



Summary of Responses to Query re. Standards for “Presumptively Renewable” Contracts Under 405(c)

(Responses Received Fall 2016, Summary Prepared December 2019)

Background

In the fall of 2016, a member of LWI asked the Professional Status Committee (PSC) to gather information about the standards and processes that schools used when evaluating whether to renew contracts that are “presumptively renewable” under ABA Standard 405(c).¹ The PSC sent a request to LWI’s listserv and received a number of responses involving a wide variety of approaches. This memorandum summarizes the responses that we received, with notations about where the committee can provide additional information.² These responses are grouped based on the level of review

¹ ABA Standard 405(c) provides in relevant part that “[a] law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure[.]” https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_standards_chapter4.authcheckdam.pdf. *Interpretation 405-6* provides that “[a] form of security of position reasonably similar to tenure includes . . . a program of renewable long-term contracts. . . . For the purposes of this Interpretation, ‘long-term contract’ means at least a five-year contract that is *presumptively renewable* or other arrangement sufficient to ensure academic freedom.” *Id.* (emphasis added). While law schools are not required to provide 405(c) protections to legal writing faculty, many schools have chosen to do so.

² Some respondents expressly allowed information to be shared publicly, while others did not grant that permission, and we did not ask specifically about posting the information. Additional responses actually were sent to another LWI member in 2015 and were shared with the committee in 2016. We therefore have created this document that keeps all schools anonymous. However, if you want identifying information about schools that have granted permission for that to be shared, please contact PSC co-chair

required: (1) automatic renewal (at least generally); (2) some review but minimal; and (3) more review.

1. Schools that Provide Automatic Renewal (at least generally)

- **School A:** Contracts renew without review unless the Dean or Director triggers a review.
- **School B:** “At the end of a series of five one-year contracts, we are simply given the opportunity to sign another contract which includes five one-year terms.”
- **School C** (code provisions available): “Our 405c contracts are renewed without any review or other process as long as a review is not requested by the professor or the dean. The general understanding is that unless there is a problem, contracts are automatically renewed. So far, we’ve never had a review requested. No file needs to be put together, no committee, no vote. Dean makes the decision, but if nothing is done contract is automatically renewed. The university has so far not been involved at all in 405c appointments. They are “decanal” appointments and so handled entirely by the dean and the law school.”
- **School D:** “We put together a memo akin to our annual salary memo that requests renewal with sample materials but no formal review.”
- **School E:** “Typically, our dean . . . asks us if we would like to renew our contracts and sends a letter that we both sign to that effect. No more teaching and scholarship reviews!”
- **School F:** “New hires are placed on a one-year contract. At the end, they receive a one or two year contract. At the end of the three year term, they go before the faculty to decide whether to award a three-year presumptively renewable rolling contract. Every year we are renewed for another three years. Other than the annual evaluation with the dean like everyone else, there is no big ‘do we renew’ decision. They are then Associate Clinical Professors. Promotion to Clinical Professor is seven years after the granting of the rolling contract. Similar to a

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tenure-review. I think this description is what [another school] used to do and may still do. Our process was set in place about fifteen years ago.”

- **School G:** “very minimal” review; faculty handbook states, “Under University policies, a senior lecturer who is employed under such a long-term contract shall, upon the expiration of the contract, be reappointed to another five-year contract, except for the following reasons: Closure or permanent down-sizing of the program within which the senior lecturer teaches; Professional incompetence; Serious misconduct; Financial exigency; or Changing staffing needs of the program within which the lecturer teaches.” “Since the reasons for non-renewal are so narrow, there’s very little review. I usually am not aware that it’s going on until I get the letter saying I’ve been reappointed.”
- **School H:** “We are attempting to fully adopt the term ‘tenure equivalent’ for our long-term contract faculty with 405(c) status. As a ‘tenure equivalent’ and presumptively renewable there is no separate process for renewal absent good cause. . . . For renewal of a 405(c) contract, no file or formal decision-making. Same standards for termination of someone on a 405(c) contract as for tenured faculty. Publication requirements are tied to promotion rather than retention. No inconsistent standards from the larger university.”

2. Some Review but Relatively Minimal

- **School I** (code provision available). “We do give the presumption meaning, in that the review is a much less onerous one than the review for the initial long-term appointment, and the presumptive renewal standard is whether there is ‘just cause’ for non-renewal. The relevant provision in the attachment is IV(B)(7). This internal procedure is currently incorporated by reference into our law faculty union contract (on which we must commence new negotiations this spring).”
- **School J:** “At the end of our first 5-year presumptively renewable contract, we must apply for renewal and submit an abbreviated file (unless we are also seeking promotion, in which case we have to submit a full file). The abbreviated file is a letter that summarizes our activities during the previous five years, including teaching, professional growth, and service. That letter goes to a

committee for review. The committee also reviews our students' evaluations for the previous five years, but we are not required to provide any taped classes or other materials. The committee may, but rarely does, ask for additional information. That committee then makes a recommendation to the Dean, who decides whether to renew the contract. That decision is not reviewed by the full faculty under our current code. I went through the process in 2015, and it was not particularly arduous. The letter was just a bullet point list of what I had done in the past five years accompanied by a short narrative and a short reflection on what I had accomplished over the last five years and what I wanted to accomplish in the next contract period."

