

COLLEGIALITY IN HIGHER EDUCATION EMPLOYMENT DECISIONS: THE EVOLVING LAW

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INTRODUCTION

The appropriate use of collegiality in employment decisions is an issue at the forefront of policy discussion in higher education.¹ Despite the fact that the courts have affirmed at every turn the use of collegiality as a factor in higher education tenure, promotion, and termination decisions, the academic community, particularly the faculty, continues to remain divided over the wisdom of incorporating collegiality into faculty employment decisions.

Those who support the consideration of collegiality in faculty evaluations point out that colleges and universities have long recognized the importance of cooperation and collegial interaction among faculty in advancing the missions of their institution. Supporters of the use of collegiality also emphasize that most courts that have addressed the use of a faculty member's working relationship with his or her colleagues in tenure, promotion, or termination decisions have upheld the consideration of collegiality and have even urged its consideration. For example, the Seventh Circuit Court of Appeals in *Adelman-Reyes v. Saint Xavier University*² affirmed the district court's grant of summary judgment to the University, noting that "winning the esteem of one's colleagues is just an essential part of securing tenure."³ Similarly, the district court in *Bresnick v. Manhattanville College*⁴ stated in deciding for the college in a tenure

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1. This article focuses on the term "collegiality" as it pertains to a person's ability to work well with others and not on the concept of collegial or shared governance within the academic community. "The term *collegiality*, as it is used in academia, has two meanings. The first refers to the well-defined principle of collegial, or shared, governance. The second refers to faculty interactions with colleagues and administrators." FRANKLIN SILVERMAN, COLLEGIALLY AND SERVICE FOR TENURE AND BEYOND 7 (2004).

2. *Adelman-Reyes v. Saint Xavier Univ.*, 500 F.3d 662 (7th Cir. 2007).

3. *Id.* at 668 (quoting *Namenwirth v. Bd. of Regents of Univ. of Wis. Sys.*, 769 F.2d 1235, 1243 (7th Cir. 1985)).

4. *Bresnick v. Manhattanville Coll.*, 864 F. Supp. 327 (S.D.N.Y. 1994).

denial case: “It is predictable and appropriate that in evaluating service to an institution, ability to cooperate would be deemed particularly relevant where a permanent difficult-to-revoke long-term job commitment is being made to the applicant for tenure.”⁵ Likewise, the Supreme Court of Connecticut in *Craine v. Trinity College*⁶ noted:

A multitude of factors go into a tenure decision including the quality of a candidate’s work, the departmental need for a specialist, the number of tenure positions available, the mix of well-known scholars and up-and-coming faculty, the collegiality of the candidate, and the quality of relations with peers and the administration.⁷

Faculty who oppose the use of collegiality in employment decisions raise several arguments. The most frequent argument is breach of contract when collegiality is not defined specifically as a separate and distinct criterion in the employment contract or institutional tenure policy. Faculty denied tenure or terminated for lack of collegiality have also asserted that collegiality is a vague and amorphous term that can easily be used as a mask for discrimination on the basis of race, gender, age, religion, national origin, or disability. Finally, while the American Association of University Professors (AAUP) and others have recognized that collegiality is an important aspect of a faculty member’s overall performance, they have argued that its use as a separate factor in higher education employment decisions poses a threat to academic freedom and free speech.⁸

The *Journal of College and University Law* published an article in 2001 on the role of collegiality in higher education employment decisions.⁹ Despite some opposition, but with strong affirmation by the courts, colleges and universities since 2001 have increasingly used collegiality in making tenure and promotion decisions.¹⁰ In interesting new trends, higher

5. *Id.* at 329.

6. *Craine v. Trinity Coll.*, 791 A.2d 518 (Conn. 2002).

7. *Id.* at 537 (citing *Zahorik v. Cornell Univ.*, 729 F.2d 85, 92-93 (2d Cir. 1984)).

8. See Mary Ann Connell & Frederick G. Savage, *The Role of Collegiality in Higher Education Tenure, Promotion, and Termination Decisions*, 27 J.C. & U.L. 833, 858 (2001). For articles criticizing the use of collegiality in making academic employment decisions, see Gregory M. Heiser, “*Because the Stakes Are So Small*”: *Collegiality, Polemic, and Professionalism in Academic Employment Decisions*, 52 U. KAN. L. REV. 385, 388–89 (2004) (discussing criticisms of the use of collegiality); Edgar Dyer, *Collegiality’s Potential Chill Over Faculty Speech: Demonstrating the Need for a Refined Version of Pickering and Connick for Public Higher Education*, 119 EDUC. L. REP. 309 (1997) (arguing that use of collegiality in academic employment decisions threatens academic freedom); Perry A. Zirkel, *Personality as a Criterion for Faculty Tenure: The Enemy It Is Us*, 33 CLEV. ST. L. REV. 223, 224 (1984–85) (equating collegiality with personality and asserting that use of collegiality threatens individual academic freedom).

9. See Connell & Savage, *supra* note 8.

10. WILLIAM A. KAPLIN & BARBARA A. LEE, *THE LAW OF HIGHER EDUCATION* 537 (4th ed.) (“Collegiality, or institutional ‘citizenship,’ is increasingly being used, either

education institutions are incorporating collegiality in their initial hiring decisions¹¹ and in school and departmental policies.¹² The present article seeks to update the research published in 2001 by discussing cases, law review articles, and other sources published over the last ten years. In addition, this article will focus on the tenure and promotion policies of a number of colleges and universities in the United States to see if and how collegiality is being addressed in institutional policies.

I. DEFINING COLLEGIALITY

Courts have long recognized the right and even the responsibility of a college or university to consider a faculty member's working relationship with his or her colleagues in making hiring, tenure, promotion, and termination decisions.¹³ Nevertheless, the word "collegiality" was not the focus of court decisions until 1981 when the Court of Appeals for the Fourth Circuit in *Mayberry v. Dees*¹⁴ introduced into higher education case law, seemingly with approval, the defined concept of "collegiality" as a distinct criterion upon which to base higher education employment decisions. The *Mayberry* court defined "collegiality" as "the capacity to relate well and constructively to the comparatively small bank of scholars on whom the ultimate fate of the university rests."¹⁵

What does "collegiality" mean?¹⁶ How is "collegiality" defined?¹⁷ More specifically, what is its meaning within the context of the academic community?¹⁸ It seems to be a "term that [has] taken on new meanings

overtly or covertly, to make tenure decisions.").

11. Leonard Pertnoy, *The "C" Word: Collegiality Real or Imaginary, and Should It Matter in a Tenure Process*, 17 ST. THOMAS L. REV. 201, 206, 213 (2004).

12. See *infra* Part IV.

13. See, e.g., *Mabey v. Reagan*, 537 F.2d 1036, 1044 (9th Cir. 1976) (holding that an essential although subjective element of professor's performance is "ability and willingness to work effectively with his colleagues."); *Watts v. Bd. of Curators, Univ. of Mo.*, 495 F.2d 384, 389 (8th Cir. 1974) ("A college has a right to expect a teacher to follow instructions and to work cooperatively and harmoniously with the administration."); *Chitwood v. Feaster*, 468 F.2d 359, 361 (4th Cir. 1972) (upholding nonrenewal of several nontenured faculty who engaged in pattern of bickering and running disputes with department heads, saying: "A college has a right to expect a teacher to follow instructions and to work cooperatively and harmoniously with the head of the department."); *McCauley v. S.D. Sch. of Mines & Tech.*, 488 N.W.2d 53, 59 (S.D. 1992) (affirming that college has right to expect teacher to follow instructions and to work cooperatively and harmoniously with administration).

14. *Mayberry v. Dees*, 663 F.2d 502 (4th Cir. 1981), *cert. denied*, 459 U.S. 830 (1982).

15. *Mayberry*, 663 F.2d at 514.

16. Dyer, *supra* note 8, at 309 (contending that the term is ambiguous, "could use refinement," and may, "like obscenity, [be] easier to comprehend by observation than with words").

17. See *id.* at 309-10 (stating that the term is "not easily defined" and that existing definitions "do[] little to provide any semblance of specific guidelines for behavior").

18. See Pertnoy, *supra* note 11, at 208 (asserting that "confusion abounds" over

over time.”¹⁹

Within the academic community, collegiality has been defined variously as the ability to “get along,” “work well with colleagues,” “demonstrate good academic citizenship,” or “contribute to a collegial atmosphere.”²⁰ Academics often use phrases such as “being a team player,” “being a good citizen,” “fitting in,” and “collegiality to describe the values and benefits of involvement and participation in the life of the community.”²¹ These terms expand into the expectation faculty have that their colleagues share the load and contribute fairly to teaching, committee assignments, admission processes, and other academic responsibilities.²² According to one commentator, collegiality includes advising, mentoring, and recruiting students; fulfilling committee responsibilities; meeting departmental administrative responsibilities; participating in the governance of professional associations; enhancing the reputation of the department and the institution; securing extramural funding; meeting departmental and institutional community responsibilities; and maintaining harmonious relations with colleagues.²³ Indeed, as another commentator puts it, collegiality is about harmony and cooperation.²⁴ Karl Hostetler describes collegiality as “being a good colleague, being decent and civil to other people.”²⁵

Although few other courts have attempted to formally “define” collegiality, many have described what they consider to be collegial behavior. For example, the court in *Watts v. Board of Curators* observed that a “college has a right to expect a teacher to follow instructions and to work cooperatively and harmoniously with the administration.”²⁶ Another federal judge, Deanell Reece Tacha of the Tenth Circuit Court of Appeals,

the definition of collegiality and arguing that it should be more objectively defined).

19. Michael L. Siegel, *On Collegiality*, 54 J. LEGAL EDUC. 406, 408 (2004).

20. See Mary Ann Connell & Frederick G. Savage, *Does Collegiality Count?*, 87 *Academe* 37–40 (2001), available at <http://www.aaup.org/AAUP/pubsres/academe/2001/ND/Feat/Conn.htm>.

21. Phyllis Bronstein & Judith A. Ramaley, *Making the Persuasive Tenure Case: Pitfalls and Possibilities*, in *TENURE IN THE SACRED GROVE: ISSUES AND STRATEGIES FOR WOMEN AND MINORITY FACULTY* 38 (Joanne E. Cooper & Dannelle D. Stevens eds., 2002).

22. *Id.* at 138–39.

23. Silverman, *supra* note 1, at 14–20.

24. Pertnoy, *supra* note 11, at 207 (“[C]ollegiality is about the harmonious co-existence of colleagues joined in a common enterprise.”).

25. Karl D. Hostetler, *Ethics of the Profession: Complexities of Collegiality, Professionalism, Morality, and Virtue*, in *THE ART AND POLITICS OF COLLEGE TEACHING* 324 (Karl D. Hostetler et al. eds., 2d ed. 2001). For other books addressing issues of politics and conflict in the academic setting, see, for example CYNTHIA BERRYMAN-FINK, *Can We Agree to Disagree? Faculty-Faculty Conflict*, in *MENDING THE CRACKS IN THE IVORY TOWER* 141 (Susan A. Holton ed. 1998); RAYMOND R. LEAL, *From Collegiality to Confrontation: Faculty to Faculty Conflicts*, in *CONFLICT MANAGEMENT IN HIGHER EDUCATION* 19 (Susan A. Holton ed. 1995).

26. *Watts v. Bd. of Curators*, Univ. of Mo., 495 F.2d 384, 389 (8th Cir. 1974).

defined collegiality in a thoughtful article questioning whether expanding the number of federal court judges would contribute to a lessening of collegial relations among the federal judiciary.²⁷ Writing from her academic background, Judge Tacha said:

Before describing the impact of collegiality on an appellate court, I must somehow define it. I come from an academic background, where collegiality was at least a professed (if not practiced) value. Like Justice Stewart's experience with obscenity, I know collegiality when I see it, and I have experienced its failures where it was important in supporting professional relationships. Most succinctly stated, collegiality on an appellate court is knowing my fellow judges so well, and respecting their intellects and work patterns so much, that I am willing to listen and consider carefully their perspectives on each legal issue that we confront. It is a personal understanding that transcends political backgrounds, personal idiosyncrasies, and the natural tendency to adhere unyieldingly to one's personal opinions.

. . . Collegiality is lively, tolerant, thoughtful debate; it is the open and frank exchange of opinions; it is comfortable controversy; it is mutual respect earned through vigorous exchange.²⁸

There is also a shared vision of what collegiality is not: it is not congeniality²⁹ or just being pleasant with everyone; it is not "going along with the crowd" or automatically deferring to administrators.³⁰ While few courts have explicitly stated their definition of what collegiality is, a number have taken note of what they define as uncollegial behavior.³¹

27. Deanell Reece Tacha, *The "C" Word: On Collegiality*, 56 OHIO ST. L.J. 585 (1995).

28. *Id.* at 587.

29. Congeniality is behaving in a manner conducive to friendliness or pleasant social relations. See Mark L. Adams, *The Quest for Tenure: Job Security and Academic Freedom*, 56 CATH. U. L. REV. 67, 82 (2006). It is also defined as "[h]aving the same tastes, habits, or temperament; sympathetic; [o]f a pleasant disposition; friendly and sociable; a congenial host." *Id.* In contrast, collegial is defined as "[c]haracterized by or having power and authority vested equally among colleagues." *Id.* Yet, people often confuse the two. *Id.*

30. Silverman, *supra* note 1, at 7.

31. See, e.g., *Ward v. Midwestern State Univ.*, 217 F. App'x 325 (5th Cir. 2007) (demonstrating a lack of interpersonal skills evidenced by shouting at other faculty during faculty meetings, chastising fellow faculty members, and missing faculty meetings); *Cuenca v. Univ. of Kansas*, 101 F. App'x 782 (10th Cir. 2004) (demonstrating unprofessional behavior and engaging in unwarranted personal attacks on students and colleagues); *Sawicki v. Morgan State Univ.*, No. WMN-03-1600, 2005 WL 5351448 (D. Md. Aug. 2, 2005) (having strained relationships with colleagues and students); *Slatkin v. Univ. of Redlands*, 106 Cal. Rptr. 2d 480 (Cal. Ct. App. 2001) (demonstrating inability to interact harmoniously with others); *Mbarika v. Bd. of Supervisors of LSU*, 992 So. 2d 551 (La. Ct. App. 2008) (showing disregard for

They have variously described lack of collegiality as “unwillingness to cooperate . . . ,” “divisive . . . presence within the department,” “inability to get along,” and “deficiency in ability to work with other faculty members in an atmosphere of cooperation and collegiality . . . [!].”³²

Despite varied definitions, there is a remarkable consistency of opinion in the higher education community about the meaning of collegiality. This consistency is seen in court decisions, the AAUP’s Statement on Collegiality, colleges and university policies on appointments, promotion, and tenure, and in scholars’ discussions of the meaning and use of collegiality in faculty employment decisions. There are certain concepts emerging from the case law and other materials reviewed in this manuscript that appear to be central to the idea of collegiality: civility and respect for others, particularly those with whom one may disagree, the ability to work well with colleagues, and a willingness to share in the institutional obligations of faculty, such as to develop curricula and evaluate others.

In addition to the courts, the AAUP has long recognized the importance of collegiality to the well-being of academic institutions.³³ The Association contends that collegiality, in the sense of collaboration and constructive cooperation, identifies important aspects of a faculty member’s overall performance. The AAUP further asserts that a faculty member may legitimately be called upon to participate in the development of curricula and standards for the evaluation of teaching, as well as in peer review of the teaching of colleagues. It has also made the point that much research, depending on the nature of the particular discipline, is by its nature collaborative and requires teamwork as well as the ability to engage in independent investigation.³⁴

Scholarly commentators have described collegiality in similar terms and with approval. In *The Quest for Tenure: Job Security and Academic Freedom*, Mark L. Adams defines collegiality as the legitimate expectation of fellow faculty members and colleges and universities that a faculty member will cooperate and work in an effective and positive manner to further the best interests of the institution.³⁵ He believes that a well-defined and consistently applied standard of collegiality is a necessary element of the tenure process.³⁶ Most other authors who have written on the topic and attempted to define collegiality and its role in faculty employment

behaviors normally associated with being a good colleague).

