



Cornell University University Assembly

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Minutes

Codes and Judicial Committee

University Assembly

March 14th, 2018

5:05pm - 6:20pm

163 Day Hall

I. Call to Order (Chair)

- a. Call to Order
 - i. M. Battaglia called the meeting to order at 5:05pm.
- b. Roll Call
 - i. *Present:* K. Ashford, D. Barbaria, M. Battaglia, R. Bense, R. Lieberwitz, V. Price, C. Riley, E. Winarto, K. Zoner, K. Karr
 - ii. *Absent:* J. Kruser, D. Putnam, M. Horvath, G. Kaufman
 - iii. *Others Present:* J. Hannan, C. Liang

II. Approval of Minutes (Chair)

- a. March 14, 2018
 - i. K. Ashford made a motion to approve the minutes – **approved**.

III. Business of the Day

- a. Update Concerning: UA Resolution #5 Bylaws Change Clarifying the Charge of the Codes & Judicial Committee
 - i. M. Battaglia said that the resolution has passed and has clarified the charge of the Committee (CJC). He added that if the Code amendment to remove non-matriculated minors from the code passes, it will be under the Committee's jurisdiction.
- b. Update Concerning: UA Resolution #7 Charter Change Supporting the Office of the Complainant's Advisor
 - i. M. Battaglia said that this resolution has also passed and can be modified again at a later time. He added that the University Assembly (UA) is awaiting on the President's response.
 - ii. V. Price asked whether the resolution would come into effect this year or next.
 - 1. M. Battaglia said that the Committee is not involved in the earliest stages of the JCC (Judicial Codes Counselor) process, but will

take a closer role in the final stages of the application process. He noted that there have been discussions about whether the CJC should take a closer role in earlier rounds.

- iii. M. Battaglia said he was informed that Policy 6.4 will be reviewed for revamp again and will be speaking with the head of the UA about this matter. He said that the 6.4 panel is similar to the University Hearing and Review Boards (UHRB) except that there are no students on the panel, although that may change, as well as that it is essentially a mini-selection panel. He added that concerns have come to light that there is no way to formally dissent and that questions are answered in a yes/no fashion. He has drafted a new version of questions to address this issue.
- c. For Discussion: University Hearing and Review Boards Staffing Update and Discussion
 - i. M. Battaglia said that the UHRB applications went live today via email and that there appears to be a need to institutionalize the application process. He added that the Committee has asked to close the applications at midnight, but the Office of the Assemblies (Office) has responded that they go through a back-end process requiring them to be closed beforehand.
 - ii. D. Barbaria asked if the Office reflected that they possibly needed more time and stated that he did not realize there were logistical needs after the applications were submitted. He said he would prefer to move the deadline to Friday if possible.
 - 1. M. Battaglia said there were no concerns about moving it to Friday.
 - iii. D. Barbaria made a motion to allow the Office to move the closing time to 12pm.
 - 1. The motion **passed** by a vote of 6-0-1.
 - iv. C. Liang, Associate Judicial Administrator, arrived on behalf of M. Horvath who could not make it to the meeting.
 - v. M. Battaglia said that the Office plans to advertise the applications and encouraged Committee members to help advertise them.
- d. Working Group Update (R. Lieberwitz)
 - i. R. Lieberwitz said that the Group held its second session for the first forum today and is hoping to hold another meeting next week. She said that she has begun formulating some ideas and that the next public forum will be held to workshop those ideas and receive other opinions. She added that the third forum will hopefully be more specific about public comment on more concrete proposals and hopes to provide the proposals to the CJC by late April to early May.
 - ii. R. Lieberwitz said that the President's Task Force is acting independently from the Working Group, but a representative was present at today's

meeting. She added that the Group will also receive input and feedback from the Task Force and that the Task Force incorporated questions suggested by the Working Group.

