



ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON RULES & ELECTIONS (CRE)
RICK DALE, CHAIR

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April 23, 2013

To: Peggy O'Day, Senate Chair, and members of Division Council

From: Rick Dale, Chair, Committee on Rules & Elections (CRE)

Re: Conflict of Interest (COI) Policies on DivCo and Standing Committees

CRE has considered a number of potential COI issues this semester, and the committee corresponded over email about the nature of Senate activities and what circumstances should prompt a COI concern. These issues were resolved, but CRE felt they presented an opportunity to clarify Senate COI, and set the groundwork for a policy of some kind (this was also prompted by Chair O'Day, who raised COI issues in a DivCo earlier in the semester). To this end, the committee consulted with 3 chairs of CRE-equivalent committees on other campuses to solicit advice regarding COI policies (a summary of responses is attached as an appendix).

In general, the UCM CRE committee discussed the nature of Senate duties, especially on DivCo, where its function is primarily as a deliberative body, and there are only rare concerns about *direct* business or financial interests to individuals. It is a telling fact that the systemwide bylaws leave these matters very much unspecified, and only in concerns of clear potential COI issues regarding resource or financial matters is it stated explicitly (e.g., CAP COI, and some Standing Committee memberships).

After CRE discussions, and consultations with committees on other campuses, UCM's CRE recognized two models for establishing a COI policy. Before summarizing them, we raise two key issues that the Merced Division should address, which would cover most COI issues raised recently: *multiple memberships by single Senate members*, and *unit/group memberships of a Standing Committee member*. **Our overall recommendation is to add this as a discussion item in a session of DivCo**, with the details below guiding discussion. CRE's discussion, on balance, supported the *open model* (see below). Assuming committee memberships are constituted in a balanced fashion, adequately representing Senate member voices at various levels (from units to schools), then the deliberative process is meant to include all of these voices simultaneously, even when those voices are sometimes "expressed" in a vote.

One CRE member (Berck) identified a distinction possibly useful in determining when openness may be inappropriate. A key distinction in Senate actions is between those issuing *judgment/review*, and those that are *legislative*. In the former case, one *does* expect impartiality, and an evaluation based on *facts that are in evidence* (e.g., in CAP, judgments are made on record, and can be released, if in redacted form). Judgment and review take place during CAP evaluations, program review and evaluation and so on. In legislative actions, such as program or program update approvals, discussion of distribution of resources, among other things – these activities are the basis of standard legislative activity in a deliberative process.

CRE's assessment: Identifying key COI issues

Multiple memberships. Perhaps the most pointed concern for UCM is #2, in UCR's criteria described below. Because of our small number of Senate members relative to other campuses, while having nevertheless many Standing Committees to constitute, some faculty can serve on many committees. It seems important for committees to be aware of multiple memberships, and the potential for one faculty member to exert an influence on several committees. For example, even in circumstances as simple as opining on a potential change in a policy document, if one Senate member shapes discussion in two committees, then this faculty member could be exerting inequitable influence over the deliberative process, which is in spirit meant to include all relevant Senate voices. Importantly, it is not uncommon in the UC Senate structure for *some* members to participate twice in deliberations about legislation; however, there should be an awareness of this influence if it exists (e.g., a member of a school's Curriculum Committee voting on a CRF and then voting on it again in UGC).

Faculty membership issues. It is unclear how to sort out membership concerns when, for example, curricular issues are considered (such as program approval). It is unclear what level of membership should raise COI concerns, whether at the school or unit levels. For example, if a member of one school's Curriculum Committee has already voted in favor of a program, can they vote again if they are on UGC? What if one is an *affiliate* member of a graduate group that has a program change under consideration in Graduate Council? Even UCR's policy states that faculty who are members of a program, whose proposal is being considered by a Standing Committee, *stay in the room but do not vote*. From the perspective of the open model (see below), which has strong arguments in its favor, this is already a conservative policy. In addition, the zero-sum argument (see below) about program approvals suggests that one should also be wary of the *converse* of this oft-described COI issue: exerting an undue negative influence when a relevant Senate voice is out of the room, and could answer a critique or concern during deliberation.

Below are descriptions of two models that can facilitate discussion about these key issues.

