faculty member decided not to appeal. The difference is the burden of proof in the adjudication process. The issue has come to FCFA from the SEC with the other three questions, but is separable. Christie said it is somewhat irrelevant what the Code presently says in the sense that the question before the council is whether deans should be able to do this or not.

The consensus on the council was to not make any recommendations or changes to policy at the current time.

## **5. Adjournment**

The meeting was adjourned at 10:13 a.m.

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*Notes by Craig Bosman, Faculty Council Support Analyst. <cbosman@uw.edu>*

### **Present:**

Faculty: Christie (Chair), Ricker, Phillips, Vaughn, Bryant-Bertail  
President's Designee: Cameron

### **Absent:**

Faculty: Huber, O'Brien, Wilcock  
Ex Officio: Fauchald, Anderson, Drieling

## Research Misconduct Issues

Rich Christie  
r3 May 13, 2011

### Summary of Open Issues

Based on conversation with JW Harrington, Advisory Committee on Faculty Code and Regulations review, review of 42 CFR Parts 50 and 93, Federal Regulations for HHS treatment of scientific misconduct, and FCFA discussion.

1. Informal Process: Should an allegation of scientific misconduct skip the informal resolution process in 25-71B and be reported directly to OSI?
2. Allegation Credibility: Should there be a step in EO 61 to explicitly determine credibility of allegations of research misconduct prior to start of inquiry, and if so, who should make this determination.
3. Faculty Rights: Should there be a requirement for administrators to inform faculty and other persons of their rights, especially of appeal to adjudication? What rights do faculty have, when an allegation of research misconduct has been made?
4. Appointment of Investigation Committee: Should the investigation committee be appointed by the Dean, as at present, or by the faculty in some way?
5. Scope of Investigation: Should the inquiry and investigation be limited to the issues raised in the original allegation, or should they look at all aspects of a respondent's research? If the inquiry, for example, finds evidence of other research misconduct, what is the appropriate procedure?
6. Appeal of Misconduct Finding: Should faculty be able to appeal a finding of scientific misconduct? If so, through what process?
7. Appeals Process for Presidential Decisions: Is the process for appealing a Presidential decision to Board of Regents adequate?

### Summary of Resolved Issues

1. Name: FCFA agreed to use the term Research Misconduct rather than Scientific Misconduct or Scholarly Misconduct, as the latter terms could be construed to include classroom misconduct. Research is the activity that drives these issues.
2. Scope: FCFA agreed that the rigorous process of EO 61 should be applied to all research misconduct proceedings, rather than limited to those required by Federal Regulations, or having different procedures for funded and non-funded research. Although the EO 61 process mandated by Federal Regulations is burdensome, FCFA felt that the need to protect the University's reputation for research integrity was controlling, and that having multiple processes would create excessive potential for confusion and error.

3. Dean's Authority: On the issue of whether a Dean should be able to assign minor disciplinary actions (punishment) without referring the case to the Adjudication process, FCFA determined that this issue arises from a sexual harassment case and has no direct bearing on research misconduct. It will therefore be dealt with separately.

### **Expanded Discussion of Open Issues**

#### **1. Informal Process: Should an allegation of research misconduct skip the informal resolution process in 25-71B and be reported directly to OSI?**

The present dispute resolution process starts in the Faculty Code §25-71B, where the Department Chair is charged with offering an informal meeting with the accused and accusers to attempt an informal resolution of charges.

25-71C permits the dean, department chair or faculty member (presumably, the respondent) to initiate the conciliatory process at any time. (This effectively requires mutual consent of all parties.)

25-71D says that the dean, if the case is serious, and involves scientific misconduct, must refer to EO 61.

EO 61-1 says, among other things

“The OSI shall be responsible for compliance with reporting requirements established by the various federal and other funding agencies in matters of scientific or scholarly misconduct.”

Does this mean that all scientific misconduct allegations have to be reported to OSI, whether substantiated or not? What if the Dean decides the case is not serious? Then the 25-71 process does not reach the point where it is referred to OSI.

Reporting:

EO 61-4 says

“Allegations of scientific or scholarly misconduct are to be made in writing and submitted to the Office of Scholarly Integrity (OSI). The OSI shall inform the dean of the school or college of the allegation.”

