

**MERCER UNIVERSITY**

**WALTER F. GEORGE SCHOOL OF LAW**

**OPERATING GUIDELINES  
AND PROCEDURES**



**Revised 2007**

**1021 Georgia Avenue  
Macon, GA 31207**

## Walter F. George School of Law

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## **WALTER F. GEORGE SCHOOL OF LAW STATEMENT OF PURPOSE**

On August 24, 1981, the faculty of the School of Law adopted the following statement of Purpose that was approved by the University Board of Trustees on December 3, 1982:

Samuel Johnson defined the law as "the last result of human wisdom acting upon human experience for the benefit of the public." The purpose of the Walter F. George School of Law of Mercer University is to prepare its students to think, organize, and communicate in a manner that will allow them to bring that definition to life in their professional activities after graduation. The Law School does not expect that its students will emerge from three years of legal education with full competence in and mastery of the law. Instead, it tries to ensure that students who complete those three years will have the necessary intellectual and ethical foundations to grow into mature members of the legal profession.

The Law School seeks to teach its students to analyze legal problems through a logical and orderly thought process. The appropriate lawyering techniques are then applied to those problems. The student who takes full advantage of the legal education offered by the Mercer Law School should achieve much more than an opportunity and the basic tools for service to others. The Law School accepts the responsibility for producing graduates who are good thinkers, precise legal craftsmen, and responsible members of society.

## **UNIVERSITY NON-DISCRIMINATION POLICY**

Mercer University is committed to a policy of equal opportunity in employment without regard to race, color, national origin, disability, veteran status, sex, sexual orientation, age or religion (except in limited circumstances where religious preference is both permitted by law and deemed appropriate as a matter of University policy). This policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, termination, transfer, leaves of absence, compensation and training programs.

In addition, as a federal contractor, the University has adopted an Affirmative Action Plan in accordance with applicable legal requirements. This plan is reviewed and updated annually. Employees and applicants may access, upon request, the full affirmative action plan at locations and times posted in the Human Resources office.

Mercer University will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship. Mercer University prohibits any form of unlawful employee harassment based on race, color, national origin, disability, veteran status, sex, sexual orientation, age or religion.

Any employees with questions or concerns about any type of discrimination in the workplace are encouraged to bring these issues to the attention of their immediate supervisor, the Equal Opportunity Officer, or with the supervisor of the person behaving objectionably. Employees can raise concerns and make reports without fear of reprisal, harassment, intimidation, threats,

coercion or discrimination.

Mercer University maintains an audit and reporting system to determine overall compliance with its equal employment opportunity mandates and to respond to any specific complaints applicants or employees file with the Mercer University's equal employment opportunity office. The Associate Vice President for Human Resources [1400 Coleman Avenue, phone (478) 301-2786] is the Equal Opportunity/Affirmative Action Officer and is responsible for monitoring and coordinating compliance with this policy and applicable laws and regulations, including Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Executive Order 11246, and other federal and state laws.

#### **STATEMENT ON NON-DISCRIMINATION DISTRIBUTED TO EMPLOYERS**

Mercer Law School has long refrained from discriminating on the basis of race, color, religion, national origin, sex, age, handicap or disability, or sexual orientation. The policy of the Association of American Law Schools, required of all AALS-accredited law schools, reinforces our long-standing practice. A new AALS requirement, that we make our placement services available only to employers who assure us that they are willing to abide by this non-discrimination policy, was adopted by the Mercer Law Faculty on November 10, 1993. Accordingly, Mercer Law School's placement services are expressly limited to employers willing to have their request for placement services, including posting notices, considered as an assurance of the employer's agreement to consider Mercer students without discrimination on the stated bases. In addition, the Law School requests that employers using our placement services also not discriminate on the basis of any other factor unrelated to an individual's capacity to perform lawyering tasks.

## Walter F. George School of Law

Revised August 1, 1984

### ORGANIZATION FOR FACULTY PARTICIPATION IN GOVERNANCE OF THE LAW SCHOOL

#### **1. GENERAL PRINCIPLES**

A. This Document states the organization through which the faculty of the Walter F. George School of Law discharges its primary responsibilities. It establishes standing committees of the faculty, defines the areas of their responsibility, and provides for appointments of ad hoc committees to deal with unanticipated matters not falling clearly within the jurisdiction of one of the standing committees. The document is intended to operate only within the sphere of authority of the faculty of the Walter F. George School of Law as prescribed by American Bar Association Approval of Law School Standards and the Bylaws of the Association of American Law Schools and is not to be construed as an assumption by the faculty of any authority given by the Charter and By-Laws of The Corporation of Mercer University to its Board of Trustees, its President and administrative officers.

#### B. Selection of Faculty Members to Serve on Committees

With the exception of the Faculty Policy Committee, which will be elected by the faculty, the Dean shall appoint faculty members to serve on committees as hereafter established and shall designate one member of each as chairperson thereof. The following guidelines for committee appointment are recommended:

1. No faculty member should be chairperson of more than one appointed committee.
2. The chairpersons of the Admissions and Financial Aid Committee, the Appointments, Promotion and Tenure Committee, and the Curriculum Committee should each serve on no other appointed committee.
3. No faculty member should serve on more than three appointed committees. As a matter of general policy faculty members should not serve on more than two appointed committees except in unusual circumstances or where committees can be given the proper number of members in no other way.
4. Terms of appointments on appointed committees will be according to academic year.

5. The number of faculty members who will be members of each committee and the term of appointment of each member and chairperson, as set forth in this document, are intended to be advisory only and may be varied as the needs of a particular situation require.

### C. Selection of Student Members

Selection of student members to faculty committees will be controlled in the first instances by the Student Bar Association. Should this system of selection prove unsatisfactory, it should be understood that the Dean and the faculty retain the power to change it.

### D. Power of Committees

It is a matter of fundamental principle that the power exercised by committees is power delegated by the Dean and faculty. Standing Committees are instruments of and responsible to the faculty. Except as specified hereafter, standing committees shall report to the faculty as a whole and their actions are in the nature of recommendations to the faculty as a whole for review and action.

## II. STANDING COMMITTEES

### A. Admissions and Financial Aid Committee

1. Composition:
  - a. No fewer than three faculty members who shall serve as voting members, and the Assistant Dean, who shall have no vote.
  - b. The admissions assistant, who shall be a non-voting member.
  - c. One student, who shall participate in policy discussions and vote on policy questions but who shall not participate in discussions or actions involving individual student files.
2. Areas of responsibility:
  - a. Establishment of admissions standards and policies.
  - b. Application of admissions standards and policies in making admissions decisions on individual applicants. Final faculty authority for making individual admissions decisions is delegated to the committee.
  - c. Establishment of standards for award of financial aid.
  - d. Application of financial aid standards in making individual awards of the financial aid. Final faculty authority for making financial aid decisions is delegated to the

committee.