- iii. K. Ashford asked for more clarification on how the two groups work together.
 - 1. R. Lieberwitz said she does not anticipate the Working Group and Task Force to hold joint meetings or come together, but are “stay[ing] in touch” and are not acting completely separately. She said that the two groups are intersecting in ways that are helpful.
- iv. K. Ashford asked how the process works if both groups have jurisdiction over the Code.
 - 1. R. Lieberwitz said that the Task Force is a presidential council, whereas the Group receives input based on their reports.
- v. R. Lieberwitz said that it would be helpful to receive questions from the University Assembly regarding timelines and goals.
- vi. M. Battaglia said that the Working Group is specifically focused on the Code, while the Task Force is looking at it from a wider scope and anything in regard to the Code must come through the Committee.
- vii. D. Barbaria asked if the UA provided any new instructions or marching orders.
 - 1. M. Battaglia said that there were mixed perceptions about whether the Group was moving too fast or slow, but it is well-received overall.
- viii. D. Barbaria asked whether it is appropriate for anyone on this Committee to reach out to personal constituents who sit on the Task Force and meet with them and discuss the works of the Group.
 - 1. M. Battaglia replied that it is fully appropriate since the goal is to be transparent and that anything that comes up from the Working Group will end up in the Task Force anyway.
 - 2. R. Lieberwitz said they could invite Task Force members to attend forums and meetings, since everything is open.
- e. For Discussion: Concerning the Previously Passed Housekeeping Amendments to the Campus Code
 - i. M. Battaglia reviewed the first amendment on non-matriculated minors, stating that he took the language verbatim from Risk Management. He said a question arose about who inserted the saving statute, but he personally does not see an issue with leaving as is. He suggested mirroring the President’s language and leaving the saving statute with an explanation as to why it is appropriate to maintain.
 - ii. R. Benseal made a motion to vote on M. Battaglia’s suggestion.
 - 1. E. Winarto – point of clarification on what the Committee is

- voting on.
2. M. Battaglia said that they would be mirroring the amended language for section a and b, while leaving the saving statute and providing an explanation that it meets all of the goals set out to do.
 3. The motion to adopt that language was **approved** by a vote of 7-0-1.
- iii. M. Battaglia reviewed the UHRB language proposal requesting renewal. He said that the President was concerned about involving faculty and to ameliorate that concern, seniors would be allowed to be appointed.
 - iv. R. BenseI moved to accept the language.
 1. The language was marked as **resolved** by a vote of 7-0-1.
 - v. M. Battaglia reviewed the language on adding discretion to no contact directives. He said that the provision makes no contact directives not mutually binding, allows the Judicial Administrator's discretion if a no contact directive is violated, and addresses concerns about an appeals process. He added that he created a flowchart to help visualize the process.
 - vi. K. Ashford said that she is in favor of a shorter time period as it fits with the President's intent for expiration and approves of reviewing as a group rather than just through one Chair.
 - vii. M. Battaglia said that Judicial Administrator (JA), M. Horvath, does not have an issue with a shorter time period as long as the process is streamlined enough.
 - viii. R. BenseI voiced his approval of the flowchart created by M. Battaglia. He said that he believed M. Horvath noted that 35 to 40 days would be optimal. He added that he was concerned about who would approve of renewals of no contact directives. He said that the first review should be partly substantive and noted further concern about delays in process.
 - ix. M. Battaglia agreed that the goal is to avoid delays.
 - x. D. Barbaria said the Committee should not take action until M. Horvath or the Hearing Board speaks to them. He said that since no contact directives are meant to protect students, he does not believe it should be made more difficult for students to be kept from being active.
 - xi. R. Lieberwitz – point of clarification on the Committee's main topic of discussion.
 1. M. Battaglia said that R. BenseI proposed to add a third step if necessary to essentially streamline the process instead of going back to the reviewing party.
 2. R. BenseI said that his suggestion was that a renewal of the order was needed instead of an appeals process.
 - xii. R. Lieberwitz approved of the suggestion as it is simpler. She said she

believes having a review group and a paper hearing makes sense. She noted that however, if they were to eliminate an appeals process, there is no person to meet with in regard to the amount of time to continue the no contact order.

- xiii. C. Liang reiterated M. Horvath's concerns that the 21-day timeline is too short to ensure all the needs are met. She said that the Office of the Judicial Administrator wants this to be an efficient process and that the interim process is interim in order to protect all parties involved.
- xiv. K. Ashford said that R. Bensel and D. Barbaria brought up valid points about the need to preserve a safe environment, but wants to balance that with rights to due process. She said that the process is meant to be interim and while the 35 to 40 days solution would be more convenient for the Committee logistically, that must be balanced with concerns of fairness and due process. She added that 21 days is not a short amount of time either.
- xv. V. Price asked what interim means in this case, and whether it covers the period between complaints filed and investigation until the hearing begins.
 - 1. M. Battaglia said that in essence, interim measures do not imply guilt or responsibility, but there is an issue that is concerning enough to separate parties until the situation is fully addressed.
- xvi. V. Price questioned whether the Committee should allow for renewal at all if it is supposed to be an interim measure for a short period of time.
- xvii. K. Zoner said that there are circumstances beyond anyone's control and believes it is nice to have such a renewal process whether or not they would be utilized. She noted that the interim measure only requires individuals to stay away from one another and are usually worked out more easily for shorter terms. She said that it would be beneficial to have the process continue on since one or both individuals strongly do not want to see each other in these circumstances. She said she is less concerned about the time frame and approved of a 40-day period.
- xviii. K. Karr agreed that having a time frame longer than 21 days is important, but noted that no contact orders do in fact restrict students' movement.
- xix. K. Zoner said those only pertain to one-sided cases and both parties would have responsibility as the case is mutually binding.
- xx. K. Karr said that it does create anxiety within students and could create problems as it restricts movement.
- xxi. C. Liang – point of clarification on whether the days mentioned are business days or calendar days. She added that utilizing the renewal model limits students' privacy.
- xxii. R. Bensel said that the renewal process is not merely procedural but also involves information and justification. He said that if they don't renew, it

