

[Appendix H – 2]

## UNIVERSITY OF DAYTON SCHOOL OF LAW

### POLICY ON MERIT PAY

[Adopted December 18, 1987.]

#### 1. SCOPE

These guidelines are based on several assumptions. First, that the School of Law will always endeavor to keep its overall pay scale in line with the pay scales at similar law schools in the Midwest. Second, assuming the University of Dayton continues to have a growing budget as it has in the recent past and there continues to be at least some national inflation of wages and consumer prices, that the University administration is likely to require some minimum annual salary increase for a faculty member unless it can be demonstrated that the faculty member has failed to fulfill his minimum duties. Third, that all funds available for faculty raises above any minimum required by the University be used for merit pay increases for deserving faculty members in proportion to their contributions to the School of Law during the calendar year preceding the year in which the raise becomes effective.

The criteria and standards set forth below closely parallel the Promotion, Retention and Tenure Policy. Any deviation from the PR&T Policy is solely for the purposes of adapting the criteria and standards to the awarding of merit pay raises.

#### 2. CRITERIA

Faculty members are evaluated on the basis of accomplishment in three areas: teaching, scholarship and service. The criteria for each of these areas are not absolute, but rather are relative to the peer group of the individual undergoing evaluation both at the University of Dayton School of Law and at other law schools of similar or higher quality, and to accepted professional standards.

While personal evaluation by the Dean is always desirable, the Dean cannot be expected to personally engage in all forms of evaluation suggested as appropriate in this section. It is inevitable that the Dean will rely on evaluations by the Promotion, Retention and Tenure Committee and individual members of the faculty, including the faculty member under evaluation.

Many activities of a faculty member combine two, or even all three, of these areas. For example, preparation and presentation of materials at a continuing legal education program may entail teaching, scholarship and service. Any evaluation of the individual's performance will recognize the plural character of such activities in assessing the nature and extent of the individual's contributions under each of the evaluative criteria set forth below.

##### (a) TEACHING

Teaching is defined as an activity that imparts substantive information or skills, including critical thinking and writing, to learners, or guides their independent studies. Ideally, teaching would be measured by the extent of learning. However,

for practical reasons, it is usually necessary to assess teaching activity as a surrogate for a direct assessment of learning.

The most important teaching responsibility of faculty members is teaching courses in the Juris Doctor program. Quality of such efforts will be assessed by classroom visits, and reviews of required texts, reading assignments and examination questions, and other relevant indicia of learning (or teaching) quality. Other important factors in the evaluation of classroom teaching will be the creativeness of the course design and teaching methods employed, the extent and quality of prepared course materials (both primary and supplementary), and the extent of the teacher's preparation efforts (including development of innovative techniques). Quantitative factors, such as the number and diversity of courses, credit hours, and students taught, are relevant factors in the evaluation of teaching.

Other teaching activities that are appropriate for evaluation include student support activities, such as supervision of independent research projects, and counseling; non-degree teaching, such as short courses, colloquia and moot court team advising; professional education, such as continuing legal education and bar review courses; and other non-legal education, such as teaching in undergraduate or non-law graduate courses, or continuing education programs.

In assessing the overall level of an individual's teaching effectiveness, his or her teaching activities will be evaluated in terms of quality and quantity, both individually and cumulatively.

#### (b) SCHOLARSHIP

Both as teachers and as lawyers, members of the faculty of the School of Law have chosen scholarship as a way of life. Scholarship is defined as an activity that involves thorough, intellectual study of a subject, deep and insightful reflection about it, a material advancement in the knowledge, understanding or conceptualization of it, and some serious and high quality explication or debate concerning the fruits of the experience. Although legal scholarship often entails traditional kinds of research and publication, it is not limited to such activities, and, as used in this criterion, the term includes all forms of activity within the above definition. Ideally, scholarship would be measured by the individual's intellectual activity. However, for practical reasons, it is usually necessary to evaluate that activity indirectly by assessing the level of the individual's effort and the fruits of his or her activity.

Traditional legal research and writing is probably the most common form of scholarship. Traditional legal research consists mainly of library research. Traditional legal writing is the sort suitable for publication as treatises and casebooks, and articles, book reviews, notes and comments in law reviews.

Scholarship includes other forms of research, however. Thus, non-traditional forms of inquiry, such as empirical studies of law or lawyers, are valued and accepted as scholarship. Even activities that contribute to an individual's professional performance but do not lead to traditional writing, such as keeping current in one's field or representation of a pro bono or other client, will be given some weight.

Similarly, scholarship includes other forms of elaboration. Thus, traditional legal writing suitable for publications other than law reviews (such as articles, book reviews, notes and comments in business or medical reviews, chapters in practitioner

manuals, and articles in legal encyclopedias), and non-traditional forms of legal writing (such as bar review and continuing legal education materials, supplementary course materials, draft legislation, and preparation of bar committee reports) will be evaluated appropriately. Other non-traditional forms of expression (such as videotapes, professional lectures, panel discussions at professional meetings and professional consulting) will be given recognition as well.

In assessing the overall level of an individual's scholarship, his or her activities will be evaluated in terms of their quality and quantity, both individually and cumulatively.

### (c) SERVICE

With appointment to the law faculty, an individual becomes a part of both the University and the School of Law, much like admission to the bar carries with it entry into the legal profession. By custom and choice, membership in each of these "communities," the University, the School, and the legal profession, entails an obligation of service to that community.

