DISQUALIFICATION

1. Starting points

This code of practice is intended to serve as a tool and practical guideline for processing questions of disqualification particularly in the tenure track process. Separate guidelines have been issued on the disqualification concerns related to student affairs and other employment outside the university. Due to the nature of disqualification concerns, these guidelines cannot give a definitive answer to all questions related to disqualification. This is particularly true of situations solved on the basis of the so-called general clause (disqualification based on another special reason). The code will be supplemented when new relevant questions related to this issue arise.

As necessary the Aalto University legal counsels will provide interpretation guidance and other instructions for evaluating grounds for disqualification:

- Legal Counsel Anna Johansson (Student Services, anna.johansson@aalto.fi)
- Senior Manager, Legal Services Minttu Lintera (questions regarding disqualification in the case of university other employment outside the university when the employing company is involved in the Aalto University research and development projects, minttu.lintera@aalto.fi)
- Senior Legal Counsel Jari Söderström (Disqualification policy in general, jari.soderstrom@aalto.fi)
- Senior Legal Counsel Tanja Vuolle (other employment outside the university, recruitment, tenure track process, HR in general: tanja.vuolle@aalto.fi)

2. Regulations and their application

The university operates in compliance with the provisions on disqualification set forth in the Section 28 of the Administrative Procedure Act (434/2003). This has been provided for in Section 30(1) of the Universities Act (558/2009).

The provisions of disqualifications apply to the actions of members of bodies as well as to those of individual persons as regards decision-making, preparing matters for decision and acting in an expert role. Compliance with the provisions on disqualification is of great importance as it ensures that the preparations for decision-making and the decision-making itself are transparent and objective. The provisions of disqualification shall be applied in a uniform manner at all Aalto University units.

3. Purpose of disqualification provisions

The purpose of disqualification provisions is to enhance trust in the impartiality of processing a matter in general. The main purpose is to guarantee that activities related to an individual case are objective, in other words, to rule out inappropriate influences and to prevent that any economic ties, relations or other unrelated interests of for instance, an expert, presenting official or of the person responsible for the final decision affect the outcome of the matter.
A person is disqualified if s/he is, due to a relation to the matter being processed or to persons who are parties in the matter or affected by the matter, in a position that may compromise his/her impartiality.

4. Grounds for disqualification

Officials may be disqualified on the following grounds stated in Section 28 of the Administrative Procedure Act:

- **Disqualified due to standing as a party**: if the official or a close person is a party to the matter;

  A person has standing as a party to an administrative matter where his/her rights, interests or obligations are affected by the matter (Administrative Procedure Act, Section 11).

  A close person is a family member or other relative closer than a first cousin (for details, see Section 28(2) of the Administrative Procedure Act). A close person refers also to e.g. domestic partners, former spouses and half relatives. A person otherwise especially close to the person refers to other persons than relatives that have a status comparable to a family member for the employee.

- **Disqualified due to interests**: if specific benefit or specific loss from the decision of the matter is foreseen for the official or a close person.

- **Disqualified due to representation**: if the official or a close person assists or represents a party or a person due to gain specific benefit or suffer specific loss from the decision of the matter;

- **Disqualified due to service or commission relationship**: if the official is in service with or in a pertinent commission relationship to a party or a person due to gain specific benefit or suffer specific loss from the decision of the matter;

  **Disqualified due to employment relationship with a company**: If an Aalto employee is simultaneously in an employment relationship with both Aalto University and a company, s/he is simultaneously committed to pursuing the interests of two different stakeholders. In such cases, the employee cannot hold decision-making power in his/role as Aalto employee in joint projects between Aalto University and the company. Responsibility for considering this aspect in all joint projects between Aalto and the company rests with the department.

  **Other employment**: Disqualification in situations where university staff are involved in business activities have been dealt with in the Aalto University guidelines on other employment, [https://inside.aalto.fi/pages/viewpage.action?pageId=37791859](https://inside.aalto.fi/pages/viewpage.action?pageId=37791859).

- **Disqualification due to membership in corporation**: if the official is a member of the board, supervisory board or a corresponding organ of, or the managing director or in a comparable position in, a corporation, foundation, state enterprise or institution that is a party or that is due to gain specific benefit or suffer specific loss from the decision of the matter.
• **Disqualification due to responsibility of supervision or oversight:** if the official is a member of the executive body or a corresponding organ of an agency or institution, where the matter pertains to the supervision or oversight of the agency or institution.

• **Compromised impartiality:** if the impartiality of the official is compromised for another special reason. These grounds for disqualification are dealt with in more detail later on.

5. **Establishment of grounds for disqualification and decision in the matter**

The grounds for disqualification are assessed as seen through the eyes of a third party. Grounds for disqualification exist if, objectively thinking, impartiality *may have been compromised.*

Any suspicion or claim of partiality requires immediate measures. As a rule, an official shall self decide as to his/her disqualification (Administrative Procedure Act, Section 29). This is justified because usually the official him/herself is best suited to assess whether his/her relation to the matter or parties thereto is such that constitute grounds for disqualification.

