

RULE XIII-2: RULES OF PROCEDURE FOR CONDUCT CODE VIOLATION CASES

A. Definitions

1. A “conflict of interest” is present when a person either has a personal bias concerning the matter before the Conduct Code Officer or the Conduct Code Council or possesses privileged information without the authority to use such information. Neither mere familiarity with the accused nor the mere association of student to faculty regardless of the grades resulting from the association is enough to constitute a conflict under these rules.
2. “Probable cause” is a state of facts that would induce a reasonable, intelligent and prudent person to believe that it is more probable than not that the accused committed the acts which gave rise to the complaint and that those acts constitute a violation of the Conduct Code.
3. “Complaint” is a written and signed allegation of a Conduct Code violation presented to the Conduct Code Officer.
4. “Complaining party” or “complainant” is the person(s) who signed the complaint.
5. “Accused” is a member of the UNH Law community identified in a complaint as having allegedly violated the Conduct Code.
6. “Formal charge” or “charge” is a document that the Conduct Code Officer shall present to the Conduct Code Council pursuant to a finding of probable cause that the Conduct Code was violated.
7. “UNH Law community” shall mean all faculty, staff and students whose conduct is governed by the Conduct Code. It shall not refer to individuals such as alumni/ae who are no longer active participants in the activities of the degree programs of UNH Law.

B. Conduct Code Officer

1. Appointment
 - a. The Dean shall appoint one (1) member of the faculty to serve as the Conduct Code Officer. The term of appointment shall be for three (3) calendar years. The Conduct Code Officer may be reappointed for subsequent three (3) year terms.
 - b. The Conduct Code Officer may appoint volunteer students to assist the Officer in carrying out the duties described below. The Conduct Code Officer shall insure that no student volunteer is involved in or has access to cases under investigation until a finding of probable cause has been made.
 - c. The Conduct Code Officer shall decline from participation in any case in which a conflict of interest may exist. An accused party under investigation by the Conduct Code Officer who believes the Officer has a conflict of interest must file with the Officer a written request for disqualification at the time the facts supporting such request become known to the accused. The decision of the Officer to deny the disqualification request shall be immediately appealable to the Dean, whose decision shall be final.
 - d. If the Conduct Code Officer is excused or disqualified in a particular case, the Dean shall, as soon as practicable, appoint another faculty member to serve in this role during that case.
2. Functions

The Conduct Code Officer shall be responsible preliminarily for determining if probable cause exists to allow the case to proceed.

Should the Officer find probable cause, the Conduct