- e. Establishment of faculty policy for student recruitment programs, including designation of schools for recruitment visits and other recruitment efforts. (The conduct of recruitment visits is not a responsibility of the Admission and Financial Aid committee).
- f. Recommending faculty action on petitions for readmission to the law school other than petitions from persons who are no longer students because of misconduct while a student.

3. Term of Appointment:

Faculty members appointed to this committee shall serve two year terms which shall be staggered so that no more than one new member will be appointed in any year.

4. Special Status of Chairperson

The faculty member designated chairperson of the committee shall serve in that capacity for a period of four years. At the beginning of the fourth year of a chairperson's service, a vice-chairperson shall be designated who shall become chairperson the following year. In no event shall a faculty member serve on this committee for a total of more than six consecutive years.

**B. Faculty Appointments Committee**

1. Composition:

No fewer than three faculty members, at least one of whom shall have more than five years service at the time of appointment, and at least one of whom shall have less than five years service at the time of appointment.

2. Areas of Responsibility:

- a. Search for and recommendation of individuals to be considered for initial appointment to the faculty.
- b. Scheduling meetings for the Dean and the appropriate faculty body to consider reappointment, promotion and tenure of all eligible faculty members, including assembly of supporting materials. This is an administrative, not an advisory, function.

3. Term of Appointment:

Appointment to this committee shall be for a term of three years staggered so that no more than

one new member is appointed each year.

### **C. Curriculum Committee**

1. Composition:
  - a. No fewer than three faculty members.
  - b. One student member who shall vote on policy issues only.
2. Areas of Responsibility:
  - a. Determining the course offerings which shall comprise the curriculum and making additions and deletions thereto as appropriate.
  - b. Planning the yearly sequence of course offerings and specifying prerequisites as may be necessary and credit hours to be allocated to courses.
  - c. Preparation and periodic review of the law school's program of instruction projected for three years into the future.
  - d. Fixing the academic requirements for graduation.
  - e. Review of weekly course schedules and final examination schedules prepared by the Dean's Office.
3. Term of Appointment:

Appointment to this committee shall be for three year terms, staggered so that no more than one new member will be appointed each year.

### **D. Student Affairs Committee**

1. Composition:

No fewer than three faculty members and two student members from different graduating classes.

2. Areas of Responsibility:
  - a. With respect to student organizations:
    - (1) Provide faculty assistance and guidance for student organizations when and as needed.

- (2) Give initial consideration to matters affecting these organizations and their relations either with the law school or outside activities.
  - (3) A member of this committee, to be designated by the Dean, shall be recommended to serve on the University Senate Student Life Committee.
- b. With respect to student publications:
- (1) Provide faculty assistance and guidance for all law school publications other than the Law Review when and as needed.
  - (2) Law Review advisors shall be appointed by the Dean, but matters affecting the Law Review and its relations to the law school and other matters requiring faculty consideration shall be referred to the Student Affairs Committee and the Law Review advisors shall be invited to sit as members of the committee for the limited purpose of considering such matters.
- c. Law Day:
- Provide faculty assistance and guidance for the Law Day Committee when and as needed.
- d. Awards:
- (1) Recommend to the faculty proposed recipients of law school awards.
  - (2) Notify all recipients of law school awards of their selection.
  - (3) Submit to the Dean's Office the names of those recipients who are to be recognized on Law Day and at the University Honors Day dinner.
  - (4) Propose long range plans for increasing the number and kinds of awards given when appropriate.
- e. Hatcher Lectures:
- (1) Decide whom to invite.
  - (2) Make all arrangements for the lectures, including finances, invitations and facilities.
- f. Readmissions:

Consider petitions for readmission by students who have been dropped from the law school because of misconduct and make recommendations to the faculty for approval or denial of such petitions.

3. Term of Appointment:

Members appointed to this committee shall serve for three years, staggered so that no more than one new member will be appointed each year.

**E. Library Committee**

1. Composition:

No fewer than three faculty members, exclusive of the Law Librarian; one student member.

2. Area of Responsibility:

Consultation with the librarian on the matters listed below and recommendation of policies and specific measures pertaining thereto to the faculty.

- a. Acquisitions.
- b. Library use (access, hours, etc.)
- c. Physical needs of the library.
- d. General policy as to staffing of the library.

3. Term of Appointment:

Members appointed to this committee shall serve for three years, staggered so that no more than one new member will be appointed each year.

**F. Faculty Policy Committee**

1. Composition:

Three faculty members to be elected by the entire faculty, none of whom shall have completed less than two years service on the Walter F. George law faculty at the time of election and at least one of whom shall have completed five years service.

2. Area of Responsibility:

- a. Make recommendations to the Dean on the following matters:

- (1) Appointment of all standing committees.
  - (2) Creation and appointment of ad hoc committees.
- b. In consultation with the Dean and faculty recommend policies and specific measures pertaining thereto in connection with the following matters:
- (1) Maintenance of the professional welfare of the faculty in the following are: teaching loads, salaries, academic freedom and promotion and tenure standards.
  - (2) Allocation of resources in the law school budget.
  - (3) Planning for and recommending long-term development of the law school.

### 3. Term of Office:

Members of this committee shall serve three-year terms, staggered so that no more than one new member will be elected each year. The committee shall be constituted immediately upon adoption of this governance document and terms of office shall end in April of subsequent years according to the schedule provided above.

## **G. Faculty Committee on Student Honor**

### 1. Composition:

Three faculty members. These members shall not simultaneously serve on the Student Affairs Committee. If any member of the Committee seeks recusal on any given matter, or is otherwise disqualified or unable to serve, the remaining members of the Committee shall, in consultation with the Dean, agree upon the appointment of another faculty member to fill the vacancy for that particular matter.

### 2. Areas of Responsibility:

Investigate and recommend action on allegations of student behavior which is unethical or dishonest in accordance with procedures adopted by the faculty.

### 3. Term of Appointment:

Appointments to this Committee shall be for three year overlapping terms.

## **III. AD HOC COMMITTEES**

A. It is expected that all normal business of the law school faculty will be conducted through its

standing committees and that, except in unusual or emergency situations, the faculty will not act on any matter that has not first been considered by a committee.

B. In the event that some item of business does not fall into the area of responsibility of one of the standing committees, the Dean may appoint an Ad Hoc Committee or Task Force to handle such unique matters. Upon the completion of its duties, the Ad Hoc Committee or Task Force will make a final report to the faculty and the Dean and cease to function.

#### **IV. FACULTY MINUTES**

A. Minutes of the faculty meetings shall be maintained by the Faculty Secretary who shall be elected by the faculty from among its members. The term of office of the faculty secretary shall be two years, subject to reelection.

B. Faculty minutes should be distributed within 48 hours of a meeting and should faithfully reflect the policy decisions of the faculty.

## FACULTY HIRING, PROMOTION AND TENURE POLICIES

November 15, 1982

(Revised March 8, 1983)

(Amended March 25, 1985)

(Amended December 17, 1992)

(Amended November 8, 1995)

### **I. Hiring Categories - General**

The following categories cover teaching appointments made at the law school:

(1) Category I. Faculty appointments at the level of assistant professor and above leading to tenure may be made for an initial period of two years.