However, a decision on the disqualification of a member or the referendary of a multimember body shall be made by the body. Thus, the decision regarding the grounds for disqualification of a member of the departmental committee rests with the departmental committee. A multi-member body shall also decide as to the disqualification of other persons entitled to attend. In a multi-member body, a member or the referendary may participate in the consideration of the issue of his/her disqualification only if the body would not have a quorum in his/her absence and if an alternate qualified person cannot be found without considerable delay (Administrative Procedure Act, Section 29).

6. **Effect of disqualification**

The participation of a disqualified person in the consideration of an issue is a procedural error which may affect the legal validity of the decision or other measure.

An official shall not participate in the consideration of a matter or be present during such consideration, if he/she is disqualified. (Administrative Procedure Act, Section 27) **The prohibition of being present applies to meetings where decisions regarding the matter are made, and to such preparatory measures that have direct effect on the contents of the decision.** Provisions on disqualification do not apply to any technical interim measures. Technical interim measures are technical measures that allow the processing of the matter, and related ordinary office work (photocopying and mailing) or other comparable routine measures.

If a body no longer has quorum due to disqualification of several officials, the body shall be supplemented with qualified members. A body has quorum when the chair and a minimum of one half of the members are present. Members on leave of absence or disqualified members do not, however, have to be counted toward the total membership of the body in such cases. The supplementary members of the body shall be appointed in accordance with the normal procedure of that body.
7. Clause on compromised impartiality (general clause)

Disqualification on other special grounds requires that there are other reasons for disqualification than those listed in legislation; these shall be observable by third parties and of corresponding significance with those specifically stated in the Act. This general clause may be applied in the tenure track process, for instance, in the following situations:

- the person is an adverse party to or has established animosity towards the party

  Established animosity usually requires long-term fundamental dispute observable by third parties. Scientific disputes or disagreement on earlier issues does not of itself constitute grounds for disqualification.

- the person and the party are business partners or collaborate closely

  **Business partnership:** On-going or recently ended business partnership usually creates financial ties which may constitute grounds for disqualification even if the partnership did not concern the matter being processed.

  **Professional collaboration:** Usual scientific collaboration is not, as a rule, grounds for disqualification.

  **Joint projects:** Usual collaboration does not, as a rule, constitute grounds for disqualification. A particularly close, on-going or recently ended collaboration in a joint project may compromise the neutrality of the process, for instance, through positive/negative preconceptions. If the project involves several people and the persons in question do not collaborate particularly closely together or do not have a subordinate relation to each other, the situation does not, as a rule, create grounds for disqualification. When assessing the situation, it is of primary importance that the purpose of the disqualification provisions, i.e. ensuring the neutrality and objective impartiality of the process, be considered.

  **Joint publications:** If the person and the party have joint publications which have been published recently, this may usually be regarded as grounds for disqualification. Also the extent of the publication activity is relevant.

  **Supervisor or subordinate relationship:** If the person is a supervisor or subordinate of the party, this is grounds for disqualification particularly in a competitive application process, if the supervisor-subordinate relationship is on-going or has ended recently.

  The supervisor-subordinate relationship is grounds for disqualification in cases where the supervisor is the actual immediate supervisor directing and supervising the work of the subordinate or the subordinate reports to the person in question. A status of supervisor in the State Salary System does not, in itself, constitute grounds for disqualification.

  **Status of colleague:** Does not of itself constitute grounds for disqualification. May have indirect relevance in the case of public animosity or friendship or joint projects.
Close friendship: A regular friendship does not, as a rule, constitute grounds for disqualification. Other type of interdependencies associated with the relationship may have indirect relevance.

- the person and the party have other type of interdependencies.

Role of thesis advisor or supervisor: The role of thesis supervisor or instructor constitutes grounds for disqualification, particularly if this role ended recently.

Teacher-student relationship: A teacher-student relationship between the official and the party does not of itself constitute grounds for disqualification.

8. Applying the grounds for disqualification in the tenure track process

Composition of a short list:

When the short list is composed, the applicants are subjected to a so-called first-stage screening. The evaluation may be focused on a ‘technical’ assessment of the tenure track eligibility, as well as merits and other pre-requisites of each applicant which can be seen as not yet involving significant comparative evaluation between the applicants. At this stage of the process, individual members of the departmental committee may be disqualified from evaluating a given applicant in the light of pertinent provisions on disqualification. A member who has been disqualified from participating in the evaluation of an applicant shall not take any part in processing the application documents of this applicant or in the discussion regarding the applicant. The disqualified member shall leave the meeting for the duration of the discussion and decision-making regarding that applicant, and the measures taken due to his/her disqualification are duly noted in the meeting minutes. The departmental committee shall deal with questions of disqualification first, prior to beginning the actual evaluation.

If the short list –stage includes wider comparative evaluation between the applicants and of their merits as stated above, a disqualified member of a departmental committee shall be disqualified from the whole short list-stage. The chair of the departmental committee shall assess the situation prior to beginning the evaluation.

