

BOARD OF REGENTS
BRIEFING PAPER

1. Agenda Item Title: Authorizing the UNLV President to approve employment contracts of up to five years in term for law school faculty who have successfully completed three annual employment contracts.

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

The Dean of the William S. Boyd School of Law has proposed that the Board amend NSHE Title 2, Chapter 5, Section 5.4.2 to allow for longer term contracts (five, rather than three years) after at least three years of successful employment for non-tenured faculty in the law school.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

This change to the Nevada System of Higher Education *Code* would provide enhanced security for non-tenured faculty of the Law School which would enable the Law School to attract and retain outstanding professors for its specialized programs. Currently, such employees may be offered contracts with terms of up to three years after they have completed three years under annual employment contracts.

4. IMPETUS (WHY NOW?):

Long-term contracts (of at least five years) after an appropriate “probationary” period are crucial to preserving the accreditation of the Law School and to enhancing the recruitment and retention of faculty at the Law School. It is also an important part of preserving and advancing our reputation nationally.

A change to longer-term contracts is necessary to improve our student faculty-ratio for accreditation, data reporting, and ranking purposes. This reason is rooted in the American Bar Association’s (ABA) data reporting procedures and how ABA data are used in the US News rankings of law schools. Lawyering Process faculty, for example, are counted as .7 FTE, if they do not have access to contracts of at least 5 years in length (see, ABA Standard 402 & Interpretations 402-1 and 405-6). At present, our six contract-status Lawyering Process faculty are counted as only 4.2 FTE, despite teaching full loads. Adoption of longer-term contracts would result in each Lawyering Process contract faculty member being counted as 1.0 FTE, which will have the effect of hiring two faculty members and with no direct costs. Because US News rankings draw heavily on the ABA data, longer-term contracts for contract faculty should reduce our student faculty ratio for those rankings which, in turn, should have a positive impact on our overall ranking among law schools.

In addition to the six Lawyering Process contract faculty, the Law School’s Academic Support Director, Externship Director, and two of its three Saltman Center faculty are contract faculty. The trend among law schools is toward tenure and longer-term contracts for faculty traditionally on short-term contracts. These trends put us at a competitive disadvantage. We are now at risk of losing some of the very talented people we have

been able to recruit. In fact, we recently lost our very talented Academic Support Director to an offer from UCLA, a school we could not compete with in the absence of greater security in the position.

Of equal significance is the potential loss of our leadership position among law school Lawyering Process Programs. This year we were rated the number 3 Lawyering Process Program among all law schools in the country. Whatever one thinks of the limitations of the US News rankings of law schools, their specialty rankings reflect the judgment of peers in the field surveyed and is both a good indication of the regard for the program and susceptible to shifts based on reputation. We believe we are now poised to become the number one program; however, we cannot do so if we are no longer seen as a leading school or if we lose faculty to schools with enhanced status for lawyering process faculty.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Because of the accepted methodology, greater security for contract faculty would improve the Law School's calculated faculty/student ratio, improving our student faculty-ratio for accreditation, data reporting, and ranking purposes.
- In the last decade, many other schools have moved ahead of us in providing security of position to contract faculty.
- Inadequate security for contract faculty makes it hard to recruit and retain top contract faculty.
- The Law School currently has the Number 3 ranked Lawyering Process program in the country. Greater security is needed to allow us to become the Number 1 ranked program, or even to retain our Number 3 ranking.
- The Law School currently has the Number 9 ranked Alternative Dispute Resolution program in the country. Two of the three faculty in that program are contract faculty. Greater security will help the Law School retain them and add to the program's reputation nationally.
- The proposed changes would have no fiscal impact, to the extent the positions would be filled in any case.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

(1) Commits the System to longer contracts in a time of financial uncertainty and (2) creates a disparity between institutions regarding length of employment contracts available without Board approval.

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

(1) Retain the current three-year contracts, requiring all such five-year contracts to be approved by the Board, or (2) Amend the applicable *Code* provision such that all presidents may offer five, rather than three, year employment contracts after three years of annual employment.

8. COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy:	Title	Section
X Amends Current Board Policy:	Title #2	Chapter #5 Sections #5.4.2
Other:_____		
<input type="checkbox"/> Fiscal Impact:	Yes_____	No X
Explain:_____		

PROPOSED HANDBOOK REVISION
TITLE 2, CHAPTER 5, SECTION 5.4.2
Duration of Employment Contracts

Additions appear in ***boldface italics***, deletions are [~~stricken~~ and bracketed]

5.4.2 Duration of Employment Contracts

- (a) Except as provided in this subsection, an employment contract shall be for a term not to exceed twelve months. In any case, an employment contract's termination shall coincide with the conclusion of a fiscal year of the System. Except as provided in this subsection, an employment contract for a term in excess of twelve months or which overlaps a fiscal year requires the approval of the Board of Regents prior to being issued or becoming binding.
- (b) At the time of the initial appointment to employment of a faculty member who would otherwise be eligible for tenure and after consultation with the applicable department or other similar administrative unit, a president may offer at the president's discretion, and the faculty member may agree to accept, an employment contract for a period of up to three years which would not provide for eligibility for an appointment with tenure. A faculty member employed under such a contract shall not be eligible for appointment with, nor shall have, tenure during the period of such contract under any circumstances. At the termination of such an initial employment contract, succeeding employment contracts for periods of up to three years each under the same conditions as stated in this paragraph may be offered by the president at the president's discretion and accepted by the faculty member. Alternatively, the contract, at the discretion of the president, may be renewed on an annual basis and accepted as such by the faculty member. Faculty members accepting employment contracts authorized by this paragraph shall be placed in Rank O or Range O, as the case may be. During the term of such contracts such faculty members shall be eligible to receive salary increases and faculty benefits authorized under Subsection 5.6 of the Nevada System of Higher Education Code at the same time and under the same conditions as other faculty members of the System. An initial employment contract authorized by this paragraph for a term of up to one year shall require at least 90 calendar days notice of nonrenewal of appointment prior to the contract's termination, such a contract for a term of two years shall require at least 180 calendar days notice of nonrenewal of appointment prior to the contract's termination and such a contract for a term of three years shall require at least 365 calendar days notice of nonrenewal of appointment prior to the contract's termination. All succeeding employment contracts authorized by this paragraph of whatever duration shall require 365-calendar days notice of nonrenewal of appointment prior to the contract's termination. Nothing in this paragraph shall prevent the president from offering at the president's discretion, and the faculty member from accepting, an employment contract for a position providing eligibility for tenure after the termination of any employment contract authorized by this paragraph.

- (c) Except as provided in this paragraph, after the third year of employment, a president may offer at the president's discretion, and a nontenured faculty member may accept, an employment contract for a period of up to three years. At the termination of such an employment contract, succeeding employment contracts for periods of up to three years each may be offered by the president at the president's discretion and accepted by the nontenured faculty member. Alternatively, the contract, at the discretion of the president, may be renewed on an annual basis and accepted as such by the faculty member. During the term of such contracts, such nontenured faculty members shall be eligible to receive salary increases and faculty benefits authorized under Subsection 5.6 of the Nevada System of Higher Education Code at the same time and under the same conditions as other faculty members of the System. The minimal notice of nonrenewal of appointment shall be as provided in Section 5.9 of the Nevada System of Higher Education Code. The provisions of this paragraph shall not be applicable to faculty employed for a probationary period in a position providing eligibility for tenure or employed under paragraph (b) herein. The president may establish specific criteria in the institutional bylaws for issuance of extended contracts under this paragraph. Nothing in this paragraph shall give rise to any appointment or eligibility for appointment with tenure under any circumstances.
- (d) ***Nontenured faculty at the William S. Boyd School of Law, after the third year of employment, may be offered and may accept an employment contract for a period of up to five years. At the termination of such an employment contract, succeeding employment contracts for periods of up to five years each may be offered. All such employment contracts shall be on the same basis as, and subject to the same limitations, terms and conditions as those described in paragraph (c) herein.***
- (e) The appointment of athletic coaches and assistant coaches, including interim or acting appointments, shall require only Chancellor approval as long as a) the contract does not exceed 24 months, including option periods and b) the salary is \$150,000 or less for a contract year. For these purposes salary does not include standard perquisites available to all NSHE employees nor does it include performance bonuses if such bonuses would not exceed \$25,000 in any contract year. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until the Chancellor approves the appointments. The appointments shall be reported to the Board of Regents by the President on approval by the Chancellor.