- **School K (code provisions available)** "Summary of Review Process and Standards: When a professor is up for renewal, the Dean, Vice Dean, and Director confer. As long as there are no concerns about the faculty member's satisfaction of the criteria for evaluation, the contract is renewed. If a concern is expressed, the renewal will go to a committee comprised of several professors, usually including the Director, for a full review. We have an appeal process for denied renewals. Terminations before the expiration of the contract are governed by the same procedures as termination of tenured professors."
- **School L:** "The school's policy language is as follow: during the fifth year of each five-year contract, each candidate for retention will provide a two to three page self-assessment, the previous four faculty annual reports, and teaching evaluations for the previous four years to the Retention Subcommittee. The Subcommittee's review of the candidate's materials will constitute the entire review process for renewal of the five-year contract unless the Dean or six or more faculty members have expressed concern about the candidate's performance. In the latter case, the Subcommittee's recommendation will go to the voting faculty for a vote on retention."
- **School M:** "A rolling contract is one in which the initial term of years presumptively remains constant. That is, at the end of the first year on a rolling three-year contract, the contract rolls over and the faculty member begins another three-year contract. A rolling contract continues to roll subject to a positive review by the Dean After two consecutive, negative reviews, the Dean may convert a rolling contract to a three-year or five-year fixed term contract."

Before the end of the contract term, the Dean may reinstate the rolling contract after one or more positive reviews. Throughout this process, the Dean is to consult the director(s) or other members of the fixed term faculty member's program, if any."

- **School N:** [this school may have changed its process/standards since this answer was provided]: "The fact investigation occurs before the issuance of a 5-year contract or before a promotion. There's very little that happens for a renewal. Rather, it's clear to me that the administration and faculty take the position that a presumption of renewal operates as you would expect in the real world. The burden is on the *committee* to make the prime facie showing of non-renewal. Here is how it goes, procedurally: The committee reviews a short self-report submitted by the professor. The professor writes that self-report as a follow up to an initial request, I am seeking another 5-year contract. That self-report memo exists as information but not as a prima facie showing itself. Short means 3-4 pages usually. Unless the committee believes there is cause for a non-renewal, the chair alerts the faculty during the exec session of a faculty meeting 'the committee reports that x is up for contract renewal. The committee is not seeking to not renew the contract.'"

3. Schools that Require More Review

- **School O:** "Renewal of 5 year contracts. LP faculty members with 5 year contracts may apply for renewal in their fourth or fifth year of their 5 year contracts. There is a presumption of renewal of the 5 year contracts. The process will be the same as that applied to LP faculty pursuant to V(B) (1)-(5), except that applications receiving unanimous support in the 5 Year Contracts Committee shall bypass the vote of the tenured and 5 year contract faculty and go directly to the Dean. Faculty members with 5 year contracts before the enactment of these standards shall meet the substantive and procedural standards for renewal as described in this section." Additionally, the respondent provided the following information about how teaching evaluations are handled: "The Chair of the 5 Year Contract Committee shall appoint faculty members with tenure and/or 5 year contracts to conduct written peer reviews of teaching of faculty members

with 5 year contracts so that each will have at least two peer reviews of teaching before applying for renewal of a 5 year contract.”

- **School P:** “My school ended up having a complete review, almost exactly like the review for the initial five-year contract: full committee, class visits, written reports, presentation to entire Rank & Tenure Committee, voting approval. The Dean, Provost, and Board have to approve all contracts.. The only difference was that everyone in voting on it was to treat it as “presumptively renewable.” I’m not sure I know what that means in practice and I don’t think voters did. I don’t have any official language to send you as our faculty manual is silent on the issue; we are in the process of drafting a new manual but I don’t know what language, if any, is there. I have requested that the process be clarified and memorialized in the manual, but I don’t know yet.”
- **School Q (code provisions available):** This response includes several different pieces:
 - “What is the **process for renewal** of 405(c) contracts at your school. For example, does the candidate have to put together a contract renewal file? What must be contained in the file? Is there a contract renewal committee? Does the full faculty vote on renewal or non-renewal? Does it go directly to the school’s dean? Who makes the final decision? → It mirrors the process used for tenure track faculty, with a few tweaks that make sense for legal writing professors, such as more emphasis on teaching and different scholarship requirements. The review committee is the regular faculty review committee plus the legal writing director, and the committee is happy to turf most of its work concerning legal writing candidates to the legal writing director, as they have their hands full with tenure-line professors.
 - What **substantive standards** are used in evaluating renewal of a 405(C) contract? For example, does the applicant bear any burden of proof, or does the law school have to show some sort of good cause for not renewing the contract? Do the contracts contain any provisions allowing for non-renewal for financial or other business reasons of the school? Is the faculty member under any obligation to continue publishing in order

