

**RESOLUTION OF THE BOARD OF TRUSTEES
UNIVERSITY OF THE VIRGIN ISLANDS**

Purpose: To Approve the Amended Rules Governing Appeals to the Board of Trustees Recommended by the Academic, Research and Student Affairs Committee of the Board.

WHEREAS, the Legal Counsel for the University drafted amendments to the Rules Governing Appeals to the Board of Trustees which allow the electronic filing of notices of appeals, briefs, and replies to briefs; and

WHEREAS, the amended Rules incorporate into the Rules the right to appeal an unfavorable recommendation by the President on a request for tenure, which right exists in the Faculty Policy Manual; and

WHEREAS, on May 15, 2012, the Academic, Research and Student Affairs Committee of the Board of Trustees voted to recommend to the Board that the amended Rules be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE UNIVERSITY:

1. The amended Rules Governing Appeals to the Board of Trustees, attached hereto as Exhibit "A", are hereby approved.
2. That the President be authorized to take such actions as are necessary and proper to implement this resolution.
3. This resolution shall become effective June 9, 2012.

CERTIFICATION

The undersigned does hereby certify that the foregoing is a true and exact copy of a resolution of the Board of Trustees of the University of the Virgin Islands adopted at its meeting on Saturday, June 9, 2012, as recorded in the minutes of the said meeting.



Secretary of the Board

June 9, 2012

Date

EXHIBIT A

RULES GOVERNING APPEALS TO THE BOARD OF TRUSTEES

1. **Scope of Rules.** These rules govern appeals to the Board of Trustees pursuant to Section 457(a) of Title 17 of the Virgin Islands Code and to the policy manuals of the University. The Board may dismiss any appeal not in conformity with these rules.
2. **Suspension of Rules.** In the interest of expediting a decision, or for other good cause shown, the Board may modify or suspend the requirements or provisions of any of these rules in a particular case on application of the President, a faculty member appealing the recommendation of the President to deny tenure, or an employee dismissed or suspended by the President, or on its own motion.
3. **Who May Appeal and How.** A faculty member appealing the recommendation of the President to deny tenure, or an employee of the University dismissed or suspended by the President, may file an appeal. An appeal must be taken by filing electronically a written notice of appeal, stating the name of the appellant, the decision of the President being appealed, and the date of that decision. The notice of appeal shall be filed by serving the notice electronically on the Chair of the Board and the President, and a paper copy shall be mailed to them on the same date, within the time allowed by Rule 4. The Chair and President shall be served electronically and by mail as provided in Rule 11.
4. **Filing of the Notice of Appeal.** The notice of appeal must be filed within 30 calendar days after receipt of notice of the recommendation or decision of the President, which recommendation or decision shall be served on the employee by the President electronically, by hand-delivery or certified mail. The Board, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal. Otherwise the failure to timely file an appeal to the Board shall mean that the decision of the President shall become final or the President's recommendation of the denial of tenure shall be deemed unopposed.
5. **The Content and Time of Filing of Appellant's Brief.** Within 30 days after filing of the notice of appeal, the employee, as appellant, shall file a brief containing a statement of the issue or issues the Board should consider, a statement of facts necessary to understand the subject matter of the appeal, and a statement of reasons why the decision of the President should be modified or reversed. The brief shall consist of not more than thirty (30) double-spaced 8½ by 11 inches, typewritten pages, using 12 point or larger font, in black type on white paper, with the paper copies bound together with a secure binding. The original brief and 19 paper copies shall be served on the President, who shall be responsible for delivering a copy to each member of the Board, and to the University's legal counsel.

6. **The Content and Time of Filing of Appellee's Brief.** The President or his designee, as appellee, shall have 30 days after filing of the appellant's brief to file a brief containing a statement of the issue or issues the Board should consider, a statement of facts necessary to understand the subject matter of the appeal, and a statement of reasons why the recommendation or decision of the President should not be reconsidered, modified or reversed. Prior to filing his/her brief, the appellee shall attempt to agree with the appellant on the statement of the issue or issues, and on the statement of facts. If agreement is reached on these matters, then the appellee's brief need not contain them. The appellee's brief shall consist of not more than thirty (30) double-spaced 8½ by 11 inches, typewritten pages, in black type on white paper, using 12 point or larger font, with the paper copies bound together with a secure binding. The original brief and 19 paper copies shall be served on the President, who shall be responsible for delivering a copy to each member of the Board and the University's legal counsel.