32. See Pertnoy, *supra* note 11, at 204.

33. The AAUP is sometimes viewed as being against collegiality because it has opposed the consideration of collegiality as a separate criterion in tenure and promotion decisions. This perception is incorrect. The AAUP views collegiality as important as it is a part of the three primary factors in evaluation for tenure—teaching, research, and service. See Committee A, report attached, as Appendix A.

34. See *id.*

35. Adams, *supra* note 29, at 85.

36. *Id.*

decisions have supported its use.³⁷

Other commentators have criticized existing definitions of collegiality as being so vague and ambiguous that they provide little guidance for faculty behavior, but most of those authors have wanted a clearer definition because they support its use.³⁸ Further, they believe faculty will be more collegial if they are given clearer guidance on what is expected of them.³⁹ Only a few authors have appeared to reject the concept of civility as a criterion in employment decisions, usually arguing that the concept of collegiality and civility are used as masks for discrimination.⁴⁰

37. See Seigel, *supra* note 19, at 409. Seigel discusses common definitions of collegiality and offers three of his own. *Id.* at 410. The first is “baseline collegiality,” the standard to which all faculty should comply, which consists of “conducting oneself in a manner that does not impinge upon the ability of one’s colleagues to do their jobs or on the capacity of one’s institution to fulfill its mission.” *Id.* at 411. These fundamental requirements of collegiality emphasize the personal responsibility of every faculty member to perform teaching, scholarship, and service at an acceptable level; advocate, when addressing issues of school policy, positions that are good for the college or university, not just in one’s own self interest; demand fiscal responsibility in expenditure of college or university funds; treat others with patience, courtesy and respect; interact with colleagues assuming they are acting in good faith; recognize that administrators have difficult jobs and, if necessary, disagree with them with civility. *Id.* at 429–30. Affirmative collegiality exists when faculty go beyond the call of duty and, for example, take on additional teaching assignments to help a colleague take a sabbatical or cover his or her classes when the colleague is ill. *Id.* at 414. Affirmative uncollegiality is “conduct that interferes with the ability of one’s colleagues to do their jobs or with the capacity of one’s institution to fulfill its mission.” *Id.* at 415. Affirmative uncollegiality can take on many forms, such as denigrating colleagues behind their backs, making false accusations about colleagues, and criticizing colleagues to outsiders. *Id.* at 415 & nn.29–31; see also Pertnoy, *supra* note 11, at 204, 210–12 (discussing as within the definition of collegiality having cooperative interactions with colleagues, showing civility and respect to others with whom one works and interacts, showing respect for the opinion of others in the exchange of ideas, and demonstrating a willingness to follow appropriate directives from superiors); Robert D. Hatfield, *Collegiality in Higher Education: Toward an Understanding of the Factors Involved in Collegiality*, 10 J. ORG’L CULTURE, COMM’NS, & CONFLICT 11, 13–15 (2006) (identifying three dimensions in which collegiality is inherent and important to the functioning of higher education academic departments: conflict management dimension (collegiality is important to shared power and collective decision-making), social behavior dimension (collegiality is important to workplace culture), and organization citizenship dimension (collegiality is important to being a good citizen of an organization)). See generally Adams, *supra* note 29 (examining the role of collegiality in both granting of tenure and in post-tenure evaluations and distinguishing collegiality from congeniality).

38. Dyer, *supra* note 8, at 309–10.

39. *Id.*

40. See, e.g., Melissa H. Weresh, *Form and Substance: Standards for Promotion & Retention of Legal Writing Faculty on Clinical Tenure Track*, 37 GOLDEN GATE U. L. REV. 281, 312 (2007); Adele M. Morrison, *Straightening Up: Black Women Law Professors, Interracial Relationships, and Academic Fit(ting) In*, 33 HARV. J.L. & GENDER 85, 93–98 (2010) (discussing the role that race and gender, specifically being an African-American female, plays in the evaluation of collegiality in tenure decisions and opposing its use).

Scholars differ in their interpretations of collegiality. Courts have also not expressed a uniform definition, but have interpreted the concept broadly across various circumstances, as evidenced by the following cases.

II. THE COURTS SPEAK: 2000–2010

A. Denial of Tenure

The most heavily litigated area in collegiality cases is that involving the denial of tenure and subsequent non-reappointment of a non-tenured faculty member. During the past ten years, a number of federal and state appellate and trial courts have addressed the issue, deciding in favor of the college or university in the great majority of the cases.⁴¹

In 2007, the Court of Appeals for the Seventh Circuit affirmed summary judgment for the University in *Adelman-Reyes v. Saint Xavier University*⁴² against the plaintiff professor's religious discrimination and tortious interference claims. Professor Adelman-Reyes began working in Saint Xavier's School of Education in 1998.⁴³ In 2001, the University placed her in a tenure-track position, promoted her to Associate Professor in 2002, but did not grant her tenure.⁴⁴ Adelman-Reyes applied for tenure in 2003.⁴⁵ Dean Gulley, the person who had originally hired, supervised, and recommended her for promotion, gave her a negative recommendation based on concerns about the professor's collegiality, contributions to committees, failure to contribute to the University's intellectual life, and declining enrollment in her program.⁴⁶ Eventually, the University Rank and Tenure Committee recommended against tenure, a decision with which the Vice President for Academic Affairs and the President agreed.⁴⁷ Adelman-Reyes unsuccessfully grieved the denial and subsequently filed suit.⁴⁸

41. *See, e.g.*, *Ward v. Midwestern State Univ.*, 217 F. App'x 325 (5th Cir. 2007); *Cuenca v. Univ. of Kan.*, 101 F. App'x 782 (10th Cir. 2004); *Kirk v. Hitchcock Clinic*, No. 98-700-M, 2000 U.S. Dist. LEXIS 16458 (1st Cir. Sept. 29, 2000); *Sawicki v. Morgan State Univ.*, No. WMN-03-1600, 2005 WL 5351448 (D. Md. Aug. 2, 2005); *Zhou v. Pittsburg State Univ.*, 252 F. Supp. 2d 1194 (D. Kan. 2003); *Slatkin v. Univ. of Redlands*, 106 Cal. Rptr. 2d 480 (Cal. Ct. App. 2001); *Mbarika v. Bd. of Supervisors of LSU*, 992 So. 2d 551 (La. Ct. App. 2008). *But cf.* *Cox v. Shelby State Cmty. Coll.*, 194 F. App'x 267 (6th Cir. 2006) (holding that a reasonable jury could conclude that the college's assertion that it terminated a tenured professor because of his "allegedly unprofessional conduct and lack of civility" was pretextual); *Nanda v. Bd. of Trs. of the Univ. of Ill.*, No. 00 C 4757, 2004 U.S. Dist. LEXIS 2214 (N.D. Ill. Feb. 17, 2004).

42. 500 F.3d 662 (7th Cir. 2007).

43. *Id.* at 663.

44. *Id.*

45. *Id.*

46. *Id.* at 664.

47. *Id.*

48. *Adelman-Reyes v. Saint Xavier Univ.*, 500 F.3d 662, 664 (7th Cir. 2007).

In affirming the district court's grant of summary judgment to the University, the Seventh Circuit held that the plaintiff failed to produce evidence sufficient to create a factual dispute on whether the University's stated reasons for denying her tenure were pretextual and a cover for discrimination against her because of her Jewish faith.⁴⁹ Particularly relevant to this article is the court's observation that "winning the esteem of one's colleagues is just an essential part of securing tenure."⁵⁰

The Fifth Circuit held likewise in *Ward v. Midwestern State University*,⁵¹ upholding the University's nonrenewal and tenure-denial decisions and finding that the plaintiff lacked the interpersonal skills necessary for a professor and coordinator of the Masters in Public Administration program. The University removed Ward from the coordinator position and declined to renew his contract because of several incidents of him shouting at other MPA faculty members during a faculty meeting, sending an email to all faculty chastising a fellow faculty member, and failing to attend faculty meetings.⁵²

Ward claimed that the University denied him tenure and failed to renew his contract because of his race.⁵³ The court disagreed, holding instead that Ward did not produce specific facts to rebut the University's legitimate, nondiscriminatory reasons for its actions toward him—his lack of interpersonal skills necessary to serve as Coordinator or associate professor.⁵⁴ His "[c]onclus[ory] allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation do not adequately substitute for specific facts showing a genuine issue for trial."⁵⁵

The Tenth Circuit in 2004 joined the federal appellate courts confirming the legitimacy of considering collegiality in a tenure denial situation.⁵⁶ In *Cuenca*, a *pro se* plaintiff sued the University of Kansas, claiming that the University denied him tenure in its Journalism School because of his race and his opposition to discrimination in the workplace.⁵⁷ He based his claims on both a remark by an external reviewer about his bringing up a "minority issue" in his statement of teaching philosophy and the warning of a fellow faculty member that "playing the race card in this workplace

49. *Id.* at 668–69.

50. *Id.* at 668 (quoting *Namenwirth v. Bd. of Regents of Univ. of Wis. Sys.*, 769 F.2d 1235, 1243 (7th Cir. 1985)).

51. 217 F. App'x 325 (5th Cir. 2007).

52. *Id.* at 328.

53. *Id.* at 326.

54. *Id.* at 328.

55. *Id.* (quoting *TIG Ins. Co. v. Sedgwick James of Wash.*, 276 F.3d 754, 759 (5th Cir. 2002)).

56. *Cuenca v. Univ. of Kan.*, 101 F. App'x 782 (10th Cir. 2004).

57. *Id.* at 785.

would cost me.”⁵⁸ The Tenth Circuit affirmed the district court’s ruling that these were stray remarks by non-decision-makers that were unrelated to the tenure denial decision.⁵⁹

Of more importance to this article, however, is the appeals court ruling on Cuenca’s retaliation claim arising from the University’s brief in opposition to summary judgment. In the brief, the University argued that at worst Cuenca had shown that his supervisors were often frustrated by his “lack of collegiality, unprofessional behavior, and unwarranted personal attacks on students, colleagues, the Journalism School, the University of Kansas or others.”⁶⁰ The evidence showed that Cuenca’s letters and emails to his supervisors contained a large amount of vituperation, impertinence, and criticism of both the University administration and colleagues.⁶¹ Ruling against the plaintiff, the Tenth Circuit stated: “The discrimination statutes do not confer a license to present grievances in an arrogant and uncivil manner.”⁶²

The plaintiff in *Kirk v. Hitchcock Clinic*⁶³ addressed a denial of tenure due to lack of collegiality in an academic medical setting. Hitchcock hired Kirk in 1992 to work as a doctor in the Obstetrics and Gynecology Department, with an accompanying appointment to the medical staff of Mary Hitchcock Memorial Hospital and Dartmouth Medical School.⁶⁴ After five years, she was eligible for “voting membership,” a status akin to tenure in an academic institution.⁶⁵ She received positive reviews and recommendations for three years.⁶⁶ After expressing concerns over the quality of care in the labor and delivery ward, plaintiff experienced a strained relationship with some of the nurses and the nursing leadership.⁶⁷

In 1997, the Clinic’s Board of Governors voted 23–0 to deny Kirk tenure and terminate her employment.⁶⁸ The stated reason was lack of collegiality.⁶⁹ After failing to have the tenure denial decision overturned through an internal appeals process and losing her claim under New Hampshire’s “Whistleblower Act,” Kirk brought her suit in federal court.⁷⁰

The district court dismissed Kirk’s Title VII sex discrimination claim

58. *Id.* at 788–89.

59. *Id.* at 789.

60. *Id.* at 790.

61. *Id.*

62. *Id.* at 790.

63. 261 F.3d 75 (1st Cir. 2001).

64. *Id.* at 77; *Kirk v. Hitchcock Clinic*, CIV. 98-700-M WL 1513715, at *1 (D.N.H. Sept. 29, 2000).

65. *Kirk v. Hitchcock Clinic*, 261 F.3d 75, 77 (1st Cir. 2001).

66. *Id.*

67. *Id.*

68. *Kirk v. Hitchcock Clinic*, CIV. 98-700-M WL 1513715, at *1 (D.N.H. Sept. 29, 2000).

69. *Id.* at *3.

70. *Id.* *Kirk v. Hitchcock Clinic*, 261 F.3d 75, 77 (1st Cir. 2001).

because the charge was not raised with the Equal Employment Opportunity Commission (EEOC) in a timely manner.⁷¹ The court also dismissed Kirk's retaliation claim, holding that Kirk did not present evidence sufficient to establish a genuine issue of material fact that Hitchcock's proffered reason for its negative actions toward her (that Kirk did not practice medicine in a sufficiently collegial manner and created difficulties among her colleagues by her unprofessional approach to resolving issues) was pretextual.⁷² The First Circuit adopted the district court's conclusion that Kirk's claim failed at the pretext third stage of the analysis and affirmed Hitchcock's denying Kirk tenure and ending her employment because of her lack of collegiality.⁷³

A Maryland district court upheld a university's decision to deny a professor tenure on the grounds of non-collegiality and difficulty with interpersonal relationships with colleagues and students in *Sawicki v. Morgan State University*.⁷⁴ MSU hired Plaintiff Marianne Sawicki under a three-year contract as an Associate Professor in its Department of Philosophy and Religious Studies in March 2000.⁷⁵ MSU denied her tenure in June 2002.⁷⁶ Her terminal contract ended in June 2003.⁷⁷

Sawicki sued MSU, contending that the University and various academic administrators all worked to undermine her advancement because she is a white female, at the same time providing more favorable treatment to black male instructors and students.⁷⁸ Defendants asserted, instead, that they denied tenure and ended Sawicki's employment because of concerns about her teaching, her strained relationships with colleagues in her department, and her fractured relationships with many of her students.⁷⁹

Sawicki had several arguments with her department chair, a white male who had enthusiastically requested that she be hired as a full professor.⁸⁰ A white female departmental colleague stated that Sawicki "was the most

71. Kirk v. Hitchcock Clinic, CIV. 98-700-M WL 1513715, at *3.

72. Hitchcock Clinic, 261 F.3d 75, 77-78 (1st Cir. 2001).

73. *Id.* at 78-79.

74. *Sawicki v. Morgan State Univ.*, CIV. WMN-03-1600, 2005 WL 5351448 (D. Md. Aug. 2, 2005), *aff'd*, 170 F. App'x. 271 (4th Cir. 2006).

75. *Id.* at *1.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at *1-2. Sawicki encountered substantial problems with many of her students shortly after she arrived. *Id.* She applied strict rules restricting food or drink in the classroom and prompt attendance policies. *Id.* Students objected, and a major confrontation between Sawicki and her students ensued. *Id.* Sawicki instituted formal disciplinary proceedings against five of her students. *Id.* Fourteen of her students formally requested an investigation of her by the Chair for perpetuating "an inhospitable academic environment." *Id.*

80. *Sawicki*, CIV. WMN-03-1600, at *2.

difficult colleague I have ever had.”⁸¹ Another departmental colleague, also a white female, stated that Sawicki was “the most troublesome faculty member I have ever had to deal with in 20 years of employment in higher education.”⁸²

The district court found that Sawicki did not provide any evidence to refute the fact that she had a student rebellion in one of her classes, did not get along with her department colleagues, irrespective of race and gender, and did not have a single reviewer recommend her for tenure.⁸³ The court held that no reasonable juror could find that the circumstances surrounding Sawicki’s tenure denial amount to unlawful discrimination.⁸⁴

A Kansas district court addressed the subject of collegiality directly in *Zhou v. Pittsburg State University*.⁸⁵ The *pro se* plaintiff sued his former employer for breach of contract, national origin discrimination, and retaliation arising from the University’s decision to deny him tenure.⁸⁶ Plaintiff based his claim of discrimination in large part on the second-year tenure review letter written by the Interim Chair of the Department of Music, Gene E. Vollen.⁸⁷ In this letter, the Interim Chair wrote positive comments as to plaintiff’s teaching, scholarly activity, creative endeavor, and service.⁸⁸ As to his collegiality, however, Vollen wrote: “The Tenured Faculty do have serious concerns which need to be addressed and, while I am listing them under this heading [collegiality], they overlap with other areas, especially Teaching and Service.”⁸⁹ He further noted that “[t]he Tenured Faculty feel that you need to agree to participate with a positive collegial attitude and professional behavior in order to become tenured at Pittsburg State University.”⁹⁰

Disagreements between the plaintiff and the new department chair, Dr. Anne Patterson, continued.⁹¹ Patterson recommended that the University issue plaintiff a terminal contract for the 2000–01 academic year, saying: “I believe that retaining Wei-Kang Zhou is not in the best interest of the Department of Music. In a department that places high value upon collegiality and mutual effort toward common goals, Dr. Zhou is not a

81. *Id.* (noting that she was not receptive to her advice on effective class management and was generally unpleasant and difficult in departmental meetings).

