



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-078

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. The treatment clause in SECTION 2 of the rule should be rewritten as follows: “Chapter UWS 7 is created to read:”. In addition, a title is needed for ch. UWS 7.

b. In administrative rules, as in the Wisconsin statutes, defined terms are not capitalized. See s. 1.01 (4) and (7), Manual.

c. Definitions should not contain substantive provisions. See s. 1.01 (7) (b), Manual.

d. Section UWS 7.02 should be revised so that all of the subunits in that section, except for introductory material, end with a period, rather than a comma or semicolon or the word “or” or “and that”. The phrase “any of the following” or “all of the following” is used in introductory material rather than “and” or “or” at the end of the subunits. See s. 1.03 (intro) and (8), Manual. This style should be followed throughout the rule.

e. In s. UWS 7.02 (3) and (4), and elsewhere in the rule, “to” should replace the hyphens in the numerical sequences.

f. Section UWS 7.07 should be eliminated and replaced with a general initial applicability clause that will not become part of the Wisconsin Administrative Code. This clause should appear just before the Effective Date clause and read as follows: “SECTION . This rule first applies to conduct occurring on the effective date of this rule.”

4. Adequacy of References to Related Statutes, Rules and Forms

The analysis to the rule should contain citations to the specific paragraphs of ss. 36.09 (1) and 36.11 (1), Stats., that provide statutory authority for the rule. In addition, the analysis should cite s. 36.13 (5), Stats., as a statute interpreted by the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In item 7. of the analysis, it appears that the second “rules” should be changed to “states.”

b. In s. UWS 7.02 (1) (a) and elsewhere in the rule, the phrase “pleading guilty or no contest to” is redundant and unnecessary because those actions result in conviction.

c. Should s. UWS 7.04 be modified to provide that faculty members need report only charges or convictions of felonies that involve at least one of six conditions enumerated in s. UWS 7.02 (1) (a)? As written, the rule requires a faculty member to report a charge or conviction of any felony. In addition, s. UWS 7.05 (1) (intro.) authorizes a chancellor to initiate the expedited procedures in s. UWS 7.05 based on a faculty member’s report of *any* felony charge or conviction. Should s. UWS 7.05 (1) require a threshold finding that the elements of the felony with which the faculty member has been charged or convicted include at least one of the factors listed in s. UWS 7.02 (1) (a) before further investigation may proceed?

d. The rule should be revised to clarify whether the expedited process set forth in s. UWS 7.05 may be invoked in situations in which there has *not* been a criminal charge of a faculty member. For example, may the process be invoked when a credible witness states, or there is other strong, credible evidence that, a faculty member engaged in dangerous conduct that could be charged as a felony, but a criminal charge has not been entered? As written, s. UWS 7.05 (1) (intro.) is not clear on this point.

e. Section UWS 7.05 (1) (intro.) states that the procedure set forth in s. UWS 7.05 shall be used when the chancellor has “determined to impose a suspension without pay pending the final decision as to dismissal under s. UWS 7.06”. Section UWS 7.05 (1) (a) should be expanded to specify the time limit for initiation of the procedure under this circumstance. As written, s. UWS 7.05 (1) (a) addresses only the situation in which the process is initiated pursuant to self-reporting by a faculty member or “other credible information that a faculty member has engaged in serious criminal misconduct.”

f. Section UWS 7.05 (1) (a) should require the chancellor to provide notice to the faculty member that an investigator has been appointed. The notice should include a statement of the time limits and procedure for the faculty member to request disqualification of the investigator. Section UWS 7.05 (1) (b) should specify that the three-day time limit commences when the faculty member receives notice that the investigator who has been appointed.

g. In s. UWS 7.05 (1) (b), may the faculty member challenge the impartiality of the second investigator if one is appointed?

h. Section UWS 7.05 (2) should specify the purpose of the investigation and specify the information that must be included in the investigator’s report. Also, the subsection should be drafted in the active voice--“The investigator shall complete and file....”

i. Should s. UWS 7.05 (3) specify what is meant by “appropriate institutional governance representatives”? This comment also applies to sub. (1) (a).

j. Section UWS 7.05 (3) (intro.) should specify the minimal findings that must be made in order for the chancellor to proceed with each of the four dispositional alternatives provided in that subsection.

k. Section UWS 7.05 (3) (a) should explain what is meant by filing charges. For example, the rule should specify what information must be included in the charges, how the faculty member is to be served with the charges, and whether the charges must be transmitted to any other entity. The rule should also require notice to the faculty member of his or her right to a hearing under sub. (4), and the procedures and time limits that apply to a hearing request.

l. Section UWS 7.05 (4) should specify who must prepare the written findings and recommendations and when they must be transmitted to the chancellor. Also, “must” should be changed to “shall.”

m. Section UWS 7.05 (5) (intro.) should be rewritten to eliminate use of the phrase “Upon receipt” because the chancellor is not required to do anything immediately “upon receipt” of the findings and recommendation of the committee. The provision should begin--“Within three working days of receipt..., the chancellor shall...” Also, since this material is not properly drafted as introductory material, it should be par. (a) and the subsequent paragraphs should be pars. (b) and (c). (See s. 1.03 (8), Manual.)