Service is defined as activity that advances the purposes and/or quality of one or more of these communities. Any activity that meets this definition (whether or not specifically enumerated below) is valued. However, to be significant enough to warrant evaluation under this criterion, service should involve the active and substantial participation of the individual. Thus, bare attendance at professional meetings or membership in bar associations (that is, without such participation) is not of sufficient value to the School, the University or the legal profession to warrant evaluation. The assessment of service generally means an evaluation of the level of the individual's effort, the fruits of his or her activity, and the importance of the activity to the School, the University or the legal profession.

The most common form of service is to the School of Law. Such service includes serving as a full-time administrator, serving as a part-time administrator (such as law review or moot court advisor), sponsoring extra-curricular activities and organizations, serving as the chair or as a member of a law school committee, coordinating interdisciplinary programs and projects, and individually developing or implementing administrative or management tools or policies on behalf of the School.

Another common form of service is to the University. Such service includes serving as the School's representative in the Academic Senate, serving as the chair or as a member of a University committee or council, sponsoring University extra-curricular activities or organizations, coordinating interschool programs and projects, and individually developing or implementing administrative or management tools or policies on behalf of the University. Public service will be considered as University service where it relates to University interests.

Professional service includes actively serving on bar boards, councils, committees, and subcommittees at the national, state and local levels, assisting in the preparation and/or grading of bar examinations, participating in major professional conferences and programs, advising or otherwise assisting in the preparation and enactment of legislation, *pro bono* representation of clients, and presentation of legal materials to appropriate groups of non-lawyers.

### 3. STANDARDS

#### (a) PERIODS

These guidelines recognize that there are at least two distinct phases in the development and professional life of a law faculty member:

The "credentialing" period, normally the first four years the faculty member spends as a tenure track faculty member in law school teaching, during which the individual develops his or her individual abilities and habits as a teacher-scholar, and demonstrates himself or herself capable of assuming the role of a faculty member; and,

The "post-credentialing" period during which the individual continues to develop to his or her full potential as a teacher-scholar, and becomes a full, contributing member of the School, University, and professional communities.

Obviously, there are different expectations of the level and types of performance expected of faculty members in the two different phases.

The credentialing period serves the dual function of permitting the individual to develop his or her abilities as a teacher-scholar and of assuring the School of Law that he or she can, and will, perform as a contributing member of the law school community during the rest of his or her professional life. Therefore, faculty members are expected to devote most of their energies to teaching and scholarship during the credentialing period and the granting of pay increases should take this into account.

In the post-credentialing period, the individual is expected to be a full, participating and contributing member of the law faculty. Further, the individual is expected to continue developing his or her abilities as a teacher-scholar and to demonstrate a commitment to serving as a contributing member of the School of Law, University and legal communities during the rest of his or her professional life. Therefore, service is an equal factor in determining the faculty member's contribution to the School of Law during the post-credentialing period.

#### (b) GENERAL CONSIDERATIONS

In applying the criteria set forth above, the Dean should first divide the faculty into three separate levels:

(i) Those, if any, who have performed more than adequately and should receive merit raises in excess of the raises given to those in Level 2;

(ii) Those who performed adequately and will receive salary raises designed to keep pace with inflation and faculty salaries at comparable law schools; and

(iii) Those, if any, who have failed during the year to fulfill their minimum duties as faculty members and therefore will receive raises less than the rate of inflation or salary cuts.

The purpose of dividing the faculty into three separate levels is to enable the Dean to best allocate raises among the three levels. The first step for the Dean should be to

determine which faculty members are to be included in Level 3 and what salary cut or raise should be given to each faculty member in that level. See subsection (c), below. After the Dean has determined how much of the funds available for faculty salaries, if any, will be expended on those in Level 3, the Dean can then determine the extent of the funds available for salary raises for those in Levels 1 and 2. For example, if the Dean has available to him funds which will allow overall faculty raises significantly in excess of the rate of inflation, the Dean could give those in Level 2 raises in excess of inflation while retaining funds to give those in Level 1 significant merit raises. On the other extreme, if the Dean has available to him funds which will allow overall faculty raises of less than the rate of inflation, the Dean could decide on an equitable percentage for raises for those in Level 2 while deciding whether to retain any funds to give those in Level 1 merit raises.

(c) LEVEL 3

The Dean should closely evaluate the performance of each faculty member in Level 3 and determine what adjustment, if any, should be made to his or her salary. If the Dean concludes that a faculty member is not doing an adequate job, cutting, freezing or only marginally raising his or her salary is both the clearest directive to the faculty member to improve performance and the fairest treatment of the faculty member in relation to others.

(d) LEVEL 2

If possible, faculty members in Level 2 deserve raises designed to at least keep pace with the rate of inflation. Since there may be times when there will be insufficient funds to give those in Level 2 raises equal to the rate of inflation, the Dean must be sensitive to the need to give those in Level 2 incentives to continue to performing adequately when he or she decides how much, if any, to reserve for raises for those in Level 1.

(e) LEVEL 1

The Dean will evaluate carefully the performance of each faculty member in Level 1 and determine the amount of merit raise that will best reward him or her and provide a strong incentive for future meritorious performance. After individually evaluating each faculty member in Level 1, the Dean may place those in Level 1 in two, three or more categories and give those in each category the same percentage merit raises. This avoids trivializing of differences in performance that could arise in trying to distinguish between or among those in Level 1 with similar overall performances.