82. *Id.*

83. *Id.* at *11.

84. *Id.* at *9. In so doing, the court also noted the Fourth Circuit’s repeated reluctance to second-guess the inherently subjective tenure decisions of academic institutions. *Id.* at *8–9.

85. 252 F. Supp. 2d 1194 (D. Kan. 2003), *aff’d sub nom.* Wei-Kang Zhou v. Pittsburg State Univ., 03-3273, 2004 WL 1529252 (10th Cir. July 8, 2004).

86. *Id.* at 1215.

87. *Id.* at 1210.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* at 1210–11.

good match. His time here has been marked by discord and controversy.”⁹²

The University’s President notified Plaintiff that the University would not continue his employment beyond the 2000–01 academic year.⁹³ Plaintiff sued.⁹⁴ The University moved for summary judgment and stated in its brief that it did not renew plaintiff’s contract because of “his attitude, his failure to fulfill his job responsibilities and lying to the Music Chairperson about his involvement in the recruitment of a student.”⁹⁵ The district court found that Plaintiff did not offer sufficient evidence that the University’s stated reason for his nonrenewal for lack of collegiality was pretextual.⁹⁶ It granted the University’s summary judgment motion in part and denied in part.⁹⁷

In another national origin discrimination case, *Kalia v. City University of New York*,⁹⁸ the plaintiff claimed that Defendant CUNY failed to grant him early tenure and did not renew his employment because of his national origin. The University’s stated reason for tenure denial was “plaintiff’s pattern of untrustworthy behavior” and lack of collegiality as evidenced in his filing false observation reports for two adjunct professors.⁹⁹

Much of the case centered around the strained relationship between Plaintiff and his Dean, who testified that his efforts against Plaintiff were based on his misconduct concerning the observation reports, his inability to admit fault regarding them, his negative attitude, his inability to work well with students, his mediocre scholarship and teaching evaluations, and his lack of collegiality.¹⁰⁰

There is no question that the dean played an influential role in the negative tenure decision; however, the court ruling in favor of the University said that even if Plaintiff could establish that Defendant denied him tenure based on the personal enmity of his dean and colleagues,

92. *Id.* at 1213.

93. *Id.* at 1214.

94. *Id.* at 1215.

95. *Id.* at 1220.

96. *Id.* at 1221.

97. *Zhou*, 252 F. Supp. 2d at 1221. The court denied Defendant’s motion as to Plaintiff’s claim that Defendant assigned him a heavy workload without additional pay because of his national origin, and as to Plaintiff’s claim of a breach of the implied covenant of good faith and fair dealing. *Id.* at 1225. The court sustained Defendant’s motion as to all of the Plaintiff’s remaining claims. *Id.* The importance of this case lies in the fact that collegiality was one of the primary reasons the plaintiff was denied tenure. The court addressed the topic directly and seemingly with approval.

98. *Kalia v. City Univ. of New York*, 98 Civ. 441 (JSM), 2000 WL 1262905 (S.D.N.Y. Sept. 5, 2000), *aff’d sub nom.* *Kalia v. City Coll. of City Univ.*, 10 F. App’x. 22 (2d Cir. 2001).

99. *Id.* at *3. In one case, Plaintiff filed a report after visiting only part of one class; for the other, he filed a report without ever having attended a class. *Id.* at *1. Plaintiff then asked the two adjuncts not to tell anyone about these lapses and to lie if asked. *Id.*

100. *Id.* at *4.

Plaintiff failed to connect this enmity to discrimination based on Plaintiff's national origin.¹⁰¹

In *Slatkin v. University of Redlands*,¹⁰² an art-history professor denied tenure sued the University for religious discrimination under the California Fair Employment Act.¹⁰³ The University responded that it denied tenure because of deficiencies in the professor's teaching and/or her uncooperative actions as a colleague.¹⁰⁴

The Chair of the Art Department expressed "reservations about [Plaintiff's] ability to interact harmoniously with others, accept criticism, and achieve goals of excellence in her teaching by modifying her teaching methods to increase the interest of her students."¹⁰⁵ Other colleagues asserted that Professor Slatkin is "volatile, does not listen well to differing opinions, undermines the authority of the chair, and has not been dependable in contributing her fair share to the resolution of departmental business."¹⁰⁶

The appeals court characterized the question on appeal as: "Academic catfighting or anti-Semitism?"¹⁰⁷ While the evidence showed that several of the people involved in the tenure decision were prejudiced against Plaintiff, the same evidence showed that they were prejudiced against her as a matter of academic politics, rather than anti-Semitism.¹⁰⁸

Relying heavily on the court's opinion in *Slatkin*, the California Court of Appeal affirmed summary judgment for the defendant in *Washington v. Trustees of the California State University and Colleges*.¹⁰⁹ Plaintiff, Dr. Pat Washington, was hired as the first African-American tenure-track faculty member of the Department of Women's Studies at San Diego State University.¹¹⁰ She claimed that the University denied her tenure on the basis of her race and retaliated against her for complaining about racial discrimination at SDSU by criticizing her as being "uncollegial."¹¹¹

The Trustees asserted, on the other hand, that SDSU denied Dr. Washington tenure because of her deficient scholarship about which she had been repeatedly warned.¹¹² They further asserted that there was no

101. *Id.* at *14.

102. 106 Cal. Rptr. 2d 480 (Cal. Ct. App. 2001).

103. *Id.* at 486.

104. *Id.* at 486–87.

105. *Id.* at 483.

106. *Id.* at 485.

107. *Id.* at 482.

108. *Slatkin*, 106 Cal. Rptr. 2d at 482. It is interesting to note the court's finding that the prejudice against Plaintiff by the academic decision-makers for personal reasons was not evidence of unlawful discrimination. *Id.* at 488–89.

109. 2006 Cal. App. Unpub. LEXIS 3111 (Cal. Ct. App. Apr. 14, 2006).

110. *Id.* at *2.

111. *Id.* at *1, *3. SDSU is operated by the Trustees of the California State University and Colleges system's governing board. *Id.* at *1 n.1.

112. *Id.* at *32–33.

evidence in the record that SDSU retaliated against her because of her complaints about possible race discrimination.¹¹³

Permeating the record were descriptions of Plaintiff's strained relationships with her colleagues. The Department Chair accused Washington of trying to sabotage a conference sponsored by the Department.¹¹⁴ Three faculty members in the Department stated that they would no longer be willing to sit on Plaintiff's tenure review committee.¹¹⁵ Another faculty member said she would retire if required to do so.¹¹⁶ The Dean wrote Plaintiff a letter in which he summarized some of her colleagues' concerns about her, including their belief that she "acted in a rude, selfish, and insensitive manner . . ."¹¹⁷ The Dean further stated: "It is my observation that these faculty have legitimate concerns, and I urge you to alter your behavior."¹¹⁸

The California Court of Appeal agreed with the trial court that Plaintiff did not provide sufficient evidence that Defendant's stated reason for her tenure denial, i.e., deficient scholarship, was pretextual or that criticisms of Plaintiff's lack of collegiality were based on her complaints about race discrimination.¹¹⁹

B. Termination of Tenure

There have been a number of cases since 2001 involving the termination of tenured faculty in part because of a lack of collegiality. In many of these cases, the aggrieved faculty member has challenged the termination on the basis of race, gender, or national origin discrimination, or claims of denial of free speech rights. In all of the cases, the courts have upheld the consideration of collegiality as a legitimate factor in evaluating a tenured faculty member. In the majority of the cases, the courts have rejected the faculty member's claims and upheld termination by the university based on lack of collegiality.¹²⁰ In a few cases, the court has said that it was for the jury to decide if they believe the university was genuine in its concern about collegiality or whether it was used as a pretext for discrimination.

113. *Id.*

114. *Washington*, 2006 Cal. App. Unpub. LEXIS 3111, at *4.

115. *Id.* at *5.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at *31–33, 38, 46.

120. *See, e.g., Cox v. Shelby State Cmty. Coll.*, 194 F. App'x. 267 (6th Cir. 2006); *Llano v. Berglund*, 282 F.3d 1031 (8th Cir. 2002); *Finch v. Xavier Univ.*, 689 F. Supp. 2d 955 (S.D. Ohio 2010); *Frierson-Harris v. Hough*, 2007 WL 2428483 (S.D.N.Y. Aug. 24, 2007); *Sengupta v. Univ. of Alaska*, 21 P.3d 1240 (Alaska 2001); *Bernold v. Bd. of Governors of Univ. of N.C.*, 683 S.E.2d 428 (N.C. Ct. App. 2009); *Mega v. Whitworth Coll.*, 158 P.3d 1211 (Wash. Ct. App. 2007); *Marder v. Bd. of Regents of Univ. of Wis. Sys.*, 706 N.W.2d 110 (Wis. 2005).

1. Cases Supporting the College's or University's Decision to Terminate a Tenured Faculty Member for Lack of Collegiality

In *Sengupta v. University of Alaska*,¹²¹ the Alaska Supreme Court held that a tenured professor's lack of collegiality, evidenced by his unprofessional and disruptive conduct, might, along with other factors, constitute sufficient "cause" for termination by a public university.¹²² In so holding, the Court rejected claims that the termination was motivated by national origin and color discrimination.¹²³

Dr. Mritunjoy Sengupta, an Indian by birth and descent, was a tenured professor of engineering at the University of Alaska-Fairbanks.¹²⁴ Two years into his tenure, Sengupta filed several grievances against the University, alleging in part that he, and not his colleague, should have been appointed head of the engineering department and director of a University research institute.¹²⁵

Sengupta's claims were denied by the University in part because the grievance proceedings demonstrated his lack of collegiality.¹²⁶ Specifically, it was found that he had "demeaned, degraded, and abused his colleagues" and "repeatedly dealt with his colleagues and the University in a dishonest manner."¹²⁷ The record also showed that Sengupta had "testified falsely under oath multiple times during the hearing[,] created and introduced false documents," "committed plagiarism by copying material from another University professor without proper credit," and "intentionally misrepresented his academic degrees."¹²⁸ Based on these findings, University administration sent Sengupta a notice stating its intention to discharge him for "cause," pursuant to University policy, and initiate termination proceedings.¹²⁹ "Cause" was defined as "some substantial shortcoming, [including unprofessional conduct,] which render[ed] continuance in employment detrimental to appropriate discipline and efficiency of service."¹³⁰ At each stage of the termination proceedings, the decision-making committee or individual found that Sengupta should be terminated. For example, the pre-termination hearing officer concluded that Sengupta's "propensity for dishonest, unprofessional and disruptive behavior" rendered his continued employment at the University

121. 21 P.3d 1240 (Alaska 2001).

122. *Id.*

123. *Id.* at 1258.

124. *Id.* at 1245.

125. *Id.*

126. *Id.* at 1246.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at 1246 n.1.

“detrimental to appropriate discipline and efficiency of service.”¹³¹ On Sengupta’s administrative appeal, the superior court found “substantial evidence to support” the University’s termination decision.¹³²

Following his termination, Sengupta filed several claims against the University and others, alleging that his termination was motivated in part by discrimination against his national origin and color.¹³³ The superior court granted the University summary judgment on Sengupta’s § 1981 mixed motive discrimination claim, which was affirmed by the Supreme Court of Alaska. The supreme court, on viewing the evidence in the light most favorable to Sengupta, found that he did not meet his burden of producing evidence of conduct or statements by persons involved in the decision-making process that was directly tied to the alleged discrimination in his termination.¹³⁴ For example, Sengupta provided no evidence of “racial or national origin animus such as derogatory remarks about employees from India” and his evidence “consist[ed] largely of his own conclusory affidavit testimony.”¹³⁵ Sengupta thus failed to show that the University’s termination decision, which was based in part on his lack of collegiality, was motivated by national origin or color discrimination.

A year after the Alaska Supreme Court decided *Sengupta*, the Eighth Circuit Court of Appeals, in *de Llano v. Berglund*, addressed a public university’s use of collegiality as a factor in firing a tenured professor.¹³⁶ Manuel de Llano, a professor of physics, was fired by North Dakota State University approximately six years after he was granted tenure, in part because of his “complete and utter lack of collegiality and cooperation with peers . . . [which made his] continued effectiveness in the department impossible.”¹³⁷ Other contributing factors included the “harassed” staff in de Llano’s department, his “excessive filing of frivolous grievances with the intent to harass” coworkers, and his failure to “correct deficient behavior even after receiving two letters of reprimand.”¹³⁸

De Llano’s lack of collegiality was further evidenced by his “acrimonious relations” with University administration and department colleagues, his removal as department chair “to improve the morale of the department and to strengthen the program in physics,” his authorship of a “series of derogatory letters” concerning several faculty members, his receipt of “several letters” from administration regarding his “disruptive conduct,” his letters to a local newspaper regarding a “variety of ongoing [departmental] conflicts,” department censure for “verbally harassing” the

131. *Id.* at 1246.

132. *Id.* at 1247.

133. *Id.*

134. *Id.* at 1258–59.

135. *Id.* at 1258.

136. 282 F.3d 1031 (8th Cir. 2002).

137. *Id.* at 1034.

138. *Id.*

department secretary and for “failing to attend faculty meetings,” and the transferring out of over “ninety percent” of his introductory physics class.¹³⁹

After his termination, de Llano sued the University, claiming in part that he was denied procedural due process because he was accused of “general violations of university policy and not specific acts.”¹⁴⁰ Contrary to de Llano’s assertion, the court found that the University’s notice of dismissal to de Llano did not contain “vague accusations” but “specifically outlined” the reasons for de Llano’s dismissal, including, the “lack of collegiality, harassment of department personnel, refusal to heed prior warnings regarding his conduct, and the excessive filing of grievances.”¹⁴¹

De Llano also claimed that the University, in firing him, violated his First Amendment right to write letters publicly criticizing the University.¹⁴² The court found that although these letters contained “occasional” comments that may be “properly characterized as issues of public concern” and thus protected by the First Amendment, there was no evidence that these “few” comments were a “substantial or motivating factor” in his termination.¹⁴³ The University was thus able to sustain the termination of a tenured faculty member on grounds of his lack of collegiality.

In another example of a public university considering collegiality in its decision to terminate a tenured professor, the North Carolina Court of Appeals in 2009 decided *Bernold v. Board of Governors of the University of North Carolina*,¹⁴⁴ a case in which a tenured professor was fired for his “incompetence of service,” which was evidenced by his lack of collegiality.¹⁴⁵ During his tenure, Leonard Bernold, a professor of engineering at North Carolina State University, received three consecutive annual post-tenure review findings of “does not meet expectations.”¹⁴⁶ These reviews constituted evidence of Bernold’s “professional incompetence,” pursuant to the University’s post-tenure regulations.¹⁴⁷

In keeping with its regulations and based on these reviews, the University initiated discharge proceedings against Bernold, whose discharge was affirmed by the University’s Board of Governors.¹⁴⁸ After his discharge, Bernold filed suit against the University, alleging that the University had violated his substantive and procedural due process rights, and that no substantial evidence supported his discharge. In his appeal,

139. *Id.* at 1033.

140. *Id.* at 1034.

141. *Id.* at 1035.

142. *Id.* at 1036.

143. *Id.* at 1037.

144. 683 S.E.2d 428 (N.C. Ct. App. 2009).

145. *Id.* at 431.

146. *Id.* at 429.

147. *Id.* at 429–30.

148. *Id.* at 430.

