

The Panel concludes that Respondents' Motion to Dismiss 25-71 Claim should be denied. Although Professor Schwartz's petition is short on the specifics of the harm he allegedly suffered, he has indicated that application of the housekeeping amendments to Section 25-71, rather than the pre-amendment Code provisions, deprived him of a process that might have avoided the need for a UCIRO investigation and his temporary removal from his position as PI on the CVP grant. To the extent he can prove such harm, revisions of the Code in 2019 that are prospective only will not provide a remedy. The Panel believes Professor Schwartz should be permitted to put on evidence in support of this claim.

In issuing this decision, the Panel notes that its consideration of Professor Schwartz's 25-71 claim will be directed not to the general validity or impact of the housekeeping amendments he challenges, but rather to whether the violations he alleges—to the extent they are shown to have occurred—affected the terms, conditions, or course of *his* employment in the context of the events described in the petition.

2. Motion to Dismiss Professor Townsend as a Named Respondent

Professor Schwartz acknowledges he is not alleging that Professor Townsend personally engaged in any of the conduct underlying the petition. Rather, Professor Schwartz has named Professor Townsend solely in his official capacity as the Secretary of the Faculty, in the belief that the representative of the Secretary's office must be a party to the adjudication to address the actions of the office allegedly taken by a former Secretary, and to ensure any remedies requiring action by the Secretary are carried out.

The Panel concludes that Professor Townsend's involvement in the adjudication as a named respondent is not necessary to protect Professor Schwartz's interests. Professor Schwartz may call Professor Townsend as a witness. If the Panel determines that Professor Schwartz is entitled to relief and that some action by Professor Townsend (or whoever is the Secretary of the Faculty at that time) is necessary to carry out the relief, Respondents have agreed that the Panel's decision will be sufficient, independently or through the President, to require that the action be taken. The Panel therefore grants Respondents' motion to dismiss Professor Townsend as a named respondent.

3. Professor Schwartz's Motion to Strike Respondent's Answer as Non-Responsive

Prior to the Prehearing Conference, Professor Schwartz submitted a motion arguing that Section 28-36(B) of the Code requires the response to a petition for adjudication to say which facts of the petition are accepted and which are contested. He stated that the Respondents' failure to answer each assertion in the petition in that manner

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has prejudiced him in that he is unable to determine whether Respondents contest certain basic facts related to his claims. Professor Schwartz indicated it would be acceptable to have Respondents submit a revised response with answers to his specific allegations.

During the Prehearing Conference, counsel for Respondents stated that part of the reason Respondents had not provided specific responses to the allegations in the petition was that Respondents believed some of the claims in the petition should be dismissed, in which case no response would be required.

Now that the Panel has denied Respondents' motion to dismiss the 25-71 claim and has granted the motion to dismiss Professor Townsend, the Panel believes that more specific responses to the allegations in the petition would be beneficial in narrowing the issues and evidence to be presented at the adjudication hearing, as well as those that may be addressed in Professor Schwartz's planned motion(s) for summary disposition. Accordingly, the Panel orders that, in compliance with Code Section 28-36(B), Respondents submit, by July 2, an amended response to the petition that answers the petition's specific allegations.

4. Timing of Professor Schwartz's Motion(s) and Oral Argument

Professor Schwartz's motion(s) for summary disposition is (are) due by July 9. Respondents' response is due by July 23. Professor Schwartz's reply, if any, is due by July 30.

If oral argument on Professor Schwartz's motions is determined to be appropriate, it will be held during the week of July 30-August 3 or as soon thereafter as possible.

cc: Hearing Panel:
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