(2) Category II. Faculty appointments not leading to tenure, such as instructors, visiting professorships, faculty members whose tenure has ended, or adjunct professors, will not be subject to the tenure and promotion rules hereafter described. Faculty recommendations for appointment of Category II personnel shall be by a vote of at least two thirds of the faculty present and voting. Faculty recommendation for reappointment of Category II personnel shall be by a two-thirds vote of the faculty present and voting upon a recommendation of a committee appointed and conducted as provided in Section IV of this document. Committees appointed for Category II personnel shall report upon such criteria listed in Section III as may be appropriate to the nature of the particular Category II appointment under consideration.

(3) Category III. Non-faculty appointments to teaching staff positions not leading to promotion or tenure, such as staff attorneys in a clinical program or librarians with teaching responsibilities, will be made on a yearly basis (or less), and will not be subject to the promotion and tenure rules hereafter described. Category III personnel will be hired in accordance with University employment policies on recommendation of administrator in charge of the hiring department, with approval by the Dean and the concurring votes of at least two-thirds of the faculty present and voting. In the event that Category II or Category III personnel are considered for a Category I appointment, time served in the Category II or Category III appointment is normally not credited as Category I time.

(4) The Director of the Law Library shall, as an incident to holding the position, carry the academic rank of Assistant Professor, Associate Professor, or Professor of Law without tenure. Incidental to this status, the Director shall participate in the deliberations and voting on all matters coming before the faculty except the Director shall not vote on promotions above the rank of the Director or on tenure decisions. The primary job responsibility for the Director is the operation and development of the law library, but the Dean may from time to time, as the need arises, assign the Director to teach a course in

which the Director has special expertise and interest. Promotion in academic rank for the Director shall follow the procedures for Category I appointments. The Criterion shall be demonstrated excellence in the management, operation and development of a service-oriented law library that contributes to the educational and research mission of the school. In applying this criterion, the Promotion Committee may consider the Directors service to the school, the University, library academic community, and the bar, scholarly activities, involvement in professional organizations, continuing legal education, and service to the profession and the community.

## **II. Category I Personnel**

### **A. Contracts**

(1) Faculty recommendations concerning all Category I appointments shall be by a vote of at least two-thirds of the Category I faculty and the Director of the Law Library present and voting at a properly called meeting. The initial period of appointment may be two years.

(2) During the month of November of the second full year of appointment all Category I faculty and the Director of the Law Library in attendance at a properly called meeting will vote on each candidate and decide whether the appointment should be continued. A second two-year contract may be offered. If a candidate receives less than a two-thirds vote of those voting for retention, the contract will be terminated in accordance with University policy on termination of faculty contracts.

(3) Prior to February 15 of the third full year of employment, all Category I faculty and the Director of the Law Library in attendance at a properly called meeting will again vote on the candidate in question and decide whether the appointment should be continued. A third two-year contract may be offered. If the candidate receives less than a two-thirds vote of those voting for retention, the contract will be terminated at the end of the appointment term in accordance with University policy on termination of faculty contracts.

(4) Any person hired in mid-year will be subject to the same time limits as above, with the timing of the extension votes to be set in each individual case by the Dean.

### **B. Tenure**

(1) If a candidate is offered a third two-year term of employment the faculty tenure committee will meet during the fall of the fifth year of employment to consider the granting of tenure. The faculty tenure committee will consist of all faculty members who have been voted tenure. A recommendation for tenure shall be by a two-thirds vote of those faculty tenure committee members voting. Tenure is awarded by the Board of Trustees upon recommendation of the President and, if approved, will vest at the end of

the fifth year of employment. If tenure is not granted at that time the person is not subject to a further extension of the contract.

### **C. Promotion**

(1) All personnel in Category I are eligible to be considered for tenure and promotion at any time. Except for extraordinary circumstances, the time period of tenure will be as described above and the time period for promotion will be three years in rank as an assistant professor and at least four years in rank as an associate professor. Promotion to a higher rank will be in the normal case at the end of the academic year in which it is approved. Time served in an equivalent rank at another law school may be counted for purposes of this section, at the discretion of the University.

(2) The promotion committee will consist of all Category I faculty members and the Director of the Law Library holding a rank higher than the faculty member to be considered for promotion. Except in extraordinary cases, the committee will meet before February 15 of the pertinent year of employment to consider a candidate for promotion. A two-thirds vote of those promotion committee members voting is required for recommendation for promotion.

(3) In the case of denial of promotion, the promotion committee may reconsider the decision on motion by the Dean or any faculty member, but in no event shall such reconsideration take place within six months of the original denial.

### **III. Category I Personnel**

#### **Criteria for Hiring, Extension of Contracts, Promotion and Tenure Decisions**

A. Initial hiring decisions shall be based on evaluation of the individual's contributions and capacity to contribute to the development and improvement of the law, legal processes, and legal education. Criteria relevant to extension of contracts, promotion and tenure, listed below, shall form the basis of a judgment concerning an initial hiring decision. In making any employment decision, only those criteria which are substantially related to the tasks of a legal educator shall be given any weight.

B. The two primary criteria to be considered for extension of contract, promotion or tenure decisions will be:

(a) Overall quality of teaching both in and out of the classroom, as judged by the faculty with appropriate input from students.

(b) Scholarly interest and performance, as judged by the faculty with input from contacts outside the law school and students where appropriate. Indicia of this criterion will be -  
(1) published works or works in progress for publication and (2) briefs or other general

writings which demonstrate law-related scholarship.

Excellent performance in both teaching and scholarship are expected for promotion or tenure. Only in the most extraordinary cases will meeting only one of the criteria result in promotion or tenure. It is expected that a candidate for tenure will have completed a major work of scholarly interest which substantially contributes to the literature on the subject. It is expected that a candidate for promotion to the rank of Professor will have attained recognition for significant, mature career achievements among the candidate's professional colleagues. In the usual case, this achievement will include scholarly publication since tenure. Alternatively, a candidate could be promoted to full professor if the candidate has gained a reputation in any significant segment of the academic community, bench or bar for consistent, high order academic or lawyerly accomplishment or public service contributions. Individuals hired with teaching or administrative responsibilities on a twelve month basis will likely require special arrangements with the Dean to fulfill these scholarship requirements. Three other criteria, in addition to the above two primary ones, for extension of contract, promotion, and tenure are:

- (c) Responsible participation in group deliberative processes of the law and university faculties.
- (d) Professional service to the school and community.
- (e) General contributions to the intellectual or educational environment of the law school and the university.

The candidate will supply such materials as are deemed appropriate to demonstrate that these criteria have been satisfied.