Bernold contended that the lower court erred in upholding his discharge on “grounds of lack of collegiality.”¹⁴⁹

The Court of Appeals affirmed the lower court’s decision, finding that the University had complied with state law and its own procedures in discharging Bernold. State law permitted Bernold’s discharge for “incompetence,” which was evidenced by his “interactions with colleagues [that] had been so disruptive that the effective and efficient operation of his department was impaired.”¹⁵⁰ Further, Bernold was aware that “collegiality or lack thereof was one possible focus of evaluation during his post-tenure reviews” as the college of engineering regulations provided that “each faculty member is expected to work in a collegial manner.”¹⁵¹ The court disagreed with Bernold that a “lack of collegiality cannot constitute incompetence” and found that the record contained “ample evidence that [Bernold] was disruptive to the point that his department’s function and operation were impaired.”¹⁵² The court also noted that Bernold failed to cite authority that “disruptive behavior cannot constitute incompetence.”¹⁵³ The University thus prevailed in using Bernold’s lack of collegiality and disruptive behavior as evidence of his incompetent service to the University and as grounds for his termination.

The issue of collegiality among faculty has also been addressed in the private school context. The case of *Frierson-Harris v. Hough*, for example, also involved the dismissal of a tenured professor based on, among other factors, his “lack of collegiality.”¹⁵⁴ This lack of collegiality was evident, for example, in Michael Wesley Frierson-Harris’s “refusal to cooperate” in the resolution of Union Theological Seminary’s financial problems.¹⁵⁵ Due to these financial problems, the Seminary decided to lease certain of its housing space to third parties and asked the professors in this building to relocate.¹⁵⁶ Relocation assistance and new housing were provided by the Seminary. Harris was the only faculty member who did not cooperate with this process and created numerous difficulties for the seminary, including forcing it to engage in eviction proceedings against him, refusing to move to the assigned alternate housing, refusing to move his property from the hallway of his new residence, forcing the university to pay for offsite storage facilities for his belongings, and rejecting the president’s attempt to gain his cooperation.¹⁵⁷ Based on his “refusal to cooperate” with the relocation process and his “lack of collegiality,” the

149. *Id.* at 430.

150. *Id.* at 431.

151. *Id.*

152. *Id.* at 432.

153. *Id.*

154. 2007 WL 2428483, at *5 (S.D.N.Y. Aug. 24, 2007).

155. *Id.*

156. *Id.* at *3.

157. *Id.* at *4-*5.

Seminary instituted dismissal proceedings against Harris.¹⁵⁸

A dispute resolution committee examined Harris's record and found that his "withholding of cooperation and threats of litigation against fellow faculty members . . . impeded debate and created an atmosphere of fear and apprehension on the part of his faculty colleagues that impact[ed], in a very real and negative way, [the Seminary's] small community of scholars."¹⁵⁹ Based on this record, the Board of Trustees voted unanimously to fire Harris and revoke his tenure.¹⁶⁰

Harris brought suit against the Board of Trustees, the president, certain faculty members and other persons on several counts, including a § 1981 claim that his dismissal was racially motivated.¹⁶¹ As proof of racial discrimination, Harris cited to only one racially discriminatory remark by a university official who was not involved in the termination process and was not a defendant.¹⁶²

The court granted the Seminary and other defendants summary judgment on Harris' discrimination claim because he failed to make a prima facie showing that his termination occurred under circumstances giving rise to an inference of racial discrimination.¹⁶³ The Seminary thus prevailed in firing a tenured professor for, among other reasons, a lack of collegiality, and overcame a claim that the firing was racially motivated.

2. Cases in Which the Court Did Not Affirm the Decision to Terminate, Even Though Affirming the Legitimacy of a College or University Considering Collegiality

There are several cases in which the courts, for a variety of reasons, have refused to uphold the college or university decision to terminate a tenured faculty member for lack of collegiality. Those reasons include the college or university failing to follow its own policies and procedures in terminating a faculty member, a violation of procedural due process, or because the court believed there was contradictory evidence about the university's motive that presented a jury question.

In 2005, the Wisconsin Supreme Court decided *Marder v. Board of Regents of the University of Wisconsin System*,¹⁶⁴ a case that involved the termination of a tenured faculty member by a public university's board of regents, based on behavior that "contributed to the breakdown of collegiality" within the faculty member's department.¹⁶⁵ John Marder was

158. *Id.* at *5.

159. *Id.* at *6.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at *7.

164. 706 N.W.2d 110 (Wis. 2005).

165. *Id.* at 116.

a tenured faculty member in the communicating arts department at the University of Wisconsin Superior.¹⁶⁶ The University initiated termination proceedings against Marder based on eighteen separate charges.¹⁶⁷ The University believed that these charges evinced “a pattern of behavior” that was inconsistent with its expectations of its tenured faculty members and that violated “standards of professional conduct,” thus constituting “just cause” for Marder’s termination.¹⁶⁸

During Marder’s termination proceedings, the faculty terminations committee found that Marder had “engaged in a course of conduct” that was “simply unacceptable” at the University.¹⁶⁹ This included inappropriate conduct with female students and “harassing and disruptive behavior toward . . . faculty colleagues and departmental staff,” which required the University to move his office to another building and reduce his workload.¹⁷⁰ Despite findings of Marder’s non-collegial behavior, faculty and board review committees did not recommend his termination.¹⁷¹ The chancellor, however, pursued termination because it was “necessary to maintain faculty morale and [University] integrity.”¹⁷² The Board of Regents subsequently found just cause for dismissal and affirmed Marder’s termination.¹⁷³

While Marder did not contend that there was insufficient evidence to terminate him for “just cause,” he filed suit against the University claiming in part that ex-parte communications between the chancellor and the Board of Regents, before the board meeting to vote on his termination, violated his procedural due process rights under state statutory law.¹⁷⁴ The court found that Marder’s rights under state law were not violated, but that his constitutional due process rights required his presence at any hearing in which new facts were presented and on which his termination was based.¹⁷⁵ The court thus remanded Marder’s case to the circuit court to determine whether such facts were presented.¹⁷⁶

While this case does not turn on the sufficiency of evidence upon which the University’s termination decision was based, it is interesting that Marder does not even contend that there was insufficient evidence of his lack of collegiality or that it was an inappropriate basis for his

166. *Id.* at 113.

167. *Id.*

168. *Id.*

169. *Id.* at 114.

170. *Id.* at 114.

171. *Id.*

172. *Id.* at 115.

173. *Id.* at 116.

174. *Id.*

175. *Id.* at 116–17.

176. *Id.* at 117.

termination.¹⁷⁷ The case also depicts the detail in which universities must keep records of alleged non-collegial behavior for it to constitute “just cause” for the termination of a tenured faculty member.

Lastly, this case is telling for the resistance and difficulty that university administration typically faces in firing a tenured faculty member, as even with eighteen charges of misconduct that amounted to a “near total breakdown in collegiality” in Marder’s department, the faculty and board review committees recommended against termination.¹⁷⁸ Despite these hurdles, the University was able to garner enough evidence of Marder’s non-collegial behavior for a Board vote of eleven to three in favor of terminating Marder.

The following year, the Sixth Circuit Court of Appeals heard *Cox v. Shelby State Community College*, a case in which a male, African-American, tenured professor of psychology was fired by a community college.¹⁷⁹ During his twenty-five years at Shelby State Community College, Robert Cox filed numerous complaints alleging gender and racial discrimination with the College’s affirmative action officer and with the Equal Employment Opportunity Commission.¹⁸⁰ Cox filed these complaints at various stages in his career and in response to different circumstances; for example, when he received negative feedback from his students and colleagues regarding a course, when he was denied travel reimbursement by the president, and when faculty members critiqued his class syllabus.¹⁸¹

Allegedly based on his performance and student complaints, the College took several adverse employment actions against Cox, which included suspending his teaching schedule, formally relieving him of his teaching duties due to “unsatisfactory performance” and “student complaints,” and requiring his participation in an “action plan” “designed to increase his pedagogical skills and to improve his attitude.”¹⁸² The plan called for Cox to be assigned a supervisor with whom he would meet weekly and to whom he would send monthly reports.¹⁸³ Three months into the action plan, however, an administrative officer decided that the college should initiate termination proceedings, despite Cox’s compliance with the program and the College’s promise that he would have the entire fall to improve before re-evaluation.¹⁸⁴

During the termination proceedings, Cox’s internal discrimination complaints were introduced at the termination hearing along with the

177. *Id.* at 113.

178. *Id.* at 114.

179. 194 F. App’x 267 (6th Cir. 2006).

180. *Id.* at 268.

181. *Id.* at 268–70.

182. *Id.* at 269–70.

183. *Id.* at 269.

184. *Id.* at 269–70.

testimony of the College's affirmative action officer, notwithstanding Cox's attorney's objections.¹⁸⁵ The College contended that this evidence was introduced "solely to demonstrate Cox's lack of collegiality and unprofessional conduct toward his colleagues and the administration."¹⁸⁶

After his termination, Cox sued the College and the Tennessee Board of Regents on a number of claims, including that the affirmative action officer's testimony regarding his racial discrimination complaints constituted unlawful retaliation under Title VII of the Civil Rights Act of 1964.¹⁸⁷ Following a jury verdict in favor of Cox on this claim, the College appealed.¹⁸⁸ In denying this appeal for judgment as a matter of law, the Sixth Circuit found that Cox presented "sufficient evidence for a reasonable jury to have found that [the College] unlawfully retaliated against . . . Cox, thus violating Title VII of the Civil Rights Act of 1964," and that his "allegedly unprofessional conduct and lack of civility" was a pretext for discrimination.¹⁸⁹ The court noted that it was an "inescapable fact" that Cox's complaints were used in some manner during every adverse employment action that he suffered.¹⁹⁰ For example, the administrative memorandum suspending Cox's teaching duties stated that through

memos and actions you have a long history of filing racial and gender discrimination lawsuits that are not in the vein of problem solving for a better College; but are deemed baseless by the civil rights commission that takes up many hours of administrative time, distracts from student success, and adds little to the esprit de corps of the college.¹⁹¹

It was thus "entirely possible that a reasonable jury could have found [the College's] explanation to lack credibility."¹⁹² The college thus failed to prove that it was Cox's lack of collegiality and poor performance that motivated his termination, as opposed to retaliation for his filing of gender and racial discrimination complaints.

For different reasons than those presented in *Cox*, the Washington Court of Appeals, in *Mega v. Whitworth College*, also refused to uphold the College's decision to terminate a tenured professor for lack of collegiality.¹⁹³ Dr. Tony Mega, a chemistry professor at Whitworth College, was granted tenure against the recommendation of his evaluation

185. *Id.* at 270–71.

186. *Id.* at 271.

187. *Id.*

188. *Id.*

189. *Id.* at 273, 275.

190. *Id.* at 275.

191. *Id.* at 269.

192. *Id.* at 275.

193. 158 P.3d 1211 (Wash. Ct. App. 2007).

committee, which had “lost confidence in [Mega’s] collegiality.”¹⁹⁴ Despite this negative vote, the College’s president recommended Mega for tenure in exchange for his agreement to treat “his colleagues and others collegially, with courtesy and thoughtfulness.”¹⁹⁵ Mega also agreed “that a breach of these professional responsibilities may be construed by the administration as an act of insubordination and could result in the action to terminate a tenured appointment.”¹⁹⁶ Based on the president’s recommendation and Mega’s “interim collegiality,” the Board of Trustees granted Mega tenure.¹⁹⁷

The College soon began receiving complaints about Mega’s behavior, but still entered into three subsequent tenure contracts with Mega, the last of which made the offer of appointment subject to the College’s faculty handbook dismissal procedures.¹⁹⁸ The College eventually initiated dismissal proceedings against Mega, whose dismissal was affirmed by the trustees.¹⁹⁹

Upon his dismissal, Mega sued the College alleging in part that the College had breached its contract with him.²⁰⁰ While the jury found for the College, it was allowed by the trial court to consider the terms contained in the president’s letter to Mega, including the requirements of collegiality, a part of Mega’s contract. The trial court determined that it had erred in doing so and granted Mega a new trial on several breach of contract issues.²⁰¹ This decision was upheld by the Court of Appeals. Based on his last employment agreement, the court found that Mega’s termination was controlled by the contract provisions in the faculty handbook, and the president’s letter, which was fully performed, was limited to the College’s initial decision to grant tenure. There was thus a “tenable basis” for the trial court’s new trial order.²⁰²

While the college failed to incorporate the collegiality requirements from Mega’s first employment contract into his final one, this case shows that educational institutions have used collegiality as an explicit contractual requirement for tenured professors and consider a lack of collegiality to be grounds for dismissal.

In another decision in which the court held that a jury determination was in order, *Finch v. Xavier University*²⁰³ involved the termination of Miriam Finch and Tara Michels, two tenured female professors over the age of

194. *Id.* at 1213.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.* at 1213–14.

199. *Id.* at 1214.

200. *Id.*

201. *Id.* at 1216–17.

202. *Id.* at 1217.

203. 689 F. Supp. 2d 955 (S.D. Ohio 2010).

forty, by Xavier University because they were “jointly responsible for the dysfunctional atmosphere” in its Communication Arts Department.²⁰⁴ The professors’ “lack of collegiality” was a central issue in their termination and ensuing suit against the University, as their termination proceedings arose in the midst of their “continuing conflict” with the Communications Arts Department.²⁰⁵

The record reflects that the department was “factionalized and beset by in-fighting among its faculty” and that there were a “myriad of incidents and disputes” between the professors and the department chair, pertaining to “departmental policy, teaching assignments, a new faculty search, and . . . performance reviews.”²⁰⁶ The professors also filed formal discrimination complaints against the department chair.²⁰⁷ An ad-hoc committee, allegedly constituted to investigate the inner workings of the department, recommended instituting formal termination proceedings against the professors for “gross dereliction in carrying out their ethical responsibilities” to the University and because they, along with a male professor, “combined to create a hostile and non-collegial work environment” with no evidence that they might change their behavior without a removal of the department chair.²⁰⁸ Thereafter, a five-member faculty committee unanimously recommended that the professors be terminated, and that recommendation was subsequently adopted by the president.²⁰⁹ As a result, the professors were given a one year terminal contract, with notice that they would be dismissed at the end of that year.²¹⁰

The professors filed suit against the university alleging in part that the University was guilty of gender and age discrimination, retaliation, and breach of contract.²¹¹ The professors introduced evidence that the male professor in their department, who was also accused of non-collegial behavior by the ad-hoc committee, was treated more favorably than they were and was not terminated.²¹² Based on the evidence, the court denied the University’s motion for summary judgment on the professors’ discrimination claim, because while the professors’ “alleged obstreperous conduct provide[d] [the University with] a legitimate, non-discriminatory reason for their discharge,” the professors produced sufficient evidence that their alleged uncollegiality may have been a pretext for gender and age discrimination by the University.²¹³

204. *Id.* at 959–60.

205. *Id.* at 960.

206. *Id.*

207. *Id.*

208. *Id.* at 960, 964.

209. *Id.* at 960.

210. *Id.*

211. *Id.* at 961.

212. *Id.* at 963.

213. *Id.* at 964.

Similarly, the court denied the University's motion for summary judgment on the professors' retaliation claim because while their "alleged misconduct" provided the University with a "legitimate, non-retaliatory reason for their discharge," they introduced evidence that the third professor who did not file discrimination complaints was not recommended for termination proceedings.²¹⁴ Further, evidence showed that the University viewed the "lodging [of the] discrimination complaints" against it and other faculty members as "arrogant," "uncivil," and "uncollegial."²¹⁵ The court noted, however, that viewing the evidence in the light most favorable to the University, it was possible for a reasonable jury to conclude that the professors "were the major source of discord" within the department and that their conduct violated University standards and policy, thus providing a "substantial basis" for the conclusion that the University acted in good faith and not in a discriminatory or retaliatory manner.²¹⁶

Lastly, in light of the conflicting evidence, the court denied the parties cross-motions for summary judgment on the professors' breach of contract claim, in which they alleged that the University breached its employment contract with them by discharging them for less than "serious cause."²¹⁷ The University contended, however, that the faculty handbook provisions on a "Climate of Respect" were breached when professors made "false accusations of discrimination and improper conduct against other faculty members and . . . discriminat[ed] against co-workers and job applicants based on national origin and race."²¹⁸ Thus, while the University failed to produce evidence sufficient to warrant summary judgment in its favor, the court noted that a jury may reasonably find that the University's termination of the professors was based on their lack of collegiality and disruptive behavior.