According to 25-71, EO61, and thus OSI, is not reached until the Dean determines that the allegations are serious. However, EO61 contemplates a direct report of misconduct to OSI.

Investigation:

EO61-4 continues “Upon receipt of a written allegation, the OSI, in consultation with the dean of the school or college, shall initiate an inquiry into the allegation. The OSI shall first discuss the matter with the party raising the issue. Thereafter, the OSI shall inform the respondent that an

allegation of misconduct has been made, provide that person a copy of the written allegation, and explain in detail the process for addressing allegations of scientific or scholarly misconduct.”

This would seem to cut out the chair’s informal settlement process and the Dean’s assessment of seriousness in 25-71, if the person reporting the incident happens to decide to report to OSI.

Question: What should actually happen? Should all reports of misconduct be directed to OSI? Should this be clarified in 25-71?

It appears that OSI’s pre-investigation investigation, detailed in further parts of section 4, supplants the Dean’s decision as to seriousness in 25-71. In particular, OSI is given the authority to determine whether an investigation is needed, while the Dean is just consulted.

OSI’s level of notification of the Feds is when an investigation occurs. From this we conclude that no notification would be required if allegations of misconduct were settled by the informal process before reaching OSI. Oddly, I think this means that if the Dean decides there is misconduct that warrants a minor penalty, and the initial report was not made to OSI, then there would be no report to the Feds. Which seems wrong.

Confidentiality:

EO 61 and the Federal Regulations promise confidentiality to persons making accusations of scientific misconduct. 25-71 is silent on the topic. There appears to be a real danger that a well-intentioned chair could violate the EO 61 promises while attempting an informal resolution of the issue under 25-71. In particular, by inviting the accuser to meet with the accused, without informing them that the meeting is optional and they have a right to confidentiality, or by revealing the name of the complainant to the accused while discussing the issues informally.

Custody of Research Materials

EO 61 authorizes OSI to take custody of research materials necessary to determine the validity of an allegation of research misconduct immediately upon receipt of the allegation. The informal process of 25-71 would permit a guilty respondent to become aware of the allegation before OSI, and delete or alter the data.

Informal Settlement Better

In harassment cases informal meetings between the involved parties are more likely to result in a mutually acceptable settlement and reduce the time, cost, and emotional pain of a more formal process. This is an argument for keeping the informal process.

The counterargument (beyond those presented above) is that research misconduct is not an issue between two parties, it is an issue between the university and an individual. While there is a possibility that the informal process might serve to clear up cases where misunderstanding has occurred, this must be weighed against the possible costs.

My view: The seriousness of an allegation of scientific misconduct, together with the Federal expectations of confidentiality for the accuser and reporting requirements, and finally the risk

that research data will be deleted or altered before it can be sequestered, appear to militate strongly for a requirement in 25-71 that all allegations of research misconduct be referred immediately to OSI. However, it may be desirable to place some credibility assessment on the referral. See the credibility issue.

**2. Allegation Credibility: Should there be a step in EO 61 to explicitly determine credibility of allegations of research misconduct prior to start of an inquiry, and if so, who should make this determination.**

The Federal Regulation section 93.201 defines an allegation as ANY report of misconduct to any institutional official, including oral reports. 93.307 requires an inquiry for ANY allegation that is credible. (The inquiry is where people start taking hard disks away, etc.)

EO 61 requires OSI to initiate an inquiry for ANY allegation. The language in EO 61 implies but does not require that the inquiry first find that the allegation is credible, and permits measures such as taking custody of research materials independent of any determination of credibility.

FCFA discussion so far favors an explicit determination of credibility prior to starting an inquiry. The point was made that the determination of credibility cannot warn the respondent of the allegation until research materials have been taken into custody. However, no agreement has yet been reached on how this determination can be made. An initial suggestion that the Dean make the determination was met with concern that the Dean was not unbiased, since the Dean makes the final decision (modulo appeal) about misconduct.

My view: First, I think that the university officials referring allegations of misconduct to OSI should be directed to refer all *credible* allegations. I might make this a bit looser by saying “all allegations that may be credible”. This does not relieve EO 61 of the responsibility of determining credibility because allegations can be directly reported to OSI by the whistleblower, but it’s a good first filter for obviously incredible allegations.