Open model

The first of these, an *open model*, leaves COI's unspecified, and prompts concerns only in very rare circumstances, motivated by the nature of Senate business as a *deliberative process*. In this case, one places a high threshold for COI's, because Senate activities are almost never, for example, deciding upon contracts or voting on matters of direct financial interest to individuals. A more common concern is when a Senate member sits on a Standing Committee that is approving or reviewing academic programs to which that faculty member belongs. Even in this case, it is difficult to argue for a worrisome COI. If this is a matter of distributing resources, and resources are limited, then there is a zero-sum situation in which *both* members and non-members of programs could be said to have a *potential* vested (and opposed) interest in seeing programs get approved. It's also unclear what level of membership is relevant to specifying this COI. At the broader level, is a SSHA program under review a potential COI issue if a committee member is SSHA faculty? In the words of UCI's chair of CRJ (Hirschberg):

"Some committees' members act as representatives of (and perhaps advocates for) their School, while other committees' members are expected to act for the Division and not for their School's interests. One could argue that a member of a School might act in the School's interests. If so, and if it is a zero-sum game, then a non-member of a School would not be neutral either as their School's interests would best be served by advocating against the contemplated measure."

In addition, one could argue that Senate members of Standing Committees are *not* impartial members, but rather represent voices of their relevant faculty groups, to ensure that matters important and relevant to

them are injected into discussion. For this reason, deliberative activities should *expect* to have members interested in conversation on important curricular matters. As one UCM CRE member put it:

“They do not have a ‘business interest’ that they are voting on. They are not bidding for the Regent’s contract in [a program]. Their only interest in this is as loyal employees of the Regents. COI without an outside monetary interest is hard to achieve in a deliberative body, like Congress or our Senate. We are not a court. We do not require impartiality. We actually prefer passion.”

Under this model, the Senate would recognize a COI only under very special circumstances, such as if there is a perceived direct individual financial or business interest in its deliberation. This would only come under extremely rare circumstances, most often in CAP and CAPRA, but this is where issues of conflicts are made more explicit already. UCSD’s Senate Analysis (Hamann) notes some agreement with this model, but does raise issues:

“Generally I agree that Senate activities are deliberative and pure impartiality is not required – it might even be impossible for anyone to achieve. You are correct that the expertise and knowledge can be valuable during committee discussions. Conflict of interest is not just financial, however, and whether or not a faculty member could personally benefit from a curricular decision is only part of the picture. There is also the issue of fairness: A faculty member voting in the department and then again in the committee gives someone two votes while other faculty only have one. Is this fair? And then there is the issue of perception: Do these faculty members have undue influence over the outcome of the proposal? Some would argue that even having them in the room when the proposal is discussed would give them undue influence, but voting could definitely be perceived that way.”

Again, this conflicts with the notion that COI’s run in both directions. For example, in grant-reviewing circumstances at the National Science Foundation, it is generally considered a COI if a researcher has a proposal under consideration by a panel, and so cannot serve on a panel (and in some cases may not be sought out for reviewing other proposals). It is important to note that COI’s have both undue facilitative *and* undue inhibitory definitions.

Explicit model(s)

UC Riverside serves as an example of a more explicit model. Under this model, each Standing Committee separately develops a conflict-of-interest policy that is agreed upon at the start of each year’s Senate business. This could be a policy drafted as part of a committee’s procedures, that is agreed upon each year as a consent item. UCR’s committee sent us valuable information on how they carry out this explicit model. The broader guidelines by its Senate asks each committee to pen its own COI policy, but to remain aware of the following three items:

- “1. Consider financial implications, i.e. will a vote afford a personal financial benefit*
- 2. Consider if the vote will allow a committee member to vote multiple times and thus have undue influence, i.e. can they vote at the department and then again within the committee*
- 3. Consider spousal and other personal conflicts”*

In the common case of program review or approval, when a faculty member of the relevant group is on the committee, UCR’s chair (Ran) quotes from the COI policy in Committee on Courses:

“If an issue comes before the Committee on Courses that emanates from the department or program of a committee member, he/she will provide information, but will not vote on the issue.”