In conclusion, these cases all support the consideration of collegiality as a factor in termination of tenured faculty, but the courts also do not necessarily accept the University's determination without going through the analysis that is called for in employment discrimination or constitutional law cases, and they sometimes prefer leaving it to a jury to decide whom they believe.

C. Refusal to Hire, Termination during Probationary Period, and Contract Non-Renewal

Although previous studies have focused on the use of collegiality in tenure, promotion, and termination decisions, the review of case law since 2000 indicates an interesting new trend. In numerous cases, colleges and

214. *Id.* at 966.

215. *Id.*

216. *Id.* at 967.

217. *Id.* at 968–69.

218. *Id.* at 969.

universities have embraced collegiality as a standard by which they have denied employment to adjunct faculty members who applied for tenure-track faculty positions, issued terminal contracts to tenure-track faculty members during their probationary period, or declined to renew contracts because of performance concerns including collegiality. As in other cases, plaintiffs in these circumstances have argued that adverse employment decisions were the result of retaliation or age, race, national origin, or gender discrimination. This section outlines cases in which courts have addressed a variety of such issues and regularly found the university's rationale for the decision, including collegiality considerations, controlling.

1. Adjunct Faculty Not Hired for Tenure-Track Positions

The case of *Gronowicz v. Bronx Community College*²¹⁹ presented the issue of an age discrimination claim that ultimately turned on poor performance and lack of collegiality on the part of the faculty member, an adjunct history professor at a community college, who filed suit arguing that he was not hired for a tenure-track position because of age discrimination.²²⁰ The professor, Anthony Gronowicz, could not rebut the College's legitimate, non-discriminatory rationale for declining to hire him, arising from poor performance in the required faculty presentation and subsequent interview.²²¹ The court noted that the College had introduced evidence showing that "faculty members who made the hiring decisions had concerns over Gronowicz's interpersonal skills."²²² Further, "[m]ultiple faculty members stated that they felt that [Gronowicz] did not possess the requisite level of collegiality. A former colleague of Gronowicz's explained, 'I thought, and still believe, that Dr. Gronowicz was unreliable, difficult, and would give the department a bad name wherever he was involved.'"²²³ The court ultimately held that the "belief among faculty members making the hiring decisions that Gronowicz was insufficiently collegial . . . constitute[d] a legitimate non-discriminatory reason, rebutting [his] prima facie case."²²⁴

Another example of a situation where an adjunct professor was not hired for a tenure-track position is *Alvarez-Diemer v. University of Texas-El Paso*, which was decided by the Fifth Circuit Court of Appeals in 2007.²²⁵ Rossana Alvarez-Diemer, the plaintiff, was hired as a visiting faculty member in the business school in 1999 and applied for a tenure-track

219. 2007 U.S. Dist. LEXIS 74917 (S.D.N.Y. 2007).

220. *Id.*

221. *Id.* at *3.

222. *Id.* at *6. At least one member of the faculty hiring committee had worked with the plaintiff previously and was familiar with his performance as an adjunct faculty member.

223. *Id.* at *6-*7.

224. *Id.* at *7.

225. 258 F. App'x 689 (5th Cir. 2007).

position in 2000.²²⁶ The University offered her only a non-tenure track visiting position in May 2001, which she accepted.²²⁷ She again applied for the tenure-track position in 2002; however, the interview did not go well, she was not hired, and she appealed to the provost, who upheld the decision not to hire.²²⁸ She filed an Equal Employment Opportunity Commission (EEOC) complaint in 2004 alleging gender and race discrimination.²²⁹ The district court granted summary judgment to the University because, although the professor established a prima facie case, she could not overcome the University's legitimate, non-discriminatory rationale for the decision.²³⁰ The Fifth Circuit subsequently affirmed, relying on a six to two faculty vote against hiring her because of "lack of experience[,] . . . her potential for publishing on strategic management, and her collegiality with UTEP faculty during her employment as a visiting professor."²³¹

While *Gronowicz* and *Alvarez-Diemer* took place in the public university context, the case of *Panter v. California Institute of the Arts* involved a faculty member at a private university who sought to change her employment status from adjunct to regular faculty.²³² During the process, however, another colleague alleged that she was having an extra-marital affair.²³³ The professor filed a complaint in which she alleged that her colleague's accusations constituted "uncollegial behavior" and sexual harassment.²³⁴ The grievance committee concluded that his behavior was not sexual harassment, but "violated faculty collegiality and professionalism rules. [He] was censured, denied any pay raise for one year, and the committee's report was made part of his personnel record."²³⁵ Thus, the collegiality issue in this case did not involve the plaintiff's campaign to pursue a regular faculty position, but it is interesting to note that the private institution disciplined the other faculty member for violating collegiality by suggesting that the plaintiff was having an affair. It is interesting to note that in two of the failure to hire cases, the fact that the applicants had taught as adjunct faculty members was actually a detriment to success at being hired in permanent positions. Equally non-collegial applicants with no "history" with the department may have been more favorably received.

226. *Id.* at 690.

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.* at 691.

232. No. B167686, 2004 Cal. App. Unpub. LEXIS 7179, at *6 (Cal. Ct. App. July 30, 2004).

233. *Id.* at *7.

234. *Id.* at *9.

235. *Id.* at *10.

2. Terminal Contracts or Contracts Not Renewed

In *Miller v. University of South Alabama*,²³⁶ a tenure-track professor in the English department filed suit when she was issued a terminal contract, arguing that she was dismissed in retaliation for her opposition to alleged discriminatory hiring practices in violation of Title VII and the First Amendment.²³⁷ The chair of the department wrote a memorandum to the dean stating:

After careful consideration and consulting with a number of colleagues, I regrettably feel that it is in the best interest of the English Department that [plaintiff] be non-reappointed. *There are serious problems regarding her collegiality.* In addition, [she] has a weak scholarly record and only ‘favorable,’ rather than good or excellence [sic] reviews in the area of teaching. She does not appear to be a good fit for our department.²³⁸

A federal district court found that she had not engaged in statutorily protected speech under Title VII,²³⁹ nor had she engaged in protected speech for First Amendment purposes,²⁴⁰ and granted summary judgment to the University and individual defendants.

Whereas *Miller* dealt with a retaliation claim, *Mbarika v. Board of Supervisors of LSU* involved direct claims of race discrimination and defamation.²⁴¹ Dr. Victor Mbarika, a tenure-track professor in the business school at Louisiana State University, filed suit when he was issued a terminal contract because of poor teaching and sub-par publication evaluations.²⁴² The Louisiana Court of Appeals affirmed the grant of summary judgment to Defendants, concluding that Mbarika did not show that he was replaced by someone outside of a protected class or that the University’s rationale was a pretext for discrimination.²⁴³ Moreover, the court resoundingly found that Mbarika “did not meet the standards for teaching, publishing and collegiality that would have permitted his reappointment.”²⁴⁴ The court further noted:

In making a recommendation regarding Dr. Mbarika’s reappointment to another term, the tenured faculty considered, *in addition to his teaching, scholarship, and service, his collegiality and his role in the department.* They stated that Dr. Mbarika showed a disregard for behaviors normally

236. No. 09-0146-KD-B, 2010 U.S. Dist. LEXIS 48643 (S.D. Ala. May 14, 2010).

237. *Id.* at *3–*4.

238. *Id.* at *16 (emphasis added).

239. *Id.* at *28.

240. *Id.* at *35.

241. *Mbarika v. Bd. of Supervisors of LSU*, 992 So. 2d 551, 554, 556–57 (La. Ct. App. 2008).

242. *Id.* at 554, 556–57.

243. *Id.* at 562.

244. *Id.*

associated with being a good colleague; for example, [he] missed classes, regularly came late to class, treated students in a disrespectful and unacceptable manner, and failed to show up to lecture for another professor's class after agreeing to do so.²⁴⁵

The faculty ultimately declined to recommend Mbarika for reappointment because his record in scholarship and instruction did not suggest the promise of a successful tenure review, nor was "his collegial behavior acceptable."²⁴⁶ The department chair agreed and declined to recommend renewal of Mbarika's appointment because his "non-cooperative, disruptive, and combative behavior demonstrated a lack of collegiality and significantly interfered with the mission of the department."²⁴⁷

In yet another example of a suit alleging race discrimination, *Truong v. Regents of the University of California* involved a medical professor who was issued a terminal contract.²⁴⁸ The University, in a report resulting from his internal grievance, stated: "It does appear that [the professor] may have experienced some relatively subtle discrimination based on differences in cultural behaviors ('team' issues) and his national origin (accent)."²⁴⁹ The report concluded, however, that "there is no probable cause to believe [he] was the victim of malicious or purposeful discrimination. Instead, there appears to have been a series of administrative bungles exacerbated by an obvious lack of collegiality."²⁵⁰ A California appellate court, finding that the professor produced no evidence to support his discrimination complaint,²⁵¹ affirmed the lower court's decision and concluded that the professor was properly dismissed.

Moving away from the race-based discrimination context, the Eighth Circuit Court of Appeals in *Carleton College v. National Labor Relations Board*²⁵² addressed a dispute concerning faculty speech and behavior considered unacceptable by the institution. An adjunct faculty member in the College's music department was denied a subsequent contract because of his rude behavior and poor attitude in a meeting with the College's dean.²⁵³ An administrative law judge concluded that the professor's termination was improper, and the National Labor Relations Board

245. *Id.* at 557 (emphasis added).

246. *Id.*

247. *Mbarika*, 992 So. 2d at 558. The department chair testified that in twenty years he had never "had another professor do the things that Dr. Mbarika did in his three years at LSU." *Id.* at 559. He gave as examples of unprofessional [uncollegial] behavior Mbarika's appearing in an MBA class with a baseball cap on backwards after the director of the MBA program had counseled him to dress more professionally. *Id.*

248 No. G028520, 2002 Cal. App. Unpub. LEXIS 9355 (Cal. Ct. App. Oct. 7, 2002).

249 *Id.* at *11.

250 *Id.*

251 *Id.* at *18.

252 230 F.3d 1075 (8th Cir. 2000).

253 *Id.* at 1077.

(NLRB) adopted those findings.²⁵⁴ On appeal, however, the Eighth Circuit Court of Appeals concluded that the decision not to renew his contract was based on his behavior at the meeting, not on any protected activity.²⁵⁵ The appellate court, relying on the Supreme Court's recognition of "the importance of collegiality to academic institutions,"²⁵⁶ found that the NLRB's decision did not consider "[the College's] interest in fostering and maintaining mutual respect among faculty, which is, as all witnesses recognized, not only a legitimate academic interest but a necessary one."²⁵⁷ The appellate court also found that:

The Board [NLRB] believed that [the professor's] language at the meeting was merely the "salty language" that an employer must tolerate in labor matters. Perhaps, such language might be excused in a different setting. However, in the context of a meeting with the dean of the college which was called to discuss professional expectations for the future, [the professor's] use of vulgarities and description of the music department as a "laughingstock" and a "pig" evidenced his disrespect of the music department and unwillingness to commit to act in a professional manner.²⁵⁸

Finally, the Eighth Circuit concluded that ultimately it was the professor's unwillingness to comport himself in a professional fashion that led to his dismissal, not the content of his speech.²⁵⁹

The non-reappointment of a tenure-track faculty member before he stood for tenure review gave rise to litigation in *Stanton v. Tulane University*.²⁶⁰ Tulane hired Stanton as a probationary, tenure-track faculty member in its School of Architecture.²⁶¹ During his third-year review, the Promotions and Tenure Committee voiced concerns about Stanton's teaching, research, and service/collegiality.²⁶² The Committee noted that Stanton's "attitude toward the rest of the faculty has created too many problems. If a tenure vote were to be taken today, it is doubtful that he would receive any significant support."²⁶³ In order to receive tenure, Stanton before would need to overcome personality traits and a history of misjudgments.²⁶⁴ He would have to undergo a fourth-year review to determine whether his

254 *Id.* at 1077–78.

255 *Id.* at 1078–79.

256. *Id.* (citing *NLRB v. Yeshiva Univ.*, 444 U.S. 672, 680 (1980)).

257. *Id.* at 1081.

258. *Id.* at 1081.

259. *Id.* at 1082.

260. 777 So. 2d 1242 (La. Ct. App. 2001).

261. *Id.* at 1244.

262. *Id.*

263. *Id.* at 1246.

264. *Id.*

shortcomings had been addressed.²⁶⁵ The Dean of the School of Architecture expressed her doubts as to Stanton's suitability for tenure, noting her concern over his hostile interactions with faculty that created "deep pockets of enmity" at Tulane.²⁶⁶

Following the fourth-year review, the Dean notified Stanton that the upcoming academic year would be his last year of employment.²⁶⁷ Stanton sued on breach of contract and intentional infliction of emotional distress theories. The appellate court decided these issues in favor of Tulane by focusing on the relevant contract law pertaining to faculty handbooks and the lack of evidence to support a claim for emotional distress in a workplace environment.²⁶⁸ It is worth noting, however, that the court made special mention as to the matter of collegiality and its role in the University's employment decision.

Gender and national origin discrimination were the bases for the claims asserted in *Nanda v. Board of Trustees of the University of Illinois*,²⁶⁹ in which a tenure-track professor of microbiology filed suit against the University and five officials after receiving a terminal contract that ended her employment in 2000.²⁷⁰ Dr. Navreet Nanda, a woman of Asian and Indian descent,²⁷¹ claimed that the department chair made discriminatory statements toward her²⁷² and treated other similarly situated faculty members—namely four men—better than her.²⁷³ The department chair denied making any discriminatory statements and insisted that he had "numerous reasons" for recommending her discharge, including "complaints from students and technicians that [the professor] had been abusive and treated them improperly; 15 or 16 grant application rejections; [the professor's] lack of collegiality; and his belief that [the professor's] research was not 'programmatic' or consistent with the direction . . . of the Department."²⁷⁴ Nevertheless, a federal district court concluded that the professor raised issues of material fact as to whether another employee was similarly situated, and denied summary judgment to the University on those grounds.²⁷⁵ This is the only case in this group of cases in which the court did not affirm the university's decision, but it is important to point out that all the trial court did was to decide the plaintiff had raised material issues of fact that required a trial, and the court did not in any way suggest that

265. *Id.* at 1247.

266. *Id.* at 1246.

267. *Id.* at 1247.

268. *Id.* at 1249–52.

269. 2004 WL 432472 (N.D. Ill. 2004).

270. *Id.* at *1.

271. *Id.*

272. *Id.* at *4.

273. *Id.* at *18.

274. *Id.* at *5.

275. *Id.* at *32.

collegiality was an inappropriate factor for the college to consider.

As with other cases involving collegiality, the case law involving refusals to hire, terminations during the probationary period, or contract non-renewals, tend overwhelmingly to favor the institution, reaffirming the notion that courts regularly uphold faculty employment decisions that involve collegiality as at least one basis for an adverse employment decision. As noted, it is interesting that during the past decade institutions have increasingly embraced collegiality as a cause of action beyond the traditional arenas of tenure decisions and terminations. Given the volume of cases that are abandoned or settled before reaching the courts, the number of decisions in this area suggests that collegiality may enjoy increased embrace as a rationale for discipline or termination of employees outside of the traditional tenure concerns in the future.

III. REVIEW OF COLLEGE AND UNIVERSITY POLICIES ADDRESSING COLLEGIALITY

As noted by Cathy Trower, collegiality is “often a factor, sometimes unmentioned”²⁷⁶ in employment decisions. At some colleges and universities, however, collegiality is explicitly mentioned in the context of various institutional policies, including those related to tenure, promotion, and beyond. This section reviews tenure, promotion, and other institutional policies referencing collegiality.²⁷⁷ This review yielded twenty-five institutions, or institutional units, that embrace policies referencing collegiality in various fashions, including as a separate university policy; a separate criterion for tenure; a component of teaching, research, or service for purposes of tenure review; a general reference in faculty handbooks; or a reference in a policy separate from the tenure and promotion process.²⁷⁸

It is interesting to note that use of collegiality in institutional policies extends beyond the broader university level to college²⁷⁹ and

276. CATHY A. TROWER, *THE QUESTIONS OF TENURE* 40 (Richard Chait ed., 2002).

277. An online review of policies using free form search terms such as “collegiality” and “tenure,” “tenure policy,” “handbook,” or “faculty” was conducted, and links returned were then narrowed to those referring to an institution’s faculty handbook or tenure and promotion policy, rather than an article or other entry referring to tenure or collegiality. Additional institutional policies referencing collegiality were identified through a review of literature. Finally, the policies of the thirty institutions identified by *The Chronicle of Higher Education* as “2010 Great Colleges to Work For” in the “Tenure Clarity and Process” category were analyzed for references to collegiality, yielding four institutions (Gettysburg College, Hardin-Simmons University, Oklahoma City University, and University of Notre Dame, Department of Economics and Econometrics). See *Great Colleges to Work For*, CHRON. HIGHER EDUC., July 25, 2010, available at <http://chronicle.com/article/Great-Colleges-to-Work-For/65724/>.