to have his or her contract renewed, and if so, are tenured faculty at the school under similar obligations? → Both legal writing and tenured faculty are expected to keep writing. The university's non-tenure track union agreement applies, so once a non-tenure-track professor has 'continuing' status, that bargained agreement rules. This is actually more protection than our tenure-line faculty have, as they are not part of a bargaining unit.

- If your law school is part of a **larger university system**, does your university impose or attempt to impose requirements that may be inconsistent with the ABA standard's 'presumptively renewable' idea? That's not something that the LWI member requested in particular, but we know from conversations at the LWI Conference in Portland that it has become an issue at some schools, and the Professional Status Committee would like to gather information about that topic as well, to help members respond more effectively to that issue. → The NTT union contract gives more protection than the ABA standard."
- **School R:** This is another answer with several pieces:
 - **Process for renewal:** At [this school], LRW faculty (and clinical) operate under Long-Term Contract Statutes. These provide renewable long-term contracts of 5 years. (1) The LRW candidate does put together a renewal file; however, it is much less comprehensive than the file needed when applying for the initial long-term contract. (2) The renewal file needs to address the four areas of evaluation: teaching, professional development, advising, and citizenship. (3) The same PRT committee that evaluates candidates for tenure, reappointment, and initial long-term contracts reviews the petition for renewal. (4) No, the faculty do not vote for renewal. The PRT makes a recommendation to the Dean, who makes a recommendation to the AVP, who makes a recommendation to the president of the U.
 - Regarding substantive standards used in evaluating renewals, the language states that the candidate must demonstrate "satisfactory" performance during the term of the current contract. Then it states that the

candidate must show evidence of “excellence” in all four categories. Then to muddy the waters even more, it states: “Evidence of serious deficiencies in meeting any of the criteria will act as a bar to renewing a long-term contract.” So, whether the standard for renewal is satisfactory, excellence, or merely not seriously deficient is unknown.

- Yes, “other institutional considerations such as long-range academic needs and the financial condition of the University may lead to non-renewal.”
Larger university system: The University Handbook does include language regarding termination for financial “exigencies,” but the Law School’s Long-Term Contract Statutes “control” if a conflict exists between the Statutes and the University Handbook. So, the controlling language would be the language included above.
- Long-Term faculty are exempt from the publication requirement. They may fulfill professional development in other ways, such as presenting at conferences. Tenured faculty, of course, are required to publish.
- **School S:** “[The review] does go through the P and T Committee, there are class visits and write up by faculty on the Committee and other skills faculty, student evals are requested/analyzed, and we each provide a self report. But the Committee Chair has always said these are formalities.”
- **School T:** “Full review like initial review; results put in a binder and put in Dean’s office.”
- **School U:**
 - At School U, clinical and LRW faculty are hired under the 405(c) standard. “New hires serve a three-year probationary period through annual contracts that can be renewed for up to a total of three years. These annual contracts are not presumptively renewable. At the end of that period, the faculty member undergoes a ‘tenure-like’ review, and the entire faculty votes on whether to award that person a presumptively renewable five-year contract. 405(c) faculty (‘term faculty’) are not allowed to vote on hiring or retention except for other “term” faculty.

- Once a five-year presumptively renewable contract is approved, that term faculty member is evaluated annually. Term faculty have no scholarship requirement. A term faculty member may be terminated for just cause at any time during any contract period.
- [During the first use of these standards, LRW faculty were asked to submit] mini-vitae for each of the past four years, student evaluations for each of the past four years; [annual committee evaluations from the same period]; and a self-evaluation of our service and teaching for the past four years.
- [The Dean and Committee were going to meet to make decisions about renewal or non-renewal.] This recommendation is given effect without further faculty action unless six or more tenured or tenure-track faculty members request in writing consideration within two weeks of the communication. If the Dean and the majority of Committee A do not agree on renewal, or if six faculty members request consideration by the faculty as a whole, the tenured and tenure-track faculty will meet to consider renewal. Renewal is presumed unless a majority of faculty members vote against renewal. Votes are to be based on a judgment that renewal is or is not in the best interests of [the school] and the University.”