#### **IV. Category I Personnel**

##### **Procedure for Extension of Contracts, Promotion and Tenure Decisions**

The Dean of the Law School, in consultation with the Policy Committee, shall appoint a three-member faculty committee to evaluate each candidate proposed for extension of contract, promotion or tenure. A separate committee for each candidate for extension of contract, promotion or tenure decision will be appointed. The committee's duties include:

- (1) Attendance by each member of the committee in one or more classes taught by the candidate.
- (2) Interviews with the candidate regarding teaching objectives and methodologies and with other faculty members who have knowledge of the candidate's teaching abilities.
- (3) Evaluation of student evaluations of teaching competence.

(4) Evaluation of all written work submitted for consideration as an indication of teaching and scholarship interest and performance, including, where appropriate, outside evaluations from scholars in the field.

The committee is charged with reporting its findings in writing to the appropriate faculty committee with evaluations of strengths and weaknesses in each of the five criteria listed above.

#### **V. Effective Date**

This document applies only to faculty members extended an offer of employment after its adoption by the Board of Trustees.

**Mercer Law School**  
**Policy on Conflicts of Interest and Commitment**  
**January 17, 1996**

1. The Law School expects all full-time faculty members, senior administrators and professional librarians (hereinafter, "Law School professionals") to give their primary attention to the Law School community through such functions as teaching, scholarship, administration, service, and continuing professional development.
2. The Law School is keenly aware that its proper subject of study - the law -evolves constantly as a result of complex judicial, legislative, regulatory, political, professional, economic and social forces that exist mostly outside the boundaries of the Law School campus. Mercer Law School is committed to educating its students in an environment that nurtures its connections to those external legal arenas.
3. In order for Mercer Law School to accomplish its educational mission, therefore, it is important that Law School professionals maintain strong ties to the outside legal communities in which the law is developed, lawyers practice, and our graduates will work.
4. The important connections established by Law School professionals to the legal community outside the Law School may well take many forms. On occasion, those links may appear to cause individual members of the Law School community to be in conflict with the interests of the Law School community. Such links may also call into questions the individual's commitment to the Law School community.
5. In light of the importance that Mercer Law School places on the links between the academy and practice, it is the policy of Mercer Law School to be cautious not to presume that any such apparent conflicts of interest or commitment are real and persistent.
6. Nevertheless, the Law School community is also aware that Law School professionals may occasionally become occupied in matters that have little actual or potential benefit to the Law School community, while detracting significantly over an extended period of time from their ability to give appropriate attention to responsibilities within the Law School community. To guard against this possibility, each Law School professional other than professional librarians will provide to the Dean each year a plan of the Law School professional's objectives and expected activities for the following academic year. Similar plans will be developed by individual professional librarians with the Director of the Law Library. These individual plans will be designed to encourage appropriate contributions to the academic program and other functions of the Law School and University and to avoid or minimize activities likely to detract excessively from the professional's primary Law School or University commitments.
7. The attached chart, Exhibit A, sets out a method for calculating an adjusted number of hours spent on activities that may detract from the ability of Law School faculty to devote appropriate attention to Law School responsibilities ("outside activities"). A faculty member will be

presumed to be devoting excess time to outside activities if that faculty member devotes or expects to devote more than 390 adjusted hours during a 39-week academic year to these outside activities. Compliance with this guideline will also presumptively signal that the Law School professional is not engaged in any conflict of commitment. There may be occasional situations, however, in which devoting 390 or fewer adjusted hours to outside activities during an academic year may nevertheless significantly detract from a faculty member's ability to fulfill Law School or University responsibilities--as, for example, when a large number of "outside" hours are concentrated into a relatively short time during a part of the year when classes are in session.

The presumptive maximum appropriate number of hours for legal professionals other than faculty will be decided upon by the Dean in consultation with those professionals as circumstances require. It will be the responsibility of each Law School professional to update the plan called for by paragraph 6 above when that professional contemplates embarking upon one or more outside activities that alone or in the aggregate are likely to interfere with achieving the plan's stated goals or are likely to place the professional in noncompliance with an applicable presumptive limit on the number of hours appropriately devoted to outside activities.

8. Despite the value of setting out a presumptive standard, the Law School community is aware that no quantitative approach can adequately account for or appraise all situations. Therefore, notwithstanding the provisions of paragraph 7, a faculty member will be deemed in compliance with the presumptive limit on hours devoted to outside activities if, in the Dean's opinion, the performance of the individual during the measured interval meets the performance required for promotion to the rank held by the individual in question. Alternatively, a faculty member or other Law School professional will be deemed in compliance with the presumptive limit if that professional's performance meets the goals agreed upon between the Dean or Director of the Law Library and the Law School professional in the annual schedule and plan described in paragraph 6, above.

9. No Law School professional shall undertake or maintain a consulting or employment relationship or acquire or retain a significant financial interest in an enterprise that does business with Mercer University, when any such relationship or financial interest would present an actual or apparent conflict of interest with the professional's customarily accepted obligations as a lawyer, teacher, scholar, administrator, or librarian.

10. Whenever a Law School faculty member appears to be in violation of the presumptive hourly limit on outside activities, or any Law School professional is in noncompliance with an individual annual plan or engaged in a conflict of interest as defined in paragraph 9 above, it shall be incumbent on the Dean of the Law School (or the Director of the Law Library, in the case of professional librarians) to engage the individual Law School professional in a frank private dialogue about the apparent violation or instance of noncompliance. This conversation is intended to inform the Dean or Director about the circumstances and to provide for abatement of activities that the Dean or Director concludes constitute an actual violation of this policy. Nothing in this policy is intended to derogate from the Dean's or Directors authority to exercise the normal prerogatives of the Dean's office to remedy a violation of this policy or prevent future

violations.

11. Law School professionals will be expected to seek prior decanal approval and arrange for appropriate payment before imposing any direct or significant indirect costs on the Law School, including costs of using Mercer personnel, incurred in pursuit of activities that have little or no relationship to the mission of the Law School community. In any event, Law School staff members are prohibited from rendering more than de minimis assistance to a Law School professional in carrying out such activities during the hours for which the staff member is paid by the University without the express written permission of the Dean, such permission to be granted only for extraordinary reasons. Absent such permission, no Law School professional shall request that such assistance be rendered by a Law School staff member during those hours.

12. Law School professionals will not be required to record the time spent on outside activities except for time spent on compensated or potentially compensated activities of the sort that would normally require the keeping of time records.

13. Law School professionals may identify themselves as members of the Law School or University community by any appropriate means, including the use of Law School stationery, in furthering any academic, literary or other professional function. In publicly advocating a position on any matter, the Law School professional shall not imply Law School or University endorsement of that position, absent the prior written approval of the Dean of the Law School or President of the University.

14. Faculty members who wish to arrange paid outside activities shall first seek approval from the Dean, either through development of the annual plan described in paragraph 6 above or through supplementary discussions with the Dean in the case of paid outside activities unforeseen when a plan is developed.