278. Text of the various policies can be found in Appendix B.

279. See, e.g., Drexel University, College of Medicine, Tenure and Promotion to Tenure Policy, *infra* text accompanying note 320; Iowa State University, College of Liberal Arts, College Policy on Collegiality and Citizenship, *infra* text accompanying

departmental²⁸⁰ sub-levels in some circumstances. This suggests that the use of collegiality as a criterion in the decision process has become a priority of members of individual college or departmental areas within specific disciplines. The policies identified on the various levels range in scope from detailed articulations of the role of collegiality in the tenure and promotion process, including extensive definitions of the concept,²⁸¹ to broad references to the concept within the context of tenure or beyond. As noted by Mark Adams, institutions that include such statements in faculty handbooks create

enforceable contract provisions in the faculty member's employment relationship with the university. The employment relationship will be governed not only by the letter of appointment, but also by professional and institutional policies. In addition, courts may look to institutional practices and customs, as well as oral, written, and implied assurances of key administrators that relate to the rights and responsibilities of the parties.²⁸²

A. Collegiality as College and University Policy

In a step beyond the AAUP's concern about collegiality as a separate criterion for tenure review purposes,²⁸³ Northern Illinois University (NIU) and the Iowa State University College of Liberal Arts and Sciences (ISU-LAS) have crafted separate unit-wide policies focused solely on collegiality. NIU's policy is the more elaborate of the two.²⁸⁴ The policy

note 288; New Mexico State University, College of Engineering, Promotion and Tenure Policies and Procedures, *infra* text accompanying note 309; New Mexico State University, College of Health Science, Policies, Standards, and Procedures for: Annual Performance Review, Third-Year Mid-Probationary Review Tenure & Promotion, and Post-Tenure Review, *infra* text accompanying note 312; North Carolina State University, College of Education, Reappointment, Promotion, and Tenure Standards and Procedures, *infra* text accompanying note 313; University of Mississippi, School of Pharmacy, Vision Statement, *infra* text accompanying note 324; University of South Alabama, College of Arts and Sciences, Promotion and Tenure Policy, *infra* text accompanying note 297; University of Washington, College of Engineering, Promotion and Tenure Criteria, *infra* text accompanying note 306; Western Kentucky University, Potter College, Promotion and Tenure Policies, *infra* text accompanying note 319.

280. See, e.g., Central Washington University, Department of History Personnel Procedures, *infra* text accompanying note 305; New Mexico State University, College of Education, HPDR Promotion and Tenure Policy, *infra* text accompanying note 301; University of Notre Dame, Department of Economics and Econometrics, Organization Plan and General Procedures for the Committee on Appointments and Promotions and the Full Professor Committee on Promotions and Operating Procedures, *infra* text accompanying note 318.

281. See text accompanying *supra* notes 13–40 for a discussion of definitions of collegiality offered by scholars, the AAUP, and the courts.

282. Adams, *supra* note 29, at 73–74.

283. See text accompanying *supra* notes 33–34.

284. Northern Illinois University, Statement on Professional Behavior of

is extensive, and contains a preamble that outlines the importance of collegiality to the institution, as well as a rationale for the importance of such a policy, which references the AAUP's position and underscores the importance of collegiality to the maintenance of a positive work environment and the protection of academic freedom.²⁸⁵ It is particularly important to note that this policy is not merely a position statement, but can be violated by "a documented pattern of frequent and pervasive uncollegial activity, or a severe uncollegial act."²⁸⁶ Moreover, a process for dispatching complaints filed under the policy is also outlined.²⁸⁷ In the policy, collegiality is defined as follows:

Collegiality represents an expectation of a professional relationship among colleagues with a commitment to sustaining a positive and productive environment as critical for the progress and success of the university community. It consists of collaboration and a shared decision-making process that incorporates mutual respect for similarities and for differences - in background, expertise, judgments, and points of views, in addition to mutual trust. Central to collegiality is the expectation that members of the university community will be individually accountable to conduct themselves in a manner that contributes to the university's academic mission and high reputation. Collegiality among associates involves a similar professional expectation concerning constructive cooperation, civility in discourse, and engagement in academic and administrative tasks within the respective units and in relation to the institutional life of the university as a whole.²⁸⁸

The policy also distinguishes collegiality from congeniality, directing that the concept is not to be equated with "conformity or excessive deference to the judgments of colleagues, supervisors and administrators; these are flatly oppositional to the free and open development of ideas."²⁸⁹ Under the policy, collegiality is evidenced by "the protection of academic freedom, the capacity of colleagues to carry out their professional functions without obstruction, and the ability of a community of scholars to thrive in a vigorous and collaborative intellectual climate."²⁹⁰

The College of Liberal Arts and Sciences at Iowa State University

Employees, University Collegiality Policy (2011), available at <http://www.niu.edu/provost/policies/appm/II21.shtml>.

285. *Id.* § 1.1.

286. *Id.* § 1.13.

287. *Id.* § 1.2. The process for dispatching complaints was drawn from the institution's faculty and staff grievance procedures. *Id.*

288. *Id.* § 1.12.

289. *Id.*

290. *Id.*

adopted a “Policy on Collegiality and Citizenship” in November 2010.²⁹¹ While more concise than the NIU policy, the ISU-LAS policy defines a collegial environment as one in which members “can thrive through openness and collaboration.”²⁹² The policy also addresses discrimination, harassment, and the protection of academic freedom and discourse:

Civility in all interactions is required. Faculty members do not exploit, intimidate, harass, or discriminate against others. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas, faculty members show due respect for the opinions of others. They strive to be objective in their professional judgment of colleagues. Faculty members accept their share of responsibilities for fulfilling the teaching, research, and service missions of the unit, the college, and the university.²⁹³

B. Collegiality as a Separate Criterion in Tenure and Promotion Reviews

1. Collegiality as a Separate Criterion

In their monograph on the broader subject of academic tenure, Ryan Amacher and Roger Meiners noted that some institutions reference collegiality in their tenure policies, “which means that the other faculty find the person to be a tolerable colleague.”²⁹⁴ This review found that Auburn University, the University of South Alabama’s College of Arts and Sciences, Saint Louis University, New Mexico State University’s Department of Human Performance, Dance, and Recreation, and Saint Norbert College consider collegiality as a separate criterion to be evaluated for faculty tenure or promotion, but these policies appear to require more than just tolerability. As previously noted, the AAUP actively resists the use of collegiality as a separate criterion for evaluation of tenure or promotion,²⁹⁵ but these few policies clearly articulate the necessity for

291. Iowa State University, College of Liberal Arts and Sciences, College Policy on Collegiality and Citizenship (2010), available at http://www.las.iastate.edu/faculty_staff/forms/_documents/Collegiality%20and%20Citizenship%20Statement%2011-3-10.pdf.

292. *Id.*

293. *Id.* Much of the language in this policy statement is paraphrased from the AAUP Statement on Professional Ethics. It is also possible that, even if the Statement is not explicitly incorporated in university policy, academic custom and usage would support its use as a standard to measure faculty behavior. See American Association of University Professors, Statement on Professional Ethics, <http://www.aaup.org/AAUP/pubsres/policydocs/contents/statementonprofessionalethics.htm>.

294. RYAN AMACHER & ROGER MEINERS, FAULTY TOWERS: TENURE AND THE STRUCTURE OF HIGHER EDUCATION 8 (2004).

295. See *supra* text accompanying notes 33–34.

demonstrating a collegial philosophy in order to successfully stand for tenure or promotion.

The Auburn University tenure and promotion policy directs that the standards for tenure are more exacting than those for promotion, and require that in addition to the assessment of teaching, research, and service required for promotion, candidates standing for tenure must also demonstrate collegiality.²⁹⁶ Auburn's tenure and promotion policy cautions faculty evaluators that granting tenure is tantamount to a thirty-year relationship and distinguishes collegiality from sociability or likability: "Collegiality is a professional, not personal, criterion relating to the performance of a faculty member's duties within a department."²⁹⁷

Auburn's policy also holds that any perceived deficiencies with regard to collegiality should be expressed to a faculty member as soon as possible, and certainly during annual reviews and during the third year review prior to tenure.²⁹⁸ The policy clearly directs faculty tenure evaluators to be mindful that their assessment of a candidate's collegiality "will carry weight with the Promotion and Tenure Committee."²⁹⁹

Likewise, the tenure and promotion policy adopted by the University of South Alabama's College of Arts and Sciences holds that candidates standing for tenure must demonstrate collegiality in addition to providing evidence of strong teaching, research, and service: "The criteria for tenure are the same as promotion plus the additional important consideration of collegiality of the candidate with her/his department."³⁰⁰ The policy also reminds faculty members evaluating tenure dossiers to consider collegiality as the fourth criterion.³⁰¹

The Saint Louis University policy represents the inverse with regard to demonstration of collegiality: rather than include collegiality as an additional factor for tenure, it is necessary to demonstrate collegiality in order to achieve promotion from instructor to assistant professor.³⁰² No showing of collegiality is necessary for subsequent promotion to associate or full professor or for the award of tenure:

Promotion to the rank of Assistant Professor requires, in addition, demonstration of effectiveness in [teaching, research, and

296. Auburn University, Faculty Personnel Policies and Procedures § 9, *available at* <http://www.auburn.edu/academic/provost/handbook/policies.html#collegiality>.

297. *Id.*

298. *Id.*

299. *Id.*

300. University of South Alabama, College of Arts and Sciences, Promotion and Tenure Policies 2 (2010), *available at* <http://www.southalabama.edu/artsandsci/policiespt.html> (follow link to "Promotion and Tenure Statement of Procedures and Criteria 2010-2011") (emphasis in original).

301. *Id.*

302. Saint Louis University, Faculty Manual 21 (2008), *available at* http://www.slu.edu/organizations/fs/fac_manual/faculty_manual_2008.pdf.

service], as well as evidence of recognition by colleagues in the same Department and College, School, or Library that the candidate possesses qualities of collegiality, such as the ability to work cooperatively and professionally with others.³⁰³

The tenure and promotion policy in the Department of Human Performance, Dance, and Recreation at New Mexico State University considers collegiality as a separate criterion in the assessment of a tenure application, but does not differentiate between promotion and tenure, as do the previous policies: “Collegiality, implicit or explicit, remains an integral part of a faculty member’s profession. Faculty members are expected to interact and cooperate in a positive manner with students, staff, faculty, administration and all others in which a person has contact within the context of his or her NMSU position.”³⁰⁴ The policy also provides examples of collegiality criteria, such as engaging in positive interactions with colleagues, completing work in a timely fashion, and sharing in unit responsibilities.³⁰⁵

At Saint Norbert College, a small private sectarian institution, faculty standing for tenure must demonstrate collegiality separately from academic preparation, effective teaching, student advising, and scholarship or professional service:

The Faculty member shall provide evidence of effectiveness in meeting the collegial expectations of the College. Activities that demonstrate collegiality include active and productive participation in the functioning of one’s discipline. Other collegial activities include those that improve the intellectual, cultural, and religious climate of the College. In addition, service to the College by participating in discipline, divisional, and Faculty meetings, and service on College committees provides other measures of collegiality. Finally, activities that promote or enhance the stature of the applicant and the College within the local community are still another measure of collegiality.³⁰⁶

2. Collegiality as an Express Component of Teaching, Research, and Service

Numerous institutions specifically consider the role of collegiality within the context of teaching, research, and service for tenure applications or

303. *Id.*

304. New Mexico State University, College of Education, HPDR Promotion and Tenure Policy 9 (Nov. 20, 2008), *available at* <http://education.nmsu.edu/departments/academic/perd/documents/hpdr-pandt.pdf>.

305. *Id.* at 10.

306. Saint Norbert College, Faculty Handbook, the Faculty Policy Statement 14 (Aug. 13, 2009), *available at* <http://www.snc.edu/thefaculty/facultyhandbook/fhbsect2.pdf>.

evaluations, and service to the institution or community is the most frequently cited category.³⁰⁷ For example, the Department of History at Central Washington University considers “cooperativeness, courtesy, and exercise of professional ethics” within the context of service to the department and the university, and provides a detailed description of collegial behavior in an appendix to the policy.³⁰⁸ In the University of Washington’s College of Engineering, the tenure policy holds that “as part of their service to the university community, faculty must behave in a professional manner,” and cautions that failure to do so can affect an applicant’s evaluation of service.³⁰⁹ Interestingly, this policy also calls for transparency, and allows the applicant for tenure to respond to any concerns about collegiality as a part of the record.³¹⁰ Academic librarians at Hardin-Simmons University are evaluated annually using collegiality as a component of the service criterion, but collegiality is not a part of the tenure process.³¹¹

Several policies identified in this review consider the role of collegiality in tenure applications beyond service to the institution, extending it to teaching and research as well. The tenure and promotion policy in the New Mexico State University’s College of Engineering³¹² is drafted in a fashion akin to the Auburn University policy and defines collegiality by referring to the Fourth Circuit’s assessment of the concept in *Mayberry v. Dees*.³¹³ The policy extends the evaluation of collegiality across teaching, research, and service, and provides examples in an appendix.³¹⁴ Further, the tenure and promotion policy in the Department of Health Science at New Mexico State University extends consideration of collegiality beyond service to research and creative activity because it has the “potential to enhance

307. The AAUP discourages the use of collegiality as a separate criterion in tenure and promotion decisions. *See supra* text accompanying *supra* note 34; *see also* Hooker v. Tufts Univ., 581 F. Supp. 104, 107 (D. Mass. 1983) (noting that collegiality is used in the place of service in university tenure and promotion policy and concluding that denial of tenure to faculty member was due to failure to meet university standards under the policy and not because of gender discrimination).

308. Central Washington University, Department of History Personnel Procedures, available at <http://www.cwu.edu/~history/personnelproc.html>.

309. University of Washington, College of Engineering, Promotion, and Tenure Criteria, available at <http://www.engr.washington.edu/mycoe/faculty/pt-toolkit.html#criteria>.

310. *Id.*

311. Hardin-Simmons University, Faculty Handbook 111 (Aug. 2006), available at http://www.hsutx.edu/admin/hr/Employees/PHB_August2006Aug17.doc.

312. New Mexico State University, College of Engineering, Promotion and Tenure Policies and Procedures 4 (Jan. 2008), available at [http://engr.nmsu.edu/pdfs/COE_PT_Policy_3-1b%20\(final\).pdf](http://engr.nmsu.edu/pdfs/COE_PT_Policy_3-1b%20(final).pdf).

313. *Id.* at 4; *see also supra* note 15 and accompanying text (describing the *Mayberry* court’s definition of collegiality).

314. New Mexico State University, *supra* note 309, at App. B.

performance in each of three areas.”³¹⁵ The tenure and promotion policy in North Carolina State University’s College of Education also extends assessment of collegiality across teaching, research, and service, and distinguishes collegiality from congeniality: “to be congenial is parallel with sociability and agreeableness, while collegiality is a positive and productive association with colleagues. A person need not be congenial to be collegial.”³¹⁶ The Santa Clara University faculty handbook clearly states that collegiality is not a separate criterion, but must be blended among teaching, research, and service: “Collegiality is not a distinct capacity to be assessed independently of the traditional triumvirate of scholarship, teaching, and service. It is rather a quality whose value is expressed in the successful execution of these three functions.”³¹⁷ However, among these policies, it is singular in that it only permits use of collegiality in tenure evaluations if there is a possible detrimental effect on administrative function: “In those rare instances in which lack of collegiality becomes an issue in the evaluation of faculty for promotion and tenure, it may be considered only insofar as it has a negative effect on the functioning of the department, college or school, or University.”³¹⁸

C. Policies Broadly Referencing Collegiality

Numerous institutions refer to collegiality briefly or broadly in tenure and promotion policies or faculty handbooks, but do not include it as a separate criterion for review. Several institutions make reference to collegiality in the service context. At Baylor University, tenure applications are evaluated on the basis of teaching, research, and collegial service,³¹⁹ and at Oklahoma City University, collegial relations with colleagues is considered part of university service.³²⁰ In the Department of Economics and Econometrics at the University of Notre Dame, collegiality

315. New Mexico State University, Department of Health Science, Policies, Standards, and Procedures for: Annual Performance Review, Third-Year Mid-Probationary Review Tenure & Promotion, and Post-Tenure Review 6–7 (2009), available at <http://www.nmsu.edu/~hlthdpt/documents/hlspt.pdf>.