UCR’s websites for each standing Committee includes COI policy statements, found here:

<http://senate.ucr.edu/committee/>

And an example COI statement, for Committee on Courses, is found here:

http://senate.ucr.edu/committee/8/COI_2012-2013.pdf

And another from the CAPRA-equivalent:

http://senate.ucr.edu/committee/17/COI_2012-2013.pdf

Note these are not very long or especially detailed. They identify what seem to be key COI issues that may emerge in a given committee.

Appendix: Comments from CRE-equivalent Chairs and Senate offices:

UCI’s Dan Hirschberg (2/13/13)

“There are some implicit rules which preclude certain people from serving on certain committees by virtue of positions that they hold. For example, Deans, Associate Deans, Directors, Chairs, and Vice Chairs may not serve on Planning & Budget. Also, there is a "shadow" CAP for handling cases involving CAP members (but this is not in the bylaws). There is an explicit rule that adds an Oversight Member to membership on an Advancement to Candidacy committee when a COI might exist.

Some committees' members act as representatives of (and perhaps advocates for) their School, while other committees' members are expected to act for the Division and not for their School's interests.

One could argue that a member of a School might act in the School's interests. If so, and if it is a zero-sum- game, then a non-member of a School would not be neutral either as their School's interests would best be served by advocating against the contemplated measure.

I believe that committee deliberations involve knowledge of facts, which School members would best be able to provide, and application of logic. Further, it is not unusual that there is non-uniform support (or even opposition) within a School on any such issue.

Another example may help you. Does the CAP member of a School recuse him/herself when a member of that School is up for advancement? (Assume the case where the CAP member is not a co-author or spouse.)”

UCSD’s Senate Analyst Diane Hamann (2/14/13)

“The San Diego Division does not have a formal recusal policy, although CAP has a rule that if a member voted on a file in the department, they can participate in the discussion, but must abstain from the CAP vote. How much participation is left to the discretion of the member and, perhaps, the CAP Chair.

This situation has been handled differently in different committees depending on the topic, the committee, the personality of the member(s), and the personality of the committee chair. Sometimes the member

leaves the room of his/her own accord, participates in the discussion and abstains from the vote, or participates and votes. When it is the chair of the committee, he/she has turned the meeting over to the vice chair to conduct for this issue or has conducted the meeting but not participated in the discussion and not voted. I don't remember seeing a chair vote on a proposal from his/her department, but it has probably happened.

Generally I agree that Senate activities are deliberative and pure impartiality is not required – it might even be impossible for anyone to achieve. You are correct that the expertise and knowledge can be valuable during committee discussions. Conflict of interest is not just financial, however, and whether or not a faculty member could personally benefit from a curricular decision is only part of the picture. There is also the issue of fairness: A faculty member voting in the department and then again in the committee gives someone two votes while other faculty only have one. Is this fair? And then there is the issue of perception: Do these faculty members have undue influence over the outcome of the proposal? Some would argue that even having them in the room when the proposal is discussed would give them undue influence, but voting could definitely be perceived that way.

Unless there is a formal policy in place, though, I don't think a committee member could be prevented from voting in committee on proposals from his/her own academic unit. Whether it is wise or politic to do so, is a different question.”

 UNIVERSITY OF CALIFORNIA | **Academic
Senate**
COMMITTEE ON RULES AND JURISDICTION

February 19, 2013

To: Rick Dale
Associate Professor, University of California, Merced

From: Ziv Ran Chair
Committee on Rules and Jurisdiction

Re: **Senate Question regarding COI statements**

At UCR We leave it up to each committee to determine its own conflict of interest statement, but we do ask committees to consider the following three points when drafting its COI:

1. Consider financial implications, i.e. will a vote afford a personal financial benefit
2. Consider if the vote will allow a committee member to vote multiple times and thus have undue influence, i.e. can they vote at the department and then again within the committee
3. Consider spousal and other personal conflicts

For your reference, please visit our Senate website, senate.ucr.edu, where each committee has posted its own COI statement on its page.

Second, and more specific to your issue, our Committee on Courses has the following language within its COI:

"If an issue comes before the Committee on Courses that emanates from the department or program of a committee member, he/she will provide information, but will not vote on the issue."

We hope this is helpful