EXHIBIT A

	Compensated (including potentially compensated) consulting/law practice/bar review or similar activity other than legal scholarship that is related to any significant University or Law School goal	Compensated (including potentially compensated) consulting/law practice/bar review or similar activity that is unrelated to any significant University or Law School goal	Clearly “outside” activity - Not at all law - related
Fraction per hour worked to be counted toward and “outside” total or “cap” (390 hours per 39-week academic year).	1/2	3/4	1

## **TENURE AND PROMOTION GUIDELINES AND INTERPRETIVE COMMENT**

These Guidelines arose primarily from a desire for an articulated procedural norm to guide Evaluation Committees. The Guidelines also inform candidates of the usual tenure and promotion procedure and of the faculty's interpretation of parts of the tenure and promotion document. The Guidelines are intended to establish a norm, but they are not mandatory, to the faculty a unique set of considerations. Evaluation Committees should use the Guidelines as their starting point, but they may adapt the procedure to the candidate's particular situation. All procedural issues not constrained by the tenure and promotion document are entrusted to the sound discretion of the Evaluation Committee and the Dean, which discretion should be exercised after consultation with the candidate. When the Evaluation Committee or the Dean use a procedure different from that described in these Guidelines, the faculty should be informed of the reason for the variation.

Any candidate who was a faculty member at the time of the adoption of these Guidelines may elect to have all future contract, tenure or promotion decisions conducted without reference to the Guidelines. This election must be made in writing to the Dean within six weeks of the adoption of the Guidelines and need not identify any specific provision to which the candidate objects. Prior to any vote on a candidate who has opted out of the Guidelines, the Dean shall inform the Evaluation Committee and the faculty that the individual is to be considered without reference to the Guidelines, and the faculty shall draw no inference from the fact of the election. Any procedure which was within the discretion of the Dean or the faculty before the adoption of the Guidelines may be employed without regard to whether or not the candidate has elected to be exempt from the Guidelines.

### **1. Uncompleted scholarly works**

Section III-B(b) describes the scholarship criterion as "[s]cholarly interest and performance," and further provides that "[i]ndicia of this criterion will be (1) published works or works in progress for publication, and (2) briefs or other general writings which demonstrate law-related scholarship." Except in extraordinary circumstances, only completed works, that is, works ready for submission to a publisher, will be considered for satisfying the "scholarly *performance*" aspect of this criterion. Works in progress can be submitted as demonstration of the "scholarly interest" aspect of this criterion. Outside reviews will be sought only for completed works.

### **2. Outside reviews**

When the candidate's area of scholarship is not adequately represented on the faculty, outside reviews provide the opinions of experts in the particular scholarly area. Further, outside reviews provide the benefit of the views of qualified individuals who are unaffected by the outcome of the vote on the candidate. In theory, then, outside reviewers can comment exclusively on the quality of the candidate's scholarship without considering any other factors, either consciously or

unconsciously. In this sense, outside reviews offer some of the advantages sought by blind grading for student examinations.

In practice, of course, the opinions of an outside reviewer can still be affected by matters other than the quality of the reviewed work. The reviewer may know the candidate from settings beyond the four corners of the article reviewed, or the reviewer may be affected by loyalty or antipathy to particular kinds of scholarship or movements within legal education. In either case, a reviewer's opinions may be affected by considerations other than the scholarly work reviewed. However, this reality is probably unavoidable, and in the case of reviewers who know the candidate from the candidate's national-level work in a discipline, it is in some sense desirable. The dangers of biased outside reviews can be ameliorated by taking special care in the selection of outside reviewers. And in the final analysis, it is the responsibility of each voting member of the faculty to decide how much weight, if any, to give to an individual outside review.

Section III-B(b) and Section IV(4) provide for outside reviews, "where appropriate," on the occasions of contract extension, promotion, or tenure. Outside reviews are generally appropriate for any tenure or full promotion vote. A candidate can request outside reviews for any other vote, as well. Generally, the following minimum numbers of outside reviews should be obtained:

<u>Vote:</u>	<u>Recommended number:</u>
for a tenure vote	4 reviews
for a vote on promotion to Professor	4 reviews of work since tenure

Each completed major work submitted for consideration for tenure or fall promotion should be reviewed. The decision of which reviewers to assign to which scholarly work is left to the discretion of the evaluation committee. Customarily, reviewers should be selected in the following manner: The candidate should be asked to provide the names of three experts in the field. The evaluation committee should select one of these to be contacted by the Dean. This expert will not be asked to review, but rather to provide the names of possible reviewers. Ideally, the three experts and the reviewers should not be persons with whom the candidate has a close professional or personal relationship. The candidate should be invited to examine the list of potential reviewers and to inform the committee of the existence and the nature of any personal or professional conflicts or relationships the candidate may have with any potential reviewer. The committee will decide whether to request a review from any person identified by the candidate as problematic.

Reviewers should not be asked how the candidate would fare at the reviewer's institution. Rather, reviewers should be asked to comment, as specifically as possible, on the quality and the importance of the reviewed work. Reviewers can be provided with the relevant language of the document ("a major work of scholarly interest which substantially contributes to the literature on the subject") to guide their analysis. Reviews should be shared with the candidate.

The evaluation committee and the Dean should seek commitments from reviewers early

enough and in sufficient quantity to produce the number of completed reviews suggested above. The Dean and the committee should monitor the number of reviews received and should urge reviewers to submit their reviews in a timely fashion. The faculty has the discretion to table the vote If a sufficient number of reviews has not been received prior to the scheduled vote.

### **3. Inside reviews**

The primary responsibility for evaluating a candidate's scholarship rests with the faculty itself. Therefore, inside reviews are vital. The document charges the evaluation committee with the responsibility of "evaluation of all written work submitted for consideration." Completed work submitted for consideration. The candidate should be provided a copy of all written inside reviews.

While inside reviews are important, they could discourage junior faculty from seeking inside mentoring at early stages of their writing. Therefore, to reduce this danger, a review undertaken to provide feedback and mentoring cannot be used for tenure and promotion purposes without the permission of the candidate. The reviewing faculty member may agree to conduct a second review of the writing in its current form, this time for the purpose of the tenure and promotion process. The faculty members decision should be made after consultation with the candidate. A faculty members decision to refrain from reviewing the submitted article justifies no inference regarding the quality of the article or the reasons for the faculty member's decision.

### **4. Evaluation committees**

The Dean, in consultation with the Policy Committee, appoints the three-person evaluation committee. The Dean should make every effort to appoint a committee that is representative of a cross-section of the voting faculty. The evaluation committee should submit its report sufficiently in advance of the faculty's vote to allow the faculty time to review the materials thoughtfully. Absent exceptional circumstances, the report should be in the faculty's hands at least one week prior to the scheduled vote.

### **5. Section III-B: The meaning of "professional colleagues" as used in the standard for full promotion.**

The standard for full promotion requires that the candidate attain "recognition for significant, mature career achievement among the candidate's professional colleagues." The term "professional colleagues" is to be defined broadly to include lawyers, judges, and other colleagues involved in professional projects in the area of the candidate's work.