316. North Carolina State University, College of Education, Reappointment, Promotion, and Tenure Standards and Procedures § 3.2 (Sept. 22, 2008), available at <http://www.ncsu.edu/policies/employment/rpt/RUL05.67.204.php>.

317. Santa Clara University, Faculty Handbook 4 (Oct. 15, 2010), available at <http://www.scu.edu/provost/policies/upload/3-4-Policies-and-Procedures-on-Promotion-and-Tenure-2.pdf>.

318. *Id.*

319. Baylor University, Policy for Tenure and Promotion 1 (Feb. 26, 2010), available at <http://www.baylor.edu/content/services/document.php/63933.pdf>.

320. Oklahoma City University, Criteria for Renewal, Promotion, and Tenure of Probations and Tenured Faculty Members 55 (2008), available at <http://www.okcu.edu/hr/> (follow link to “Faculty Handbook”) (describing forms of collegiality in the context of contributions to the university and professional communities, and including it as one of three criteria for renewal, promotion, and tenure of faculty).

is considered a part of university service, and faculty members are expected to maintain an atmosphere of civility.³²¹ The tenure and promotion instructions for applicants at Western Kentucky University's Potter College direct that collegiality should be discussed in the context of service to the institution.³²²

Other institutions mention collegiality in a broader sense within their tenure and promotion policies. For example, the tenure policy at the Drexel University College of Medicine states that faculty members are expected to have conducted themselves in a collegial fashion during their time at the institution,³²³ and Villanova University articulates the same expectation of collegial behavior.³²⁴ Collegiality is not stated as a criterion for tenure review at Gettysburg College, but that policy does suggest that faculty members reviewing tenure applications "think collegially."³²⁵

In some circumstances, collegiality is mentioned in university materials outside of the tenure and promotion process. For example, Eastern Kentucky University mentions collegiality in its strategic plan,³²⁶ while the School of Pharmacy at the University of Mississippi references the role of collegiality in its vision statement.³²⁷ At the University of Missouri, collegiality is emphasized throughout the institution through an employment rule directed at maintaining a positive work environment and discouraging harassing or intimidating behavior,³²⁸ while at Villanova University, applicants for department chair positions are required to demonstrate their collegiality in order to be eligible for the position.³²⁹ In addition to other articulated duties, department chairs at Saint Louis University are responsible for "establishing a climate of collegiality."³³⁰ At

321. University of Notre Dame, Department of Economics and Econometrics, Appointment and Promotion Procedures and Organization Plan 7 (2008), available at http://economics.nd.edu/assets/26517/economics_cap_document.pdf.

322. Western Kentucky University, Potter College, Promotion and Tenure Policies 11 (July 1, 2007), available at <http://www.wku.edu/pca/potter-college-tenure-and-promotion-policies> (follow link to "Download the Potter College Promotion and Tenure Word document").

323. Drexel University, College of Medicine, Tenure and Promotion to Tenure Policy 1 (Nov. 29, 2007), available at http://www.drexelmed.edu/documents/facaffairs/tenure_policy_revised112907.pdf.

324. Villanova University, Full-time Faculty Handbook 15 (Aug. 1, 2004), available at <http://www3.villanova.edu/facultycongress/cof/full-time-faculty-handbook.pdf>.

325. Gettysburg College, Faculty Handbook 20 (Sept. 2010), available at <http://www.gettysburg.edu/dotAsset/2794522.pdf>.

326. Eastern Kentucky University, Strategic Plan, Description of the University, available at <http://www.web.eku.edu/sp/description.php>.

327. University of Mississippi, School of Pharmacy, Vision Statement, available at <http://www.pharmacy.olemiss.edu/visionstatement.html>.

328. University of Missouri, Collected Rules and Regulations § 330.080, available at <http://www.umsystem.edu/ums/departments/gc/rules/personnel/330/080>.

329. Villanova University, *supra* note 321, at 50.

330. Saint Louis University, *supra* note 299, at 7.

the College of the Atlantic, collegiality is mentioned as part of the search procedures for new faculty members: “The importance of collegiality and shared vision in contributing to good working relationships must be balanced by the long term interest of the College to maintain intellectual, social and cultural diversity as well as intellectual freedom.”³³¹

IV. CONCLUSION

As was true ten years ago,³³² the academic community continues to debate the use of collegiality in higher education employment decisions. Those who support its use argue that colleges and universities have long recognized the importance of cooperative and collegial interactions among faculty to advance the missions of their institutions. Others who support the use of collegiality argue that it should be identified as a separate, distinct criterion in tenure, promotion, hiring, and termination decisions, both to put faculty on notice of the criteria used to evaluate them and to encourage good collegial behavior.

Those who oppose the use of collegiality in employment decisions argue that it constitutes a breach of contract unless it has been identified as a separate, distinct criterion in tenure, promotion, hiring, and termination decisions. Others oppose its consideration arguing that it can be used as a mask for discrimination. Still others, including AAUP, recognize that collegiality is an important component of a faculty member’s overall performance but oppose its use as a separate criterion for tenure out of concern that its isolation as a distinct criterion might intrude on professorial rights of academic freedom and free speech.

Courts, however, have given almost unanimous support for consideration of collegiality whether or not the term is identified as a criterion for consideration in tenure, promotion, or termination policies. Although opinions may remain divided about the precise definition of collegiality and the wisdom of its use as a separate criterion, courts have made clear that they are willing to embrace the concept and have regularly favored colleges and universities in defending litigation surrounding its use.

Perhaps as a result, colleges and universities are increasingly using collegiality in making important employment decisions. Moreover, an increasing number of departments, schools, and institutions have adopted statements embracing collegiality as a specific criterion in tenure and promotion decisions, or as a broadly referenced concept applicable across the institution. This development would appear to reflect a growing realization among both faculty and administrators that collegiality is an important factor to consider in making employment decisions, particularly

331. College of the Atlantic, Faculty Personnel Manual § 4.4, *available at* <http://www.coa.edu/webpersonnel/frfacultyman.html>.

332. *See* Connell & Savage, *supra* note 8.

expensive, long-term, binding decisions such as granting tenure. In addition, such policies indicate a desire to encourage a collegial atmosphere and to provide faculty members with formal notice of the criteria that will be used to evaluate their employment performance.

These trends—both court decisions favoring the use of collegiality and university policies addressing it directly—appear likely to continue. Members of the academic community should continue to feel confident in considering collegiality in faculty tenure and other employment decisions whether collegiality is or is not specified as a separate and distinct criterion.

APPENDIX A: AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS ON
COLLEGIALITY AS A CRITERION FOR FACULTY EVALUATION³³³

(The statement that follows was approved by the Association's Committee A on Academic Freedom and Tenure and adopted by the Association's Council in November 1999.)

In evaluating faculty members for promotion, renewal, tenure, and other purposes, American colleges and universities have customarily examined faculty performance in the three areas of teaching, scholarship, and service, with service sometimes divided further into public service and service to the college or university. While the weight given to each of these three areas varies according to the mission and evolution of the institution, the terms are themselves generally understood to describe the key functions performed by faculty members.

In recent years, Committee A has become aware of an increasing tendency on the part not only of administrations and governing boards but also of faculty members serving in such roles as department chairs or as members of promotion and tenure committees to add a fourth criterion in faculty evaluation: "collegiality."^[1] For the reasons set forth in this statement, we view this development as highly unfortunate, and we believe that it should be discouraged.

Few, if any, responsible faculty members would deny that collegiality, in the sense of collaboration and constructive cooperation, identifies important aspects of a faculty member's overall performance. A faculty member may legitimately be called upon to participate in the development of curricula and standards for the evaluation of teaching, as well as in peer review of the teaching of colleagues. Much research, depending on the nature of the particular discipline, is by its nature collaborative and requires teamwork as well as the ability to engage in independent investigation. And committee service of a more general description, relating to the life of the institution as a whole, is a logical outgrowth of the Association's view that a faculty member is an "officer" of the college or university in which he or she fulfills professional duties.^[2]

Understood in this way, collegiality is not a distinct capacity to be assessed independently of the traditional triumvirate of teaching, scholarship, and service. It is rather a quality whose value is expressed in the successful execution of these three functions. Evaluation in these three areas will encompass the contributions that the virtue of collegiality may pertinently add to a faculty member's career. The current tendency to isolate collegiality as a distinct dimension of evaluation, however, poses

333. American Association of University Professors, On Collegiality as a Criterion for Faculty Evaluation, <http://www.aaup.org/AAUP/pubsres/policydocs/contents/collegiality.htm>.

several dangers. Historically, “collegiality” has not infrequently been associated with ensuring homogeneity, and hence with practices that exclude persons on the basis of their difference from a perceived norm. The invocation of “collegiality” may also threaten academic freedom. In the heat of important decisions regarding promotion or tenure, as well as other matters involving such traditional areas of faculty responsibility as curriculum or academic hiring, collegiality may be confused with the expectation that a faculty member display “enthusiasm” or “dedication,” evince “a constructive attitude” that will “foster harmony,” or display an excessive deference to administrative or faculty decisions where these may require reasoned discussion. Such expectations are flatly contrary to elementary principles of academic freedom, which protect a faculty member’s right to dissent from the judgments of colleagues and administrators.

A distinct criterion of collegiality also holds the potential of chilling faculty debate and discussion. Criticism and opposition do not necessarily conflict with collegiality. Gadflies, critics of institutional practices or collegial norms, even the occasional malcontent, have all been known to play an invaluable and constructive role in the life of academic departments and institutions. They have sometimes proved collegial in the deepest and truest sense. Certainly a college or university replete with genial Babbitts is not the place to which society is likely to look for leadership. It is sometimes exceedingly difficult to distinguish the constructive engagement that characterizes true collegiality from an obstructiveness or truculence that inhibits collegiality. Yet the failure to do so may invite the suppression of dissent. The very real potential for a distinct criterion of “collegiality” to cast a pall of stale uniformity places it in direct tension with the value of faculty diversity in all its contemporary manifestations.

Relatively little is to be gained by establishing collegiality as a separate criterion of assessment. A fundamental absence of collegiality will no doubt manifest itself in the dimensions of teaching, scholarship, or, most probably, service, though here we would add that we all know colleagues whose distinctive contribution to their institution or their profession may not lie so much in service as in teaching and research. Professional misconduct or malfeasance should constitute an independently relevant matter for faculty evaluation. So, too, should efforts to obstruct the ability of colleagues to carry out their normal functions, to engage in personal attacks, or to violate ethical standards. The elevation of collegiality into a separate and discrete standard is not only inconsistent with the long-term vigor and health of academic institutions and dangerous to academic freedom, it is also unnecessary.

Committee A accordingly believes that the separate category of “collegiality” should not be added to the traditional three areas of faculty performance. Institutions of higher education should instead focus on developing clear definitions of teaching, scholarship, and service, in which

the virtues of collegiality are reflected. Certainly an absence of collegiality ought never, by itself, to constitute a basis for non-reappointment, denial of tenure, or dismissal for cause.

Notes

[1] At some institutions, the term “collegiality” or “citizenship” is employed in regulations or in discussions of institutional practice as a synonym for “service.” Our objection is to the use of the term “collegiality” in its description of a separate and additional area of performance in which the faculty member is to be evaluated.

[2] The locus classicus for this term is the 1940 *Statement of Principles on Academic Freedom and Tenure*: “College and university teachers are citizens, members of a learned profession, and officers of an educational institution.” (AAUP, *Policy Documents and Reports*, 10th ed. [Washington, D.C., 2006], 3.)

APPENDIX B: SELECTED COLLEGE AND UNIVERSITY POLICIES
REFERENCING COLLEGIALITY

Auburn University

Auburn University includes specific reference to collegiality in its tenure and promotion criteria and considerations:

In appraising a candidate's collegiality, department members should keep in mind that the successful candidate for tenure will assume what may be an appointment of 30 years or more in the department. Collegiality should not be confused with sociability or likability. Collegiality is a professional, not personal, criterion relating to the performance of a faculty member's duties within a department. The requirement that a candidate demonstrate collegiality does not license tenured faculty to expect conformity to their views. Concerns relevant to collegiality include the following: Are the candidate's professional abilities and relationships with colleagues compatible with the departmental mission and with its long-term goals? Has the candidate exhibited an ability and willingness to engage in shared academic and administrative tasks that a departmental group must often perform and to participate with some measure of reason and knowledge in discussions germane to departmental policies and programs? Does the candidate maintain high standards of professional integrity? Collegiality can best be evaluated at the departmental level. Concerns respecting collegiality should be shared with the candidate as soon as they arise; they should certainly be addressed in the yearly review and the third year review. Faculty members should recognize that their judgment of a candidate's collegiality will carry weight with the Promotion and Tenure Committee.³³⁴

Baylor University

Collegiality is mentioned, but not defined, in the university's tenure policy within the discussion of the purposes of tenure: "The system of academic ranks that is associated with the tenure system recognizes faculty members' achievement in the realms of teaching, scholarly and/or creative work, and collegial service to the University, the professional community, and other communities."³³⁵

334. Auburn University, Faculty Personnel Policies and Procedures, *supra* note 293.

335. Baylor University, Policy for Tenure and Promotion, *supra* note 316.

Central Washington University, Department of History

History department tenure and promotion policies expressly define collegiality and its role in the tenure process: “The tenure committee reviews the file and meets with the chair, commenting on the candidate’s collegiality (defined as cooperativeness, courtesy and exercise of professional ethics [or see Appendix II] and contributions particularly with regard to service to the department and the university.”³³⁶

Appendix II of the policy provides further clarification of the definition of collegiality:

Pulling one’s weight in the department: assuming and carrying out a reasonable and appropriate share of department’s business; reliably following through on departmental assignments; taking part in departmental governance and decision making; advising and providing support and assistance for students; *Fostering supportive and cooperative climate in department:* collective ethic rather than competitive—good of department along with good of self; willingness to compromise; constructive and positive attitude; flexibility and adaptability; treating colleagues, chair, and staff with civility and respect; assuming responsibility for one’s own actions; holding appropriate expectations for others’ contributions; *Relating primarily to department but including the university and the profession;* *Conducting oneself in a professionally ethical way when relating to colleagues and students.*³³⁷

College of the Atlantic

Collegiality is mentioned as part of search procedures for faculty members:

In all cases, the college must seek candidates who are highly qualified academically, show exceptional promise as teachers and who fulfill the curricular need. The importance of collegiality and shared vision in contributing to good working relationships must be balanced by the long term interest of the College to maintain intellectual, social and cultural diversity as well as intellectual freedom.³³⁸

In addition, collegiality is assessed as part of faculty employment contract renewal evaluations in a sub-category called “Community Building,” which is separate from university service: “These functions are those which advance the health of the College and make it a better and more effective institution. This could be development of new programs or

336. Central Washington University, Department of History Personnel Procedures, *supra* note 305.

337. *Id.*

338. College of the Atlantic, Faculty Personnel Manual, *supra* note 328.

it could take the form of leadership, collegiality or positive support of programs.”³³⁹

Drexel University, College of Medicine

Medical school tenure and promotion policy states that collegiality is an expectation for faculty members: “In addition, it is expected that any faculty member seeking tenure will have demonstrated appropriate collegiality towards colleagues, students, staff and patients throughout their employment at the College.”³⁴⁰

Eastern Kentucky University

Collegiality is broadly referenced in the university’s strategic plan, but not tenure policy:

