

Nevada Faculty Alliance Committee A / Legal Defense Policy and Procedures

Revised September 2008

I. PREAMBLE

The Nevada Faculty Alliance (NFA) offers a two-tiered, integrated program of assistance to faculty of the University and Nevada System of Higher Education (NSHE) under its Legal Defense Policies and Procedures. Legal defense guidance is available to all faculty of the NSHE, including part-time faculty. Legal defense assistance is available to all full-time faculty of the NSHE faculty who are members of the Nevada Faculty Alliance. **Legal defense guidance is limited to consultation with the campus legal defense committee, which may intervene to resolve faculty issues through informal means. Legal defense assistance may involve consultation with NFA's Legal Defense Chair, consultation with a Nevada-licensed attorney approved by the NFA Legal Defense Committee, or support to retain the services of such an attorney in a manner consistent with these rules.**

The NFA Legal Defense Committee functions in accordance with the American Association of University Professors' (AAUP) Committee A on Academic Freedom and Tenure, created to uphold, implement and enforce the principles of academic freedom and tenure developed in the AAUP's 1940 Statement on these issues. The Nevada Faculty Alliance, through its legal defense policy, affirms and upholds AAUP Committee A principles as the premise of its statewide Legal Defense Program. NFA further affirms the principles of academic due process and faculty governance. NFA supports these principles through legal defense work and by implementing an innovative program of legal assistance to extend, enhance and amplify services offered under traditional Committees A.

NFA's legal defense activities assist faculty in employment-related matters. NFA's Legal Defense Program seeks to resolve cases at the lowest possible level of engagement to preserve productive, collegial relationships within the NSHE whenever possible.

This document governs NFA's Legal Defense Program. It defines and delimits the range of issues addressed under the Program; describes the Program's structure at campus and state levels; defines and distributes responsibilities at each level of the Program; details procedures to be followed by faculty who wish to receive assistance; and outlines the processes by which individual cases are assessed and managed.

II. SCOPE

NFA's Legal Defense Program assists faculty in employment-related matters (see V.A &D below). NFA's Legal Defense Program does not assist faculty in matters unrelated to employment. Employment-related matters may include evaluation, promotion, **salary**, denial of tenure, rescission of tenure, termination, conditions of employment, faculty rights, Code and Bylaws disputes, Code and Bylaws +violations, constitutional rights, accusations under affirmative action guidelines as those accusations affect employment and governance issues as governance issues affect employment, subject to the definitions and exclusions stated below (see V.A & D).

NFA works within established employment law frameworks, understanding that internal processes must be exhausted before legal action can be considered. NFA works within national AAUP Policy documents.

The Nevada Faculty Alliance assists faculty through actions of campus Legal Defense Committees, the statewide Legal Defense Committee, and the NFA State Board. The actions and responsibilities of these bodies are carefully coordinated by this document, in interlocking sets of relationships and responsibilities which ensure that communication and effective action take place. Normally cases begin at the campus level and proceed to legal assistance only if deemed necessary by authorized NFA board action. Cases which require legal representation become the responsibility of the statewide Legal Defense Committee acting through its chair. The state Legal Defense chair acts under authority from, and reports directly to, the NFA State Board, the final arbiter in case selection and funding.

III. STRUCTURE & ORGANIZATION

1. State Legal Defense Chair: Shall be, preferably, an individual with a law degree, and with a mature understanding of NSHE education policies and procedures.
2. Assistant State Legal Defense Chair: This is an optional position based upon the recommendation of the state Legal Defense chair to the State Board President, and with approval of the NFA State Board.
3. Campus Legal Defense Committees: The intent is for each university, college, and community college within the NSHE system to form Legal Defense Committees. Committee members shall be trained in national and state legal defense principles, policies and procedures: academic due process, the contents and use of the NSHE Code, their respective campus bylaws, informal and formal campus procedures and the rudiments of legal defense. Campus NFA legal defense committee members shall assist faculty only after they have received formal legal defense training from the state Legal Defense chair and supplemental training re chapter legal defense procedures. Committee members may receive additional training at the national level as opportunity allows

- a. Committee membership shall consist of teaching and or administrative faculty members within their institution.
 - b. Committee members must be NFA members
 - c. Committee members shall be appointed by the Chapter President
 - d. Committee membership may include the Chapter President
 - e. Committee makeup not to exceed three members, all of whom shall agree to undergo training on legal defense matters and relevant NSHE policies.
 - f. Each campus Legal Defense Committee shall designate one individual from the committee to serve as chair. The chair will organize, lead, and speak for the committee for that institution.
4. State Legal Defense Committee: This committee is comprised of the state Legal Defense chair, the assistant chair if applicable, and the various campus Legal Defense Committee chairs statewide.