### **6. Section III-B: The meaning of the amendment changing "outstanding" to "excellent."**

Prior to the 1998 amendments, the tenure and promotion document required "*outstanding* performance in ... teaching and scholarship" Prior to the 1998 amendments, the faculty had, through its tenure and promotion votes, consistently defined the word "outstanding" to mean

“excellent.” The 1998 amendment replacing the word “outstanding” with “excellent” merely amended the document to articulate the standard already being applied. The amendment did not represent a change in the standard required for teaching or for scholarship. Tenure Track Option for Legal Writing (approved by faculty on September 22, 1999)

**Tenure Track Option for Legal Writing**  
**Approved by Faculty**  
**September 22,1999**

On September 22, 1999, the faculty amended the Policy Committee's proposal and thereafter approved the creation of a tenure track option for Legal Writing faculty, as described in the amended proposal. Here follows the amended proposal in its entirety:

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**Summary of Goals and Rationales<sup>1</sup>**

1. To maximize our ability to attract and retain the best teachers and scholars;
2. To bring the nature of the positions into line with the value and intellectual sophistication of the courses taught;
3. To solidify Mercer's national reputation as having one of the best writing programs in the nation;
4. To eliminate the reduction of credibility with students (for both the course and the teacher) that accompanies non-tenure track status;
5. To improve our student / teacher ratio by being able to count LW teachers fully;
6. To implement a hiring process consistent with that of other tenure track positions;
7. To hire people with a long-term commitment to LW teaching and scholarship;
8. To preserve a consistent LW pedagogy appropriate for a planned sequence of courses while also preserving out customary deference to the judgement of individual teachers matters pertaining to their courses;
9. To treat our current LW teachers fairly during the transition.

**Summary of Proposal**

New hires: If a current LW teacher leaves, that contract position would be abolished and a new tenure track position would be created and filled through a national tenure track search using our standard faculty hiring process. A current LW teacher could apply for the newly created tenure track position, in competition with the national field, as described more fully below.

*Positions held by current LW teachers:* A non-tenure track LW Professor could elect to terminate his contract position by advising the Dean and the Faculty Appointments Committee on or before March 1 of the year prior to the desired contract termination date.<sup>2</sup> A tenure track

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<sup>1</sup>The rationales for the proposal are discussed more fully beginning on page 8..

<sup>2</sup> In other words, if the LW teacher's contract would normally expire on June 30, 2002, the teacher would have to give notice by March 1, 2001.

position would be created in place of the contract position. The new tenure track position would be nationally advertised during the following fall's recruiting season. The current LW teacher could be an applicant, in competition with the national field of candidates. The candidate selected for the position would begin his or her employment the July following the national search.

### **Amendment Added by Faculty**

The individuals hired for tenure track positions after the search described above would be expected to devote at least three-quarters of their total teaching time to courses formally within the School's legal writing program or courses dominantly concerned with legal writing, rhetoric, or legal analysis as such (hereinafter, "legal writing courses"). Each tenure-tracked professor in the legal writing program would also be required to devote approximately 1/4 of his or her remaining teaching time to courses other than legal writing courses. This 3/4 -1/4 mix would be explicitly explained to candidates for these positions and would be formalized in their appointment letters. The Dean or the Dean's designee would retain flexibility to waive or relax the requirement that approximately one quarter of the teaching time of these candidates be devoted to courses other than legal writing courses, but only to the extent necessary to assure that legal writing courses are staffed by "legal writing professors" - i.e., by those current or future faculty hired with the expectation that they would or will teach principally. legal writing courses. For each newly hired tenure-track legal writing professor, the Dean or the Dean's designee may measure compliance with the 3/4 - 1/4 mix during each period of two academic years during which that mix applies - i.e., during which it has not been waived or relaxed for the reason described above. In no case should any faculty member hired for legal writing positions devote less than three-quarters of his or her teaching time to legal writing courses.

### **Questions and Answers**

*Why a national search?*

Our standard practice is to fill all tenure track positions through a national search using appropriate tenure track criteria. Legal writing should be no exception.

*Should standards for the nature, quantity and quality of scholarship be different for L W?*

No, the standards for the nature, quantity and quality of scholarship should be the same. Just as in any other academic subject, theoretical or skills scholarship (both of which explore in depth some aspect of a law-related discipline) should make up the core of a scholars work. Taken together, the candidate's published work should (1) demonstrate the candidate's ability to produce scholarly work of the requisite depth in a law-related field (that is, a recognized jurisprudential, doctrinal or legal skills area); and (2) demonstrate the candidate's ongoing professional commitment to the field of legal writing.

*Should tenure be specific to teaching L W?*

No other tenure track line is expressly limited to a particular subject area, even those not easily interchangeable with other teaching assignments. Rather, course assignments by the Dean take into consideration the fit between the teacher and the course. Legal Writing should be no exception.

There are, however, two dangers to be avoided. First, we should avoid the danger of hiring someone who is not particularly interested in teaching LW but who, instead, is simply hoping to use the position as a way to get hired on a tenure track. Successful candidates should be able to establish their genuine long term professional commitment to teaching Legal Writing.<sup>3</sup> Second, we should avoid any future temptation to short-staff LW courses in order to use Legal Writing teachers to cover non-LW courses. To avoid this risk, the Dean should work with the LW Coordinator to make sure that the LW program is fully staffed before making non-LW course assignments for LW teachers.

*Why not pick a date and convert all three positions?*

Our current LW teachers were hired and have served pursuant to non-tenure track standards. Because of our respect for them and our gratitude for the valuable service they have already provided to Mercer, we should not unilaterally convert a position and force any unwilling LW teacher to compete for a tenure track position. Current LW teachers who do not wish to apply for a tenure track position should be permitted to continue in their current status as long as they are fulfilling the responsibilities required for that status. Further, current LW teachers who do wish to apply for a tenure track position should be permitted to decide how long they need in order to prepare themselves to compete for a tenure track position.

*Why not simply convert existing positions with incumbent teachers to tenure track status?*

It is likely that our incumbent LW teachers would be strong candidates in a national search for a tenure track position at Mercer or other law schools. However, tenure track hiring criteria are not the same criteria presently used for non-tenure track hiring. Therefore, no particular outcome should be assumed. The faculty should be free to select the best candidate, whether or not that candidate is an incumbent.

*What would happen if a current L W teacher leaves, thus creating a vacancy in our L W program?*

Assume that a current LW teacher (Teacher A) leaves. The contract position would be abolished and replaced with a tenure track position. The new position would be nationally advertised. Current LW teachers (B and C) can choose whether to apply for the position. The following are the possible results:

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<sup>3</sup> Among the ways a candidate can demonstrate this commitment are by prior LW teaching, the production of LW scholarship, or by participation in national Legal Writing organizations.

(1) The faculty could find that only external candidates (X, Y, and Z) meet the standards desired for the open tenure-track position. Then the faculty would extend offers only to X, Y, and Z, rank ordered in the usual way. Teachers B and C would remain in their current non-tenure track positions as long as they continue to meet the current non-tenure track standards for those positions.