The EKU university community accepts as true that leadership characterized by vision and embedded with participatory decision-making at all levels is the emblem of an effective organization. We are committed to providing an atmosphere in which we pursue our joint aspirations in the spirit and practice of collegiality and collaboration at all levels of our community.³⁴¹

Gettysburg College

Tenure and promotion policy directs faculty members to evaluate tenure applications using only the stated criteria, but encourages them to “think collegially,” but leaves the meaning of this directive unclear:

[T]he Committee shall only use those standards and criteria cited in the Tenure and Promotion Policy statement under “Tenure Criteria for Individual Achievement” to evaluate the candidate’s qualifications. Since the Faculty Personnel committee is elected by the faculty as a whole, the Committee is asked to think collegially, judging the individual in terms of her or his value in furthering the mission of the College.³⁴²

Hardin-Simmons University

Collegiality is considered part of service to the university and included in comprehensive evaluations of faculty librarians by chairs, deans, and peers, but not included in the language of the tenure policy:

Peers will review the librarian’s effectiveness in his/her primary

339. *Id.*

340. Drexel University, College of Medicine, Tenure and Promotion to Tenure Policy, *supra* note 320.

341. Eastern Kentucky University, Strategic Plan, Description of the University, *supra* note 323.

342. Gettysburg College, Faculty Handbook, *supra* note 322.

area of responsibility along with their professional expertise and instructional delivery—either individuals or classes—will be assessed (service to the library); committee service, faculty/departmental leadership and service, recruitment, retention, and development, and departmental support and collegiality (service to the university); maintenance of professional knowledge (service to the profession); and membership and leadership in community organizations or activities, including church (service to the community).³⁴³

Iowa State University, College of Liberal Arts and Sciences

The college adopted a policy on collegiality in November 2010:

The College of Liberal Arts and Sciences is committed to sustaining a positive and productive environment for scholarship, learning and service for each individual and for the collective benefit of all. Faculty are members of an interdependent community of scholars, and as such are expected to conduct themselves in a manner that contributes constructively to the College's mission and high reputation. A hallmark of collegiality is respect for shared governance and responsibility. The College is committed to ensuring a work environment where all individuals can thrive through openness and collaboration. All LAS faculty are expected to work to maintain a positive workplace that emphasizes respect for the opinions of others and is free of forms of misconduct, as enumerated in Section 7 of the Faculty Handbook. Faculty should recognize and refrain from the various forms of discrimination and harassment that may take written, verbal and physical forms, as well as attempts to influence others to engage in such acts. Employees are expected to respect the established rules of the unit, college and university that address collegiality and professional responsibility, conflicts of interest, computer ethics, deceptive practices, and interference with disciplinary procedures. All faculty members are expected to contribute to the mission of the unit, college, and university and are evaluated (see Section 5 of the Faculty Handbook) on their contributions and responsibilities as articulated in the individual position responsibility statement. In summary, all LAS faculty members have obligations that derive from common membership in the community of scholars. Civility in all interactions is required. Faculty members do not exploit, intimidate, harass, or discriminate against others. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas, faculty members show due respect for the

343. Hardin-Simmons University, Faculty Handbook, *supra* note 308.

opinions of others. They strive to be objective in their professional judgment of colleagues. Faculty members accept their share of responsibilities for fulfilling the teaching, research, and service missions of the unit, the college, and the university.³⁴⁴

New Mexico State University

College of Education, Department of Human Performance, Dance, and Recreation:

Collegiality, implicit or explicit, remains an integral part of a faculty member's profession. Faculty members are expected to interact and cooperate in a positive manner with students, staff, faculty, administration and all others in which a person has contact within the context of his or her NMSU position. The means by which a Human Performance Dance and Recreation Promotion and/or Tenure Policy faculty member interacts with others affects workplace climate and should, in turn, play an intricate role in the Promotion and/or Tenure process. Criteria for evaluating collegiality may include but are not limited to: Interacting positively, treating colleagues with respect and resolving conflict in a timely-professional manner; Participating in the distribution of responsibility among members of the department; Participating in group decision making; Completing assigned tasks within the time frame provided; Using personal expertise to solve problems; Helping to create an open environment for the exchange of ideas; Avoiding expression of discrimination or character defamation.³⁴⁵

College of Engineering:

The tenure and promotion policies in the NMSU College of Engineering explicitly refer to collegiality, and rely on the Fourth Circuit's definition of faculty collegiality in *Mayberry v. Dees*.³⁴⁶ Examples of collegial behavior are provided in an appendix to the policy:

Collegiality is a consideration in promotion and tenure decisions. Academic Collegiality should not be confused with sociability or likability. Nor is Collegiality a requirement for conformity with tenured faculty and administrators views and opinions. Academic Collegiality is defined as "the capacity to relate well

344. Iowa State University, College of Liberal Arts and Sciences, College Policy on Collegiality and Citizenship, *supra* note 288.

345. New Mexico State University, College of Education, HPDR Promotion and Tenure Policy, *supra* note 301.

346. 633 F.2d 502, 514 (4th Cir. 1981). The Fourth Circuit defined collegiality as "the capacity to relate well and constructively to the comparatively small bank of scholars on whom the fate of the university rests."

and constructively to the comparatively small bank of scholars on whom the ultimate fate of the university rests.” Academic Collegiality deals with the candidate’s ability to extend their personal teaching, research, and service activities to support the department’s mission in each of those areas as well as to support the common departmental operational needs of the department. Concerns relevant to collegiality include the following:

- Are the candidate’s professional abilities and relationships with colleagues compatible with the departmental mission and with its long-term goals? This includes a degree of civility with interpersonal relationships and building a positive esprit de corps among colleagues, staff, and students.
- Has the candidate exhibited an ability and willingness to engage in shared academic and administrative tasks that a departmental group must often perform and to participate, with some measure of reason and knowledge, in discussions germane to departmental policies and programs?
- Does the candidate maintain high standards of professional integrity?³⁴⁷

College of Health and Social Services, Department of Health Science:

The Health Science Department faculty place a high value in collegiality when assessing faculty performance. Collegiality is defined as “Demonstrated willingness and ability to work effectively with colleagues to support the mission of the institution and the common goals both of the institution and academic organizational unit.” While evidence relating to collegiality may be most evident in the category of service, collegiality can also affect performance in teaching as well as in scholarship and creative activity. Collegiality is not a separate concept but regarded as having the potential to enhance performance in each of three areas. Because the department values teamwork, evidence of collegiality plays a role in faculty evaluation. Taking into account the unique mission and demands of the Department of Health Science, consideration of collegiality shall be made under each of the categories of teaching, scholarship and creative activity, and service.³⁴⁸

North Carolina State University, College of Education

The policy on tenure and promotion states:

347. New Mexico State University, College of Engineering, Promotion and Tenure Policies and Procedures, *supra* note 309.

348. New Mexico State University, Department of Health Science, Policies, Standards, and Procedures for: Annual Performance Review, Third-year Mid-Probationary Review, and Post-Tenure Review, *supra* note 312.

Collegiality is also an expectation of all faculty. Collegiality represents a reciprocal relationship among colleagues and a value system that views diverse members of a university community as critical for the progress and success of its academic mission. The concept of collegiality, however, should be distinguished from congeniality; to be congenial is parallel with sociability and agreeableness, while collegiality is a positive and productive association with colleagues. A person need not be congenial to be collegial. Moreover, collegiality among associates involves appreciation of and respect for differences in expertise, ideas, and background, in addition to mutual trust. Evidence of collegiality is commensurate with broadly accepted disciplinary norms.³⁴⁹

Northern Illinois University

In 2011, the University Affairs Subcommittee finalized a university policy on collegiality that was subsequently adopted, which stated:

Collegiality represents an expectation of a professional relationship among colleagues with a commitment to sustaining a positive and productive environment as critical for the progress and success of the university community. It consists of collaboration and a shared decision-making process that incorporates mutual respect for similarities and for differences—in background, expertise, judgments, and points of views, in addition to mutual trust. Central to collegiality is the expectation that members of the university community will be individually accountable to conduct themselves in a manner that contributes to the university's academic mission and high reputation. Collegiality among associates involves a similar professional expectation concerning constructive cooperation, civility in discourse, and engagement in academic and administrative tasks within the respective units and in relation to the institutional life of the university as a whole. Collegiality is not congeniality nor is it conformity or excessive deference to the judgments of colleagues, supervisors and administrators; these are flatly oppositional to the free and open development of ideas. Evidence of collegiality is demonstrated by the protection of academic freedom, the capacity of colleagues to carry out their professional functions without obstruction, and the ability of a community of scholars to thrive in a vigorous and collaborative intellectual climate.³⁵⁰

349. North Carolina State University, College of Education, Reappointment, Promotion, and Tenure Standards and Procedures, *supra* note 313.

350. Northern Illinois University, Statement on Professional Behavior of Employees, University Collegiality Policy, *supra* note 281.

The policy further provides that

[a]llegations or complaints of a documented pattern of frequent and pervasive activity that clearly interferes with the professional working environment, or a severe uncollegial act, if found to be supported, will constitute a violation of this policy. Such allegations will be examined in a reasonable, objective, and expedient manner, and in accordance with applicable federal and state employment laws.³⁵¹

The policy also outlines procedures for dispositions of complaints.

Oklahoma City University

Collegiality is referenced as part of university and professional service in tenure and promotion evaluations:

Valued contributions to the University may take many forms, including: (1) constructive participation in the University's governance, including faculty meetings, councils, and committees; (2) helpful and generally supportive relations with colleagues, so as to enhance the results achieved in department and other academic programs; (3) participation in various programs of college life outside the classroom, such as art, drama, music, recreation, athletics, lectures, convocations, and religious and social gatherings; and (4) service to the faculty member's professional community.³⁵²

Saint Louis University

The faculty handbook contains two major provisions concerning collegiality, a general statement regarding university citizenship and requirements for promotion. With regard to university citizenship:

In their capacity as citizens of the University, faculty members are expected to participate in the functional and ceremonial life of the institution. This includes, but is not limited to, service on academic and non-academic University advisory and disciplinary boards and attendance at commencement events. Faculty members are also expected to demonstrate the qualities of collegiality, such as the ability to work cooperatively and professionally with others, in all aspects of academic life.

Additionally, SLU requires demonstration of collegiality in addition to evidence of teaching, research, and service for promotion from instructor to assistant professor. No further showing of collegiality is required for promotion or tenure:

351. *Id.*

352. Oklahoma City University, Criteria for Renewal, Promotion, and Tenure of Probations and Tenured Faculty Members, *supra* note 317.

Promotion to the rank of Assistant Professor requires, in addition, demonstration of effectiveness in [teaching, research, and service], as well as evidence of recognition by colleagues in the same Department and College, School, or Library that the candidate possesses qualities of collegiality, such as the ability to work cooperatively and professionally with others.”³⁵³

Saint Norbert College

Collegiality is assessed as a separate criterion for tenure applications:

Collegial Activities. The Faculty member shall provide evidence of effectiveness in meeting the collegial expectations of the College. Activities that demonstrate collegiality include active and productive participation in the functioning of one’s discipline. Other collegial activities include those that improve the intellectual, cultural, and religious climate of the College. In addition, service to the College by participating in discipline, divisional, and Faculty meetings, and service on College committees provides other measures of collegiality. Finally, activities that promote or enhance the stature of the applicant and the College within the local community are still another measure of collegiality.³⁵⁴

Santa Clara University

Collegiality is blended among teaching, research, and service:

Collegiality is not a distinct capacity to be assessed independently of the traditional triumvirate of scholarship, teaching, and service. It is rather a quality whose value is expressed in the successful execution of these three functions. Collegiality means that faculty members cooperate with one another in sharing the common burdens related to discharging their responsibilities of teaching, scholarship or creative work, and service, and do so in a conscientious and professional manner. Collegiality is not the same as conformity or intellectual agreement and may not be interpreted in a way that violates the principles of academic freedom. In those rare instances in which lack of collegiality becomes an issue in the evaluation of faculty for promotion and tenure, it may be considered only insofar as it has a negative effect on the functioning of the department, college or school, or University.³⁵⁵

353. Saint Louis University, Faculty Manual, *supra* note 299.

354. Saint Norbert College, Faculty Handbook, The Faculty Policy Statement, *supra* note 303.

355. Santa Clara University, Faculty Handbook, *supra* note 314.

University of Mississippi, School of Pharmacy

The pharmacy school's mission statement mentions both civility and collegiality: "We will be efficient and highly productive, and our work will be performed in an environment characterized by civility, cooperation, diversity, mentoring, nurturing, professionalism, collegiality, and accountability."³⁵⁶

University of Missouri

While not specifically referencing collegiality, the university has an employment rule in place intended to maintain a positive working and learning environment:

The University of Missouri is committed to providing a positive work and learning environment where all individuals are treated fairly and with respect, regardless of their status. Intimidation and harassment have no place in a university community. To honor the dignity and inherent worth of every individual—student, employee, or applicant for employment or admission—is a goal to which every member of the university community should aspire and to which officials of the university should direct attention and resources.³⁵⁷

University of Notre Dame, Department of Economics and Econometrics

Collegiality is referenced as part of service in departmental tenure and promotion policy. Faculty members seeking tenure or promotion "[a]re expected to perform reasonable service for the department when asked, to demonstrate a commitment to the construction of a healthy and vibrant department, and to maintain an appropriate level of civility and collegiality in their interactions with other faculty and staff."³⁵⁸

University of South Alabama, College of Arts and Sciences

Tenure and promotion policy directs that collegiality is a specific and necessary component of a successful tenure bid: "The criteria for tenure are the same as promotion plus the additional important consideration of collegiality of the candidate with her/his department. Absence of evidence and argument to the contrary will be considered evidence of the candidate's

356. University of Mississippi, School of Pharmacy, Vision Statement, *supra* note 324.

357. University of Missouri, Collected Rules and Regulations, Personnel, Chapter 330: Employee Conduct, *supra* note 325.

358. University of Notre Dame, Department of Economics and Econometrics, Organization Plan and General Procedures for the Committee on Appointments and Promotions and the Full Professor Committee On Promotions and Operating Procedures, *supra* note 318.

collegiality with the department.”³⁵⁹ The policy further directs that tenure and promotion committee recommendations “must communicate the sense of their deliberations and decisions and should address teaching, creative activity and/or research activity, service, and in the case of tenure, collegiality.”³⁶⁰

University of Washington, College of Engineering

Collegiality and good citizenship should not be primary components of the review. Within limits, faculty must be free to pursue their interests and career goals in the style they choose. On the other hand, as part of their service to the university community, faculty must behave in a professional manner. If a candidate has exhibited a pattern of behavior infringing on the rights of others or counterproductive to the goals of the department/COE/University, that behavior can be a factor in the evaluation of the quality and quantity of the candidate’s record of service. However, in such cases, transparency is paramount. As with the items mentioned in the previous section, it is incumbent on the faculty to discuss such issues openly when considering the candidate’s record, for the candidate to have the opportunity to respond, and for both parts of that exchange to be documented in the dossier.³⁶¹

Villanova University

The faculty handbook makes two references to collegiality. The first, in the tenure and promotion section holds: “Villanova expects its faculty to adhere to University regulations and to practice the professionalism, mutual respect, and collegiality that allow and encourage faculty, students, and staff of diverse backgrounds and traditions to cooperate to achieve the community’s goals.”³⁶² The second reference to collegiality involves potential department chairs. In order to be eligible, a nominee must possess, among other requirements, “. . .a solid record of leadership, scholarship, and collegiality.”³⁶³

Western Kentucky University, Potter College

Tenure policy holds that the tenure application dossier should include “a letter of application, a current curriculum vita, and sections on teaching

359. University of South Alabama, College of Arts and Sciences, Promotion and Tenure Policies, *supra* note 297.

360. *Id.*

361. University of Washington, College of Engineering, Promotion, and Tenure Criteria, *supra* note 306.

362. Villanova University, Full-time Faculty Handbook, *supra* note 321.

363. *Id.*

effectiveness, research and scholarship, public/university service, and such related areas as collegiality.”³⁶⁴

364. Western Kentucky University, Potter College, Promotion and Tenure Policies, *supra* note 319.