Once the short list has been composed, a member of a departmental committee who has been disqualified from evaluating a given applicant cannot take part in the meetings of the committee even when the applicant in question is not discussed.

Obtaining external reviewers

The short-listed applicants are reserved an opportunity to state their views on the partiality of the persons proposed to serve as external reviewers in the process. If someone external to the process (e.g. an applicant who is not on the short list or someone else) notifies that the relationship between the proposed expert and the short-listed applicant may constitute grounds for disqualification, this suspicion
shall be discussed by the departmental committee. The person who has notified of this suspicion shall be informed in writing (e.g. by e-mail) of the departmental committee’s view of the claim.

**Participation of disqualified persons to the tenure track process in certain cases:**

**Hearing:**
In exceptional cases, a disqualified person may be heard in the role of an expert in the matter, if it is necessary for the process. For instance, when filling in a professorial position, the departmental committee may hear a disqualified head of department or other employee if necessary for establishing the scientific or artistic substance of a related matter or to gain an overall picture of the needs of the department, in cases where the hearing involves no evaluation of the applicants. In such cases, the disqualified person shall be present at the meeting only for the duration of the hearing. The topic of the hearing shall be recorded in the meeting minutes in such cases.

**Informal introductory events related to the tenure track process**
A disqualified person may take part in an event organised for the purpose of introducing the university to the applicant (visit, lunch, informal gathering), if the event contains no official and recorded evaluation or any other measures related to the application process (e.g. actual interviews). The purpose of the campus visits and meetings is to enable both parties to assess the situation in an informal setting: the research unit (future colleagues, some of which may compete for the same position) assesses the suitability of the person to the group; on the other hand the applicant assesses the suitability of the group for his/her research interests. Disqualification is relevant only in actual decision-making or preparations which have a direct effect on the decision-making process.

**Advancement review – disqualification based on the general clause of Administrative Procedure Act (professional co-operation)**
The advancement process differs from the competitive recruitment process. The review concerns only one candidate and the focus there is on the potential/merit of the candidate based on accomplishments within Aalto employment. Therefore the reviewers may be expected to have good knowledge on the candidate’s work within Aalto University. For this reason it is also acceptable that most members of the departmental tenure track committee can be from the same department as the candidate and have professional connections, typical to and customary within university activities, with the candidate (e.g. publications, projects, teaching collaboration). Similarly, being a supervisor does not in itself constitute disqualification, as it is essential for a supervisor to be able to participate in evaluating his/her subordinate personnel.

Earlier or on-going professional co-operation (e.g. joint publications and work-related projects, working relationship) between the candidate and the members of the departmental committee is therefore not in itself considered to constitute grounds for disqualification. In order to establish disqualification for participating advancement review the professional co-operation must involve specific aspects endangering the neutrality of the review. Typically, in these cases the circumstances have lasted for several years.

As the departmental committee is appointed for reviewing an individual candidate, the matter of disqualification shall be examined before the departmental committee is appointed. If the matter of disqualification arises during the work of the departmental committee, the departmental committee shall
note the matter to have been discussed and record this briefly in the minutes of the departmental committee. If a specific discussion or assessment concerning a departmental committee member on whether a co-operation relations would be determined to establish disqualification, this assessment will be documented in the minutes of the departmental committee. If disqualification is constituted between a departmental committee member and the candidate, the member cannot act as a member of the departmental committee. E.g. business partnership always establishes disqualification and likewise if the person is a close person to the candidate in accordance with the Administrative Procedure Act.

As the chair of the departmental committee is responsible for executing the review process and presenting the matter for the departmental committee, a person with above mentioned professional co-operation with a candidate cannot act as chair of the committee.

9. Time dimension of grounds for disqualification

The grounds for disqualification are assessed, as a rule, in the light of the situation at the time of processing the matter.

Even when the situation causing grounds for disqualification has ceased to exist, it may constitute grounds for disqualification if it may have actual relevance in the case, particularly if the situation has ended recently. In the above cases of collaboration or other relations, ‘recently’ usually means within the last 3 - 5 years. This means that since time has passed, the relationship or collaboration can no longer affect the matter and thus does not constitute grounds for disqualification.

10. Cessation of existence of grounds for disqualification

If the grounds for disqualification cease to exist while the process is still on-going, the formerly disqualified official may take part in the subsequent proceedings in the matter as usual. This is the case when an official (e.g. member of a departmental tenure track committee) has been disqualified due to partiality in relation to an applicant in the short-list stage (e.g. applying for a professorial position), but this applicant is removed from the list in the later stages of the process or withdraws his/her application.

11. Case-by-case review

Grounds for disqualification may only arise when dealing with an individual case. That is why grounds for disqualification are always assessed in terms of the circumstances affecting the matter at hand at the time that the matter is being processed.

The key principle is that the grounds for disqualification are always assessed and considered case by case considering all the viewpoints affecting the matter, the purpose of the provisions on disqualification, as well as the nature of the situation in the eyes of a third party.