Second, analogies appear to exist with the criminal justice system. The determination of credibility sets off an inquiry which in turn can take custody of research data. The first step is like a DA deciding to investigate a report of a crime. The Dean is an appropriate person to make such decisions, balancing the disruption to research in the college with the need for maintaining a reputation for research integrity. The latter is like a search warrant. Society expects search warrants to be approved by a judge. The judicial role in faculty governance is played by the Adjudication Panel. Perhaps we could designate persons on the panel to approve taking custody of research data. Only one such person would need to be consulted.

**3. Faculty Rights: Should there be a requirement for administrators to inform faculty and other persons of their rights, especially of appeal to adjudication? What other rights do faculty have, when accused of misconduct?**

The Faculty Code, EO 61 and the Federal Regulations are silent concerning informing respondent faculty of their rights, although EO 61 does require that the process be explained in detail. We live in a society that expects authority to advise accused persons of their rights. When I was investigating student academic misconduct, I had to advise students of their rights prior to asking question. I think it’s obvious that respondent faculty should be advised of their rights.

What rights do respondent faculty have? Do they have a right to remain silent, or a duty as employees to cooperate with the investigation? They do have a right to representation, as discussed in the code, but they have to pay for any representation themselves. They do have a right to respond to the allegation. Do they have a right to face their accusers? To be informed of charges? To see the entire case made against them? To appeal decisions of misconduct, prior to any determination of employment action?

**4. Appointment of Investigation Committee: Should the investigation committee be appointed by the Dean, as at present, or by the faculty in some way?**

In the concept of shared governance, the faculty produces an independent opinion in parallel with the administration, with the administration having the final say. EO 61 has the Dean appointing an ad hoc advisory committee. This is insufficient separation of powers, since the Dean makes a final determination and can overrule the advisory committee.

If the faculty should appoint an advisory committee, how can this be done? The advisory committee has significant requirements in terms of technical knowledge.

**5. Scope of Investigation: Should the inquiry and investigation be limited to the issues raised in the original allegation, or should they look at all aspects of a respondent's research? If the inquiry, for example, finds evidence of other research misconduct, what is the appropriate procedure?**

This issue has not yet been discussed in FCFA. No limitations on the scope of inquiry or investigation appear in EO 61.

My view is that the inquiry and investigation should be limited to the allegations made. The EO 61 process is not a hunting license. In the event that the inquiry or investigation comes across evidence of research misconduct beyond that in the original allegation, the proper procedure is to file a new allegation with OSI, launching a separate inquiry and investigation.

**6. Appeal of Misconduct Finding: Should faculty be able to appeal a finding of research misconduct?**

There is no provision in EO 61 for appealing the Dean's decision as to whether research misconduct has occurred. The President's letter in the Aprikyan case stated the administration view that no such right exists in the Faculty Code.

Indeed, there may not presently be an unconditional right to appeal in the Faculty Code. An administrator must be accused of violating procedure or doing an injustice that affects the "terms, conditions, or course of employment" of the faculty member. The administration interprets this phrase much more narrowly than the faculty. So, hypothetically, an administrator could decide in some outrageously unfair way that a faculty member is guilty of research misconduct, and the faculty member could not appeal because the decision does not (yet) affect the terms, conditions or course of employment. Section 25-62 provides a right of appeal for any impairment of "academic freedom or employment rights", but this does not obviously cover research misconduct findings.



The Federal Regulations allow the University to decide whether to have an appeal process, but have an explicit appeal process when Health and Human Services investigates research misconduct. Furthermore, the decision is made by an Administrative Law Judge who is presumably not a technical expert, since provision is made for expert advice. The adjudication process would appear to be well suited as a venue for appeal of research misconduct findings.

**7. Appeals Process for Presidential Decisions: Is the process for appealing a Presidential decision to Board of Regents adequate?**

Initial position – This is already in the code. Specifically,

28-32.B (extract):

**B.** A faculty member may initiate an adjudication under this chapter ... for resolution of a dispute which falls within one or more of the following categories:

...

**3.** Cases in which the petitioning faculty member alleges an injustice resulting from decisions, actions, or inactions of any persons acting on behalf of the University in an administrative capacity and affecting the terms, conditions, or course of employment of the faculty member by the University. ...

and

28-61.C:

**C.** Any order of a hearing panel in a case where the President is a party in the case shall become a final decision of the University unless either party files an appeal to the Board of Regents ...