7. **The Record on Appeal.** The Appellant shall file with his/her brief an appendix in support of the brief consisting of all documents, transcripts and exhibits that were considered by the President in connection with his recommendation or decision. On the same date as the electronic filing of the appendix, the original and 19 paper copies of the appendix shall be served by mail on the President, who shall be responsible for delivering a copy to each member of the Board and to the University's legal counsel. The appendix shall consist of pages 8½ by 11 inches, in black type on white paper, bound together with a secure binding. Prior to filing the appendix, the appellant shall attempt to agree with the appellee on the documents, transcript and exhibits to be included in the appendix. In the event that they cannot agree, the appellee may file a supplemental appendix in support of the appellee's brief.

8. **The Form of Appellant's Brief.** The brief of the appellant must contain under appropriate headings and in the order here indicated:
 - A table of contents with page references;
 - A statement of facts;
 - A statement of the issues presented for review by the Board; and
 - A statement of the reasons why the decision of the President should be modified or reversed.

9. **The Form of Appellee's Brief.** The brief of the appellee must conform to the foregoing requirements applicable to the appellant's brief, except that none of the following need appear in the appellee's brief unless the appellee is dissatisfied with their statement by the appellant:
 - A statement of facts; and
 - A statement of the issues presented for review by the Board.

- 10. The Content and Time of Filing of Appellant's Reply Brief.** The appellant may file a brief in reply to the brief of the appellee not later than fifteen (15) days after the filing of the appellee's brief. No further brief of the appellant or appellee shall be filed except with leave of the Board. The brief shall consist of not more than twenty (20) double-spaced 8½ by 11 typewritten pages, in black type on white paper, using 12 point font or larger, with the paper copies bound together with a secure binding. The original brief and 19 paper copies shall be served on the President, who shall be responsible for delivering a copy to each member of the Board and the University's legal counsel.
- 11. Filing Documents By Email And Delivery of Paper Copies By Mail.** All documents, including the notice of appeal, motions, briefs, appendix and reply briefs, shall be filed and served electronically in PDF format on the President and Chair as provided by these rules unless an exemption has been obtained from the Board, or the Board has ordered that electronic filing be disallowed in a particular case. The Chair of the Board and President shall be served electronically at their email addresses listed in the directory of the University on the University's website at www.uvi.edu. *[Note: In order to enable an email to be sent to the Chair in such a manner, a generic email address will have to be established at UVI (e.g., Board.Chair@uvi.edu) and added to the University's Electronic Directory, and this email address would have to be checked regularly by the Board Liaison Person for incoming mail.]* Electronic filings and the dates on which they are filed shall constitute the official filings and official dates of filing for the purposes of these rules. In addition to the electronic filings, paper copies of all electronically filed documents shall be served by mail on the President and Chair on the same date as their electronic filing. Paper copies of all documents shall also be sent to them by mail in care of the University of the Virgin Islands, No. 2 John Brewer's Bay, St. Thomas, Virgin Islands 00802. Each document shall be signed by the party filing it, and contain a certificate of service stating the date of electronic filing and mailing, the names of the parties to which it was sent electronically and mailed, and the email addresses and mailing addresses to which it was sent.
- 12. Appearance Before The Board.** Unless expressly authorized by a vote of the Board at a duly constituted meeting of the Board, oral argument or the presentation of evidence before the Board shall not be required. If, however, the Board votes to require an appearance before the Board, the appellant may appear with counsel to speak on behalf of the appellant, and if authorized, to present evidence on behalf of the appellant. The appellee shall be given the same opportunity to speak and present evidence as is given to the appellant. The Chair of the Board shall determine the applicable procedure for appearances before the Board.
- 13. The Recommendation or Decision of the President.** The recommendation or decision of the President shall remain in effect during the pendency of an appeal unless it is modified by the Board.

14. **The University's Legal Counsel.** The University's legal counsel shall represent the appellee on appeal. During its deliberations, when necessary, the Board shall retain independent legal counsel to advise it on matters relating to appeals.

15. **Standard of Review.** In the case of an appeal by a faculty member of the President's recommendation of the denial of tenure, the appeal to the Board must be based on the grounds that the President's recommendation was unjustified because: (1) the University did not follow its stated procedures in arriving at the recommendation, or (2) the recommendation was arbitrary and capricious, lacking a substantial basis in fact, or (3) the recommendation arose from or was affected by a violation of the faculty member's constitutional rights. In all other appeals, the appeal must be based on the grounds that the decision of the President must be modified or reversed because of a substantial error that was made in interpreting Board policy, applicable rules and regulations of the University, applicable law or because of a clear abuse of authority. The Board shall uphold the decision of the President unless the appellant persuades the Board that the President's recommendation or decision was in error when measured by the appropriate standard.