IV. FUNCTIONING OF THE LEGAL STRUCTURE

1. The campus Legal Defense Committees are responsible to the membership of their respective institutions. This responsibility should include reasonable availability for concerned faculty members, appropriate documentation, and timely responses to questions. The committees shall provide guidance, moral support and recommendations to all campus faculty who seek help, within the limits of this and national AAUP policy documents
2. The campus Legal Defense Committee chair shall communicate on a regular basis to his or her counterparts, and with the state Legal Defense chair via a secure NFA List Server site. This general communication may involve current legal issues for faculty members at their institution, pertinent trends that may have a negative effect on faculty in the future, or items of interest arising at the System level. The campus Legal Defense chair is also responsible for organizing needed training for members of local NFA Legal Defense Committees.
3. When a faculty member receives notice of a departmental, division, college or other administrative action which he or she considers unjustly threatening to his or her professional standing, the faculty member can turn to the campus Legal Defense Committee for guidance. The faculty member may choose to discuss the issue with **any committee member**, the full Committee, the chair of the Committee, or with the Chapter President.

The campus Legal Defense Committees do not, in the first instance, act as advocates, or judge the ultimate merits of the complaint, but work with the

colleague who has requested help to identify pertinent facts, offer support, attend meetings with the colleague as appropriate, and mediate, negotiate and reconcile differences if possible.

4. The faculty member may elect, or be asked, to complete **the NFA Intake Form**, which shall include information needed for the NFA State Board to properly assess the case and make an informed decision about supporting the case with possible funding. The form will also include a pledge to reimburse the NFA for any funds expended if the case is settled or won in a court action and money is awarded. The form shall also include a pledge to involve the NFA state Legal Defense chair and the local campus Legal Defense Committee chair in any negotiations that involve settlement offers.
5. Upon receipt of the completed **NFA Intake Form**, the Committee chair shall, if appropriate, advertise the issues of the case via the NFA List Server to the other institution committee chairs, and to the state Legal Defense chair.
6. Upon review, the state Legal Defense chair may request a hard copy of the complaint, request direct discussions with the concerned faculty member, advise seeking legal counsel from local sources, or give the campus Legal Defense Committee chair advice on how to solve the issue within the institution. The state Legal Defense chair is not authorized to discuss the case with the administration of the institution involved unless the local NFA campus Legal Defense chair is informed and agrees that this is needed.
7. If a recommendation is made to the NFA State Board for financial support for a case, this request must be agreed to by the state Legal Defense chair, and the campus Legal Defense chair of the institution from whence comes the request. Any request for funds will be accompanied by an analysis of the issues of the case, the chances of prevailing, and the potential cost of the case. Partial support for the costs of a case may be recommended, with a cost sharing arrangement agreed to by the person seeking assistance. Any request for funding must be accompanied by an agreement to reimburse the NFA if the case is won or settled and funds are awarded.
8. Campus Legal Defense Committee chairs from each institution shall provide summaries of their institutions' activities to the state Legal Defense chair. These summaries will provide the basis for fall and spring reports to the NFA State Board by the state Legal Defense chair.

V. LEGAL DEFENSE PROGRAM

NFA's Legal Defense Program extends services for NFA members who are full-time faculty only.

A. DEFINITIONS

1. Agent "Agent" shall mean a member of NFA who currently holds one or more of the following positions: NFA state officer, NFA State Board member, NFA state Legal Defense chair, NFA campus Legal Defense chair, NFA staff member, local chapter officers or persons designated by the local chapter or NFA State Board to serve as agent.
2. NFA State Legal Defense Committee The NFA state Legal Defense Committee shall be in charge of the Legal Defense Program, subject to approval of specific funding recommendations by the NFA State Board which appoints the state Legal Defense Committee chair. The state Legal Defense Committee shall consist of the state Legal Defense chair, the assistant chair if applicable, and the various campus Legal Defense Committee chairs statewide. The state Legal Defense Committee shall receive, assess, investigate, discuss and seek to resolve cases brought to them.
3. Employment-Related Matter
 - a. Except as otherwise provided in paragraph b of this subsection, "employment-related matter" shall mean any matter involving:
 1. a dispute between a college, university or other institution of the NSHE and one or more NSHE employees who are members of the Nevada Faculty Alliance;
 2. a dispute between an institution of the NSHE and one or more of its employees and/or an employee organization if the NFA State Board decides, by a majority vote at a noticed meeting, that the matter is precedential for the academic profession and should be pursued.
 - b. "Employment-related matter" shall not mean a matter
 1. where the applicant for legal assistance is challenged by one or more subordinates, or by an employee organization, for actions taken by the applicant as a member of a personnel committee or for actions taken by the applicant in an administrative capacity; or
 2. where the applicant for legal assistance is covered by worker's compensation benefits.
4. Legal Services