(2) The faculty could find that an internal candidate (Teacher B) is qualified and could authorize an offer to that candidate for the tenure track position. If there are no other qualified candidates, B's former contract position can be covered with a visitor for the next year. B's - former contract position would then be abolished, and a tenure track position would be created in its place. The following year, that position would be filled through the usual national search process. Teacher C would remain in his current non-tenure track position as long as he continues to meet the standards for a non-tenure track position.

(3) If the faculty finds both internal and external candidates qualified, the faculty, in its discretion, can choose to hire an external candidate for the open position and simultaneously convert the qualified internal candidate(s) to a tenure track.

*What if current L W teachers remain and we have no vacancies?*

In the absence of an open position prompting a national search, a current LW teacher could elect to convert his position to a tenure track by notifying the Dean and the Faculty Appointments Committee by March 1, as described above.<sup>4</sup> The new tenure track position would then be nationally advertised the following fall, and the current LW teacher would be among the applicants for the newly-created tenure track position. No other current LW teacher could apply for that position. The successful applicant, whether internal or external, would begin tenure track employment the following July 1. This option prevents a qualified current LW teacher from being trapped in place until a vacancy occurs.

*Should current L W teachers be disqualified from applying for tenure track L W positions?*

Although it might be attractive to avoid the awkwardness of evaluating an incumbent for a tenure track position, prohibiting current LW teachers from applying would be unfair to our current teachers, who deserve an opportunity to demonstrate their ability to meet tenure track criteria. Further, the decision to start over with all new personnel would endanger the consistency and continuity of the program, perhaps unnecessarily. We can best decide whether to incur some loss of continuity after we have evaluated the applicant pool for each position.

*Will the process force current L W teachers to compete with each other for tenure track*

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<sup>4</sup> As required by University regulations, the Dean would then provide written notice that the contract position would not be renewed upon its expiration.

*positions?*

Not directly. If a current LW teacher elects to terminate his contract position and apply for the newly-created tenure track position, other current LW teachers could not apply for that position. If a current LW teacher leaves and a tenure track position is created, remaining LW teachers could apply and would theoretically be competing with each other. However, if the faculty finds that an internal candidate has the desired qualifications for a tenure track position, the faculty can put that internal candidate on a tenure track irrespective of whether other candidates are also qualified, essentially converting the candidate in place. Therefore, internal candidates are not actually in direct competition with each other or with the external candidates, one of whom may become their colleague. Tenure track positions would be available for each candidate the faculty finds qualified, without regard for the candidacy of other current teachers or external candidates.

*Why allow a current L W teacher (Teacher B) to apply for a tenure track position created by the departure of another current L W teacher rather than requiring Teacher B to elect to convert his own position?*

Permitting a current LW teacher to apply allows the current LW teacher a chance to demonstrate the desired qualifications for a tenure track position without first having to resign from his current position, a high price to pay for the opportunity to apply for an existing vacant position. Further, if a current LW teacher leaves and only external candidates can apply, the selected external candidate would have more tenure track seniority than the current LW teachers, even if the current teacher is also qualified for a tenure track position. Also, the institutional cost of the internal candidacy would be low since the departure would have already triggered a national search.

*If a current L W teacher is hired for a tenure track position, would that teacher receive credit for time served in the contract position?*

The Tenure and Promotion Document provides that if Category II personnel "are considered for a Category I appointment, time served in the Category II appointment is normally not credited as Category I time." The use of the word "normally" demonstrates that the faculty retains the discretion to credit time served when there is good reason to do so. Further, the T&P document provides that "Category I personnel are eligible to be considered for tenure and promotion at any time." The document describes the normal time periods as those to be used "except for extraordinary circumstances." Again, the use of the term "except for extraordinary circumstances" underscores the faculty's retention of the discretion to shorten the normal time periods.

For a Category II LW teacher who is placed on a tenure track, the question of whether to give credit for time served in the Category II position would be a subject to be decided by the faculty at the time of hiring, just as it would be with any other tenure track hire.

*What would be the role of the L IN Director in relation to tenure track and tenured L W*

*teachers?*

Upon commencement of the employment of the first tenure track LW teacher, the title of the Director should change to "Coordinator of Legal Writing" to recognize the collegial relationship as well as the Coordinator's role in structuring and administering the LW program. With regard to non-tenure track LW teachers, the former Director's responsibilities would not change. With regard to tenure track LW teachers, the role of the Coordinator would be similar to that of other faculty charged with the responsibility of coordinating faculty teaching teams (such as Introduction to Counseling or Introduction to Dispute Resolution). The Coordinator and all LW teachers, whether tenure track or not, would be expected to work together cooperatively toward the mutual goals of maintaining an excellent Legal Writing program with the optimal level of uniformity and consistency among sections and assisting each other's professional development.

The Coordinator would continue to have primary responsibility for program advancement and public -relations; upper-division courses and faculty development; the administration of the Legal Writing Certificate Program; informal assistance with the Legal Analysis course; and coordination of future hiring processes. The responsibility for the creation of the fall appellate assignment would rotate among the LW faculty, as it currently does.

*Could we preserve both a consistent L W pedagogy and our customary deference to the judgment of individual teachers in matters pertaining to their courses?*

Within the general parameters of the course descriptions (which simply list the topics to be covered), LW teachers currently choose their own pedagogical techniques, create their own syllabi, select their own texts, and devise their own grading methods. The only two grading or syllabus-related requirements of the current program are: (a) giving a final exam in LW I and (b) using a common appellate assignment to facilitate Moot Court selection. The only two pedagogical requirements designed to keep consistency among courses are: (a) teaching writing as a process (that is, evaluating drafts according to the stages of the writing process) and (b) explicitly teaching the structure of a written legal discussion.

Conversion to a tenure track should continue this deference to the judgment of individual teachers while maintaining necessary consistency among courses. Customarily, deference to the judgment of individual doctrinal teachers is constrained by course descriptions and other academic policies promulgated by the full faculty.<sup>5</sup> Further, in cooperatively taught courses,<sup>6</sup> that judgment is also constrained by decisions made by the team of teachers. As part of a cooperatively taught series, Legal Writing courses also fit within this model. Individual LW

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<sup>5</sup> Examples of such policies are the Uniform Grading Policy, policies about scheduling exams, policies about drop/add and allowing students to take exams at other than scheduled times, etc.

<sup>6</sup> Introduction to Counseling and Introduction to Dispute Resolution are current examples. In the recent past, Perspectives on Lawyering was also taught cooperatively.

teachers would, of course, be constrained by general academic policies adopted by the full faculty. The course descriptions should include the only two course characteristics necessary for consistency with other courses (process and structure).<sup>7</sup> Other decisions which require common resolution<sup>8</sup> should be left to the team of teachers. All remaining academic questions should be Within the discretion of the individual teacher.

*What title should the tenure track L W positions carry?*

The title of the tenure track teachers would be the same as the title of any other tenure track teacher - Assistant or Associate Professor or (full) Professor, according to rank.

*Would creation of a tenure track option affect the University administration's willingness to approve other new faculty lines?*

No. The University administration does not approve or disapprove new faculty lines, monitor how many faculty lines we currently have, or decide whether we can create new ones.