n. Section UWS 7.05 (5) (a) should, at a minimum, require the chancellor to find that the elements of “serious criminal misconduct” are present in order to recommend dismissal of a faculty member. In addition, the rule should specify whether the chancellor *must* order dismissal when the elements of serious criminal misconduct are present. If the chancellor is not required to order dismissal, the rule should specify the conditions under which the chancellor may seek a lesser penalty.

o. Section UWS 7.05 (5) (a) should specify the time limit for transmittal of the chancellor’s recommendation to the board of regents. Also, it should be written in the active voice.

p. Section UWS 7.05 (5) (b) should specify how the faculty member is to be notified of the chancellor’s decision to impose disciplinary action other than dismissal and the procedures and time limits for the faculty member to seek board of regents review of that decision.

q. Section UWS 7.05 (6) states that when the chancellor has recommended dismissal of a faculty member, the board of regents *may* “offer an opportunity for filing exceptions to the recommendation, or for oral argument.” The rule should specify the circumstances under which a request for oral argument may be denied. The rule should also set forth time limits for providing notice to the faculty member of the opportunity to file exceptions and request oral argument.

r. Section UWS 7.05 (7) states that if a faculty member does not “request a hearing” on the matter of the chancellor’s recommendation for dismissal, the board shall take appropriate action within 10 days. Apparently, the hearing referred to in s. UWS 7.05 (7) is the hearing before the institutional standing committee under s. 7.05 (4). However, because s. UWS 7.05 (7) is placed in the portion of the rule governing the board of regents actions, which occurs later in the process, it is not clear whether the hearing referred to is that one or the “oral argument”

before the board of regents which is discussed in the provision immediately preceding s. UWS 7.05 (7). Also, the rule should state the procedure to be followed by the chancellor when there is no hearing under s. UWS 7.05 (4), specifically when the chancellor must transmit his or her recommendation to the board of regents.

s. Section UWS 7.05 (6) states that the board of regents shall “issue its decision on the matter” of the chancellor’s dismissal recommendation within 15 working days of receipt of the chancellor’s recommendation. However, s. UWS 7.05 (7) states that the board of regents shall “take appropriate action within 10 working days of receipt of the statement of charges and the recommendation of the chancellor.” The rule should be rewritten to clearly specify the time limits for the board of regents action and any hearings that will be provided. Further, is there a difference between the requirement that the board “issue its decision on the matter”, in s. UWS 7.05 (6), and that it “take appropriate action” under s. UWS 7.05 (7)? If so, the different requirements of those actions should be explained. If not, then consistent terminology should be used. Also, the rule should explain the difference, if any, between the “hearing” provided for in s. UWS 7.05 (4), and “oral argument” provided for in s. UWS 7.05 (6).

t. What factors will the board of regents consider in determining whether to grant a request for oral argument under s. UWS 7.05 (6)? The rule should set forth standards the board should follow in making this decision.

u. In s. UWS 7.05 (9), pars. (a) and (b) should be combined and begin as follows--“(9) The chair of the faculty hearing body, with the approval of the chancellor, may extend the time limits....”

v. Section UWS 7.06 (1) (a) would allow the chancellor to suspend a faculty member without pay in a case in which the faculty member is charged with a felony that does not contain any of the elements in s. UWS 7.02 (1) (a) 1. to 6. Is this the intent of the rule? If not, it appears that the phrase “described in s. UWS 7.02 (1) (a)” should be inserted after “felony” and “other” should be inserted before “elements”.

w. As written, s. UWS 7.06 (1) (b) would authorize a chancellor to suspend a faculty member without pay due to inability to report to work due to incarceration for a misdemeanor violation. Is this the intent of the rule?

x. Section UWS 7.06 (1) (c) does not appear to achieve its intended result. That provision states that a faculty member may be suspended without pay pending a final decision on termination when “The faculty member has been convicted of serious criminal misconduct.” However, “serious criminal misconduct,” as defined in the rule, is not a crime enumerated in state or federal statutes and therefore there can be no state or federal conviction for “serious criminal misconduct.” It appears that the board’s intent would be achieved if par. (c) were rewritten as follows:

(c) The faculty member has been convicted of a felony in state or federal court that is described in s. UWS 7.02 (1) (a) and the chancellor finds that the faculty member’s conduct clearly poses a substantial risk to the safety of the members of the university community or others or seriously impairs one of the following:

1. The public trust in the university.

2. The university's ability, or the ability of the faculty member's colleagues, to fulfill teaching, research, or public service missions.
3. The faculty member's fitness or ability to fulfill the duties of his or her position.
4. The opportunity for students to learn, do research, or engage in public service.

It should be noted that the language suggested above assumes that s. UWS 7.02 (1) would be revised as suggested in comment d., under the heading "Form, Style and Placement in Administrative Code." Specifically, the phrase "and that" should be removed from the end of s. UWS 7.02 (1) (a) 6.

y. In s. UWS 7.06 (3) (a) and (b), "terminated" should be replaced with "dismissed."

z. All comments above pertaining to provisions in ch. UWS 7 also apply to the corresponding provisions in ch. UWS 11 that are contained in the rule-making order. Those provisions should be reviewed and modified as appropriate.