"Legal services" shall mean services rendered in preparation for, or in the course of, grievance arbitration, impasse resolution, administrative proceedings or court proceeding involving an employment-related matter. Such "legal services" shall be rendered by an authorized NFA representative or an NFA-retained attorney licensed to practice law in Nevada.

5. Member

A person shall be deemed a member of the NFA when his or her application for membership has been signed and dated by an agent of the NFA.

6. Occurrence

"Occurrence" shall mean an act or omission, or a series of acts or omissions, alleged to have been committed by an employee which:

- a. has/have been documented in writing by an individual vested with authority to evaluate an employee of a college, a university or other institution of the NSHE; and which
- b. results/result in one or more employment-related matters.

7. Participating Attorney

"Participating attorney" shall mean an attorney licensed to practice law in Nevada who has agreed to furnish legal services to the NFA Legal Defense Program. The NFA State Board shall approve and maintain a list of participating attorneys as recommended by the state Legal Defense chair. The NFA State Board may modify its list of participating attorneys at any time.

8. Letter of Application for Legal Assistance

An NFA member seeking legal assistance beyond initial consultation with the designated campus Legal Defense chair must submit a written letter of request for legal assistance to the state Legal Defense chair, and the Basis of Complaint form prepared under IV.4 above if requested.

9. Legal Assistance Agreement

Members whose cases have been funded by the NFA shall complete a "Legal Assistance Agreement" accepting the terms and

conditions of NFA assistance as defined under section V E and F below. The Legal Assistance Agreement shall be signed by the applicant, the designated NFA attorney and the state Legal Defense chair.

B. ELIGIBILITY

1. To qualify for NFA legal assistance, the applicant shall be:
 - a. A member at the time of the occurrence who has not terminated membership before asking for legal assistance; or
 - b. A non-member whose employment-related matter the NFA State Board decides, by a majority vote at a legally noticed meeting, is precedential for the academic profession and must be pursued.
2. NFA shall not discriminate against applicants on the basis of race, creed, national origin, sex, sexual orientation or age.
3. Members receiving legal assistance from the NFA shall not terminate membership while receiving such assistance.

C. COVERAGE

1. Administrative Actions

- a. Where agents of the NSHE seek to dismiss a member or take administrative or legal action against a member in connection with the practice of the profession, NFA shall attempt to ensure the member due process and fair hearing in administrative proceedings as provided under the NSHE Code and campus bylaws. NFA funding for members undergoing administrative hearings may include hearing costs, transcript costs and attorneys fees. All costs and fees must be approved by the NFA State Board upon recommendation by the state Legal Defense chair.
- b. Campus legal defense representatives will accompany and represent faculty at grievance and mediation hearings, unless legal questions or extenuating circumstances require the presence of an attorney.
- c. At formal suspension hearings or Chapter VI hearings a participating attorney will accompany and represent members upon approved request. Members must apply in writing to the state Legal Defense chair for attorney representation at suspension hearings, who must approve any such request.
- d. NFA's state Legal Defense chair, acting in consultation with the State Board and a participating attorney, will decide when an attorney's services are required in administrative proceedings.

2. Legal Actions

- a. The NFA State Board may fund legal action in any employment-related matter. Legal action may include hearings before state administrative agencies, appeals from administrative agencies to state or federal courts, legal actions initiated in state or federal courts, and/or hearings before the Board of Regents. The NFA State Board may fund legal action only when a member or an employee association has:
 - 1. Consulted with the state Legal Defense Committee via the appropriate campus Legal Defense chair and received NFA approval prior to initiating legal action; and
 - 2. Developed, in consultation with the participating attorney and the state Legal Defense chair, a strategy designed to maximize the success of the action.
- b. NFA shall consider the following criteria in deciding whether to fund legal action in an employment-related matter:
 - 1. The ability of the member to diligently and effectively pursue the matter to its ultimate conclusion;
 - 2. The likelihood of success on the legal merits of the case;
 - 3. The organizational value of the case;
 - 4. The precedential value of the case;
 - 5. The availability of funds.
- c. NFA may provide less than full funding for legal actions it supports, at the discretion of the NFA State Board.