*Would the scholarship requirement reduce a Legal Writing teacher's availability to students or otherwise impair teaching effectiveness?*

No. First, all of our current LW teachers are writing already, and many of the projects have been substantial. While teaching Legal Writing here, Lenora wrote two law review articles and finished her anthology on Law and Literature; Stasia wrote her dissertation and received her Ph.D.; Jim Hunt wrote two law review articles and completed his legal history book; Adam has written several law review articles on the ADA. David has made a good start on his book on oral argument; Michael is busy writing his Advanced Legal Writing text.

Even if we do not change our policy, our current teachers will continue writing. In part, they write because they must think of preparing themselves for tenure track positions at other schools (and we would certainly rather that they be writing for Mercer than for some other school). In part, they write for themselves - because they are writers by nature. They are thoughtful people who find that they have things to say and important professional contributions to make. We would not want to hire people who did not.

Further, their writing actually increases rather than decreases their effectiveness as writing teachers. If they write about a Legal Writing subject, their writing is substantively connected to their teaching. Even if they write about a non-legal writing subject, they are practicing the very

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<sup>7</sup> The Director, in consultation with the LW faculty, should draft the proposed course descriptions for full faculty review.

<sup>8</sup> Examples of decisions requiring common resolution are the characteristics of the common final appellate assignment, the due dates for common assignments, and the requirements of the oral argument phase of LW II.

art they teach. They become much more conscious of how they write and of the techniques they use to overcome writing difficulties. This very process makes them better teachers of writing. In this sense, scholarship is even more connected to good teaching for a Legal Writing teacher than for-teachers of other subjects.

### **Rationales for Creating a Tenure Track Option**

*Maximizing our ability to attract and retain the best teachers and scholars.* While we have been fortunate in our recruitment efforts in recent years, every year we lose excellent candidates to tenure track Legal Writing positions at other schools.<sup>9</sup> Retention is even more difficult. From the fall of 1993 (when we dropped the revolving door "teaching fellow" model) through last year, we have had four Legal Writing teachers who have chosen to remain in the academy. Two of those four have left to take tenure track positions, giving us a retention rate, so far, of only 50%.<sup>10</sup>

Since virtually any non-tenure track teacher would consider seriously a tenure track opportunity at another school, it may be only a matter of time before we lose our present teachers as well. The number of schools with at least one tenure track Legal Writing position is large and increasing every year. Most schools (95) have a director whose primary job description is the Legal Writing directorship. The status of these positions is changing rapidly. In 1998, 23 of these positions were tenure track. In 1999, 34 were tenure track, an increase of approximately 50% in the last year. A number of other schools have a newly created tenure track director position and will be hiring for that position this coming year, and there is little doubt that the trend will continue. Even more problematic from a retention standpoint are the schools that will be creating new tenure track LW positions in the next few years, for those are the schools that will be recruiting experienced LW teachers. Without doubt, Mercer's best Legal Writing teachers will be in demand for these tenure track positions.

*Bringing the nature of the positions into line with the value and intellectual sophistication of the courses taught.* Gone are the days when Legal Writing was a course about commas and citation form. Legal Writing is primarily an intensive course in legal reasoning, which is the fundamental law school skill. Mercer is one of the leaders in recognizing the importance and intellectual sophistication of this enterprise, and creating a tenure track option for Legal Writing

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<sup>9</sup> These are usually director positions. Many of these candidates do not particularly want to take on the administrative duties inherent in a director's position, but they are willing to do so in order to be on a tenure track.

<sup>10</sup> If we count the two who decided to leave the academy, our retention rate is only 33%. Because it is difficult to calculate how much the non-tenure track status affected these decisions to leave the academy, this analysis does not include those teachers. However, in both cases, the reduced status clearly played a part in the individual's decision.

teachers recognizes officially the value we already place on the course.<sup>11</sup>

*Solidifying Mercer's national reputation as having one of the best writing programs in the nation.* Development of Mercer's national reputation has been difficult, but we have met with remarkable success, thanks largely to the faculty's support of the program's development over the last ten years. Among those knowledgeable about Legal Writing programs, we have gone from unknown to well known and respected. Creating a tenure track option would immediately move us to one of the three or four most respected programs in the country.

*Eliminating the reduction of credibility with students (for both the course and the teacher) that accompanies non-tenure track status.* In many law schools, students view Legal Writing courses as less important than their doctrinal classes. This view is caused by the institutional messages students receive, usually in the form of the credit hours and grading status of the course, the attitude of doctrinal professors toward the course, and the institutional status of the teachers. Fortunately, due primarily to the credit and grading parity of LW courses and the extremely supportive attitude of all the faculty, Mercer students do not tend to undervalue their Legal Writing courses. However, they do still tend to undervalue their LW teacher. The change in title from "Teaching Fellow" to "Assistant Professor of Legal Writing and Analysis" helped the credibility problem, but the problem still exists. Somehow students know the status of the Legal Writing teachers. They think of the teachers as not quite "real faculty." This reduction in credibility results in less willingness to take seriously their teacher's classroom teaching and comments on papers, with the accompanying negative impact on learning.

*Improving our student/teacher ratio by being able to count L W teachers fully.* Aside benefit of creating a tenure track option is that we would be able to count LW faculty fully in calculating our student/teacher ratio. Therefore, our published ratio would more accurately reflect the number of faculty fully engaged in our students' legal educations.

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<sup>11</sup> When recruiting for a Legal Writing position, it is common that an applicant will ask, "If Legal Writing is so important at your school, why aren't the positions tenure track?" That can be a hard question to answer.

**Hiring Process Goals, Values and Policies**  
**Adopted April 12, 2000**

1. Maximize the opportunity for acquiring information through discussion, particularly from colleagues who have special knowledge of the work or reputation of the candidates.
2. Avoid using the words "acceptable/unacceptable" in the approval vote; instead, decide "whether to authorize an offer at this time."
3. Ensure that the ranking method produces a majority in favor of the #1 ranking.
4. Request that Hal Lewis consult with University Counsel Bill Solomon and make a joint presentation to the faculty on the potential legal liability of the University for hiring practices based on race, gender and age. If we wish to have a hiring plan that emphasizes racial, gender or age characteristics of faculty candidates, it should be carefully crafted to meet legal requirements and adopted by the faculty by majority vote.

Discussion Procedures:

5. Hiring votes should be held at specially called faculty meetings or be first on the agenda at a regularly scheduled faculty meeting to ensure adequate time for deliberation. No other business or announcements should precede the hiring decision.

Voting Procedures:

6. Rank candidates in order of preference before voting on approval of offers to be made.
7. After discussion of all candidates, hold a general ranking vote, with every voter listing all candidates in order of preference. Designate the last place finisher (the highest point total) as the last candidate eligible to receive an offer and vote again on the candidates having lower point totals. Repeat the process until (in a vote between the two top contenders) the first priority candidate is chosen by majority vote.
8. No tally of first place votes should be made or published.