- appears as if there are doubts about the case.
- xxiii. K. Zoner said that sometimes it has nothing to do with the case but how the individuals deal with one another. She added that parties can come to a “cooling down” phase without the need for a no contact directive.
 - xxiv. M. Battaglia asked what the Committee would like to decide on for number of days, noting that there seems to be an agreement of somewhere around 21 to 40 days.
 - xxv. R. Lieberwitz – point of information on how long it usually takes to get to a hearing.
 - 1. D. Barbaria said that it is likely to be 21 calendar days.
 - 2. M. Battaglia said that the total gap was reduced and cases were being cleared quicker.
 - 3. D. Barbaria said that 21 days would require the Judicial Administrator to make immediate decisions for review.
 - 4. M. Battaglia said that mean number of days was 41 days for 2015-2016, and 33 days for 2016-2017. He added that days reported excludes between 3 to 10 days of the hearing.
 - a. C. Liang added that hearing includes anything that involves the hearing such as temporary suspension.
 - xxvi. K. Zoner proposed a compromise of 30 days.
 - 1. R. Bensei said that he was about to propose 35 days, but 30 calendar days would effectively be the same as 35 days.
 - 2. K. Zoner said that it would be 30 business days, not calendar days.
 - xxvii. C. Liang said that she believes the date coincides with the rest of the proposal.
 - xxviii. C. Riley suggested 28 days.
 - xxix. K. Ashford yielded.
 - xxx. M. Battaglia said that the Committee could agree upon around a month and see how they would review this.
 - 1. K. Zoner said that the Committee should name the number of days.
 - xxxi. R. Bensei made a motion for 31 days.
 - xxxii. K. Ashford proposed 28 days.
 - xxxiii. K. Zoner proposed 30 days.
 - xxxiv. D. Barbaria said that the group would need more time to arrive upon a consensus, so they should leave it at about a month for now.
 - xxxv. R. Bensei spoke to his motion. He said that the Committee does not have all the information needed when the time period is too short.
 - xxxvi. M. Battaglia said that the mean number of days in 2016-2017 was 33 days.

- xxxvii. R. Lieberwitz reversed her original opinion and made a motion to have the reviewing party in this process be a rotating Hearing Board Chair.
1. K. Ashford dissented. She said that a single person comprises the Board Chair and is against favoring a single reviewing party instead of a full Review Board. She said that a group of at least three people would be a good compromise, but putting the decision into a single individual's hands is too much power for one person.
- xxxviii. M. Battaglia requested the Committee to vote on whether to vote on R. Lieberwitz's motion.
1. The Committee moved back into discussion by a vote of 4-4-1.
- xxxix. V. Price said she would be comfortable with having a smaller reviewing group if there were a finite number of renewals.
- xl. C. Riley – point of information on the size of the Hearing Boards.
 1. M. Battaglia said there are four Hearing Board Chairs and one Review Chair for a total of five.
 - xli. C. Riley said that he believes it does not require five people to decide on this issue.
 - xlii. K. Karr asked if each renewal would require a different Board. She noted her preference to have responsive and attentive members on the Hearing Board but also her concerns about the full board. She said that the rotating option is a great compromise and a statute of limitations in the form of a year would be beneficial.
 - xliii. D. Barbaria said that he is in favor of the idea of a rotating Chair if the initial period is short enough. He said that it should be mentioned in the Code as to what information the reviewing party would have access to.
 - xliv. R. Lieberwitz said that a rotation process would be beneficial, like in the case of judge and jury in court.
 - xlvi. K. Ashford agreed with D. Barbaria and stated that it is important to consider the increased duration. She said that it would not be beneficial to have a single person making a decision for 60 or more days.
 - xlvi. K. Zoner asked if the end report states what the longest duration was, as the Committee has only discussed a mean so far.
 1. M. Battaglia said that he does not have information from the report, but has heard that the process can extend for a long period of time.
 2. K. Zoner said that the necessitation of a review of a no-contact order after a short period of time adds to the length of time to get to the hearing. She said she is still in favor of bringing the time frame closer to the mean.
 - xlvi. M. Battaglia said that the Committee seems to be coming upon some form

of consensus.

- xlvi. E. Winarto noted that M. Horvath demonstrated that she is willing to go down to as low as seven days if she only needs to bring the issue to one Chair.
- xlix. K. Zoner said that in her experience these no contact orders go very well most of the time, but has seen parties use it to create angst against one another. She noted a concern that a no contact order would be in place for a reason because an investigation conclusion has not been reached after seven days.
 - 1. M. Battaglia said that the consensus seems to be around 20 to 35 days. He said that he could take this and rework the language for next week if the Committee has a motion.
 - li. R. Benseal asked whether affected parties would have the right to attend at renewals.
 - 1. M. Battaglia said that after 21 days, the parties could send in a paper document.
 - 2. R. Benseal said that the parties should have the right to speak and make their case if they want, since there would be no appeal if they do not have a way to participate.
 - lii. K. Ashford motioned to extend for 5 minutes and for M. Battaglia to rework the language for next week.
 - 1. The motion **passed** with unanimous consent.
 - 2. M. Battaglia said that he would be sending an administration packet that contains more information. He noted the special meeting time next week.
 - liii. M. Battaglia said that the language with renewal process was brought to the Committee's attention by the JA's Office and that there are now multiple Chairs and they are looking at having the process updated. He said that he has reworked the language so that any Chair of the UHRB can start the process of removing a Board member for whatever reason and then come to the CJC with necessary information, after which the Committee would vote by two-thirds on whether to remove or keep the member. He added that a concern arose in that there are members who are in effect missing in action and there is currently no process to pull them.
 - liv. R. Benseal made a motion to adopt the language.
 - 1. D. Barbaria asked what adopt would mean in this context.
 - 2. M. Battaglia said that the language would get resolved, and when the overall document is marked resolved, it would be voted and sent.
 - 3. The language was marked **resolved** by a vote of 8-0-1.
 - lv. M. Battaglia moved on to the language concerning Hearing Board

oversight, which allows the Committee to have more input on how rules are done.

- lvi. V. Price asked when in the process the issue would come up. She said that the Committee may be in favor of changing how this language is written.
 - 1. M. Battaglia said that his understanding of the process is that it has not been updated in a number of years.
- lvii. R. Bensel moved to remove “seated” from sections b and c and to go by majority vote.
 - 1. K. Ashford dissented.
 - 2. The motion **failed** as it was not seconded.
- lviii. R. Lieberwitz made a motion to adopt the language proposed.
 - 1. The language was **adopted** by a vote of 8-0-1.
- lix. M. Battaglia said that it was logistically difficult to arrange for a public hearing two days prior, as is currently stipulated by the Code. He said that the new language would require arrangements for a public hearing to be made within three days after scheduling.
- lx. R. Lieberwitz asked what the timeline is between scheduling and hearing.
 - 1. K. Karr said that the maximum is 21 days, but an appeal can be made to lengthen this time frame if necessary.
 - 2. C. Liang said that it must happen within 21 days, and that they would try to find an agreeable date within two to three business days.
 - 3. R. Lieberwitz asked what dates would generally be chosen.
 - 4. C. Liang said that it would vary based on availability.
 - 5. R. Lieberwitz expressed her concern that three days may not be enough time.
 - 6. C. Liang said that she believes a public hearing would be on an individual’s mind as soon as they know about it.
 - 7. D. Barbaria – point of clarification on whether this would mean that it could never be less than three days.
 - a. C. Liang said that an exchange needs to be made at least three days prior to the hearing.
- lxi. R. Bensel asked if the Committee would be interested in moving to adopt.
- lxii. R. Lieberwitz moved to amend to four business days as it seems more reasonable.
 - 1. K. Karr expressed her belief that the Code reflects a sufficient amount of time to make decisions.
 - 2. R. Lieberwitz **withdrew** her motion.
- lxiii. K. Ashford made a motion to vote as written.
 - 1. The language was marked **resolved** by a vote of 7-0-2.

- lxiv. M. Battaglia said that the Committee would be able to vote on the housekeeping amendments as a whole once the discussion is complete.
- f. For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, Policy 6.4, Selection Questions, and the Complainants Advisor
 - i. **Tabled** to the next meeting.

IV. Adjournment (Chair)

- a. The meeting was adjourned at 6:39pm.

Respectfully submitted,
Dongyeon (Margaret) Lee
Clerk of the Assembly