3. Assistance for Part-time Faculty

Part-time faculty (.50 or less?) who are members of NFA shall receive assistance under NFA's legal defense program structure operating at the campus level. There shall be no legal defense coverage for part-time faculty who are members under current Policies and Procedures. Nevertheless, the NFA, at its discretion, may take up cases it deems important to members. NFA reserves the right to litigate on behalf of its members, whether part-time or full-time faculty, regardless of membership status.

4. Right to Refuse Legal Assistance

NFA reserves the right to refuse to provide legal assistance in cases not of common interest to members, where members are not able to peruse the matter diligently, or where chances of success are remote.

D. EXCLUSIONS

NFA funding will not be provided for the following:

1. Criminal matters;
2. Intentional torts;
3. Civil matters not involving employment-related issues of common interest (**for the reasons given in Section C, subsection 2(b) above**);
4. Legal services rendered without the prior approval of the NFA under the terms of the NFA Legal Defense Program;
5. Fees in excess of rates agreed upon with participating attorneys;
6. Failure to comply with the provisions of this document;
7. Failure to accept a settlement deemed appropriate by NFA and its agents.

E. PROCEDURES FOR OBTAINING LEGAL ASSISTANCE

1. Members shall request legal assistance on employment-related matters by contacting the chair of the campus Legal Defense Committee, or the Chapter President. In no case shall applicants for legal assistance speak directly with participating NFA attorneys without explicit authorization from the state Legal Defense chair. If such unauthorized contact is made, the member is personally responsible for costs of such contact.
2. Members apply for legal assistance by providing the state Legal Defense chair with **an Intake Form, and a documented time-line if requested**, together with an accompanying letter outlining the reasons for requesting assistance and the remedy or remedies sought. The state Legal Defense chair will evaluate the materials, decide if additional documents are necessary, and communicate or meet if necessary with the member to discuss the case. The state Legal Defense chair, in consultation with the member, the campus Legal Defense Committee chair, and a participating attorney, will then determine what further actions are necessary. Since NFA seeks to resolve cases at the lowest possible level of engagement, the state Legal Defense chair may engage in further mediation or negotiation in an effort to resolve the matter. The state Legal

Defense chair may seek the advice and counsel of a participating NFA attorney throughout this process as appropriate, within the limits stated in V.E.3 below.

3. The campus Legal Defense chair, in consultation with the state legal Defense chair, is empowered to authorize one hour's initial consultation with an attorney and up to four additional hours of attorney work in a given case before seeking formal funding from the NFA State Board. The state Legal Defense chair may also seek the advice of NFA attorneys within the limits defined above, in an effort to determine the amount of support NFA should consider offering a member.
4. If a case cannot be resolved within the five hour time limit described above, the state Legal Defense chair shall refer the matter to the NFA State Board.
5. Further, if a case cannot be resolved within the five hours authorized by the state Legal Defense chair, the affected NFA member may write to the NFA State Board c/o the state Legal Defense chair requesting further legal assistance. The state Legal Defense chair shall submit the member's letter to the NFA State Board, together with the state Legal Defense chair's letter, stating the chair's assessment of the case. The chair shall also submit to the NFA State Board a letter from the participating NFA attorney analyzing the case in detail, estimating the likelihood of success in the case and stating the probable cost of litigation. The state Legal Defense chair shall submit these documents to the NFA State Board within fourteen (14) days of receiving the member's letter of request for funding.
6. The NFA State Board shall meet within thirty (30) days of receiving a completed request for funding to vote upon the matter. The NFA State Board may meet by telephone conference call, **or e-mail to discuss, or vote**, on the funding of cases if time constraints require.
7. Participating attorneys shall send approved billings in funded cases to the NFA State Treasurer no later than sixty (60) days from the date the service was performed. The NFA Treasurer shall maintain records on individual approved cases in terms of amounts paid on each case, and authorized amounts shall not be exceeded without NFA State Board approval.
8. An NFA member and the member's campus Legal Defense Committee shall be notified in writing if the request for legal assistance is denied. The notice shall state in writing the reasons for denial and the member's right to appeal the denial to the NFA State Board (see below).

F. REIMBURSEMENT BY MEMBER OR ASSOCIATION

NFA members who receive funding shall reimburse the NFA up to the amount expended for legal assistance out of any recovery, whether by judgment, settlement or insurance payment, which exceeds the member's actual documented expenses or losses. The member shall furnish an accounting of such expenses or losses to the state Legal Defense chair when the case begins, and shall up-date this accounting regularly during the legal action.

G. OTHER

1. Copies of all documents related to any case receiving legal assistance must be sent to the state Legal Defense Committee on a timely basis. The funded member and the participating attorney must keep the state Legal Defense Committee fully informed of all developments in the case. Failure to do so in a timely manner may result in withdrawal of financial support for the legal action.
2. NFA, through its state Legal Defense chair, is to be represented in any negotiation or mediation where efforts are made to resolve and settle a case NFA has funded. NFA representatives must agree in writing with any settlement reached. Failure to involve the state Legal Defense chair can result in withdrawal of NFA financial support for the legal action. If NFA representatives agree that a good settlement offer has been received, but the member refuses such offer, then NFA has the right to withdraw further financial support from the legal action. Such a withdrawal of legal assistance may occur only after the NFA State Board discusses the matter in detail and votes by a majority to withdraw aid. The member requesting further assistance shall furnish a written defense of his or her position and appear before the NFA State Board in person to make his or her case.

H. LEGAL ASSISTANCE APPEAL PROCEDURES

If the NFA State Board has refused to fund a member's application for legal assistance, or has decided to terminate assistance, and the member requesting the assistance wishes to appeal the decision, the following procedures shall apply:

1. The NFA State President or designee must receive a written request for an appeal hearing from the member or member's campus Legal Defense Committee chair to schedule a hearing. The written request for an appeal hearing must be submitted within

- thirty (30) days of the member's receiving notification of a decision not to grant, or to rescind, legal assistance.
2. The NFA State President shall call a meeting of the NFA State Board to hear the appeal. The appeal will be heard as a closed session item.
 3. The NFA State President shall contact the member who seeks to appeal to inform the member of the date, time and place of the meeting.
 4. The state Legal Defense chair and/or the participating attorney will present reasons for denial to the NFA State Board and the appellant.
 5. The appellant or the appellant's campus Legal Defense Committee chair shall present the appeal to the NFA State Board. No member of the Board shall present an appeal on behalf of the member, unless specifically requested to do so by the member.
 6. The member or committee chair shall be informed of the NFA State Board's decision at the end of the hearing and also in writing.

VI. LEGAL DEFENSE IN COLLECTIVE BARGAINING INSTITUTIONS

When an NFA Chapter has arrived at a contract with a NSHE institution through collective bargaining under NSHE collective bargaining rules, the following provisions apply:

A. Use of NFA Attorneys

Use of NFA attorneys is limited to enforcement of the bargained contract or to specific uses spelled out in the contract (e.g. authorized grievance procedures). If provisions of the contract are applied in a grievance brought under the contract, then NFA can only engage in legal action concerning the grievance if the grievant claims that procedures have not been followed correctly, and if the NFA State Board agrees that procedures have been violated, therefore requiring legal action.

NFA reserves the right to litigate on behalf of NFA members in employment-related matters (a) not covered by the collective bargaining agreement, but (b) designated in the collective bargaining agreement as covered by the NSHE Code and institutional bylaws.

In cases involving termination of employment, the faculty member shall reimburse NFA for the cost of attorneys' fees upon reinstatement to the faculty's former position.

B. NFA's Duty to Members of the Bargaining Unit

It is NFA's duty under the contract to assist any member of the bargaining unit, whether a member of NFA or not, in matters where a violation of the contract provisions is alleged. Final authority to seek legal redress for an alleged contract violation rests with the NFA State Board.

C. Recommendations for Legal Action

The NFA State Board shall base any decision to take legal action to enforce provisions of the collective bargaining contract upon the recommendation of the campus Chapter, acting through its President, and upon the recommendation of the state Legal Defense chair responsible for that campus. In making such a decision, the NFA State Board shall receive and review an assessment of the matter provided by an NFA-retained attorney. The NFA attorney shall analyze the issues of the case in detail, and also state to the Board the probabilities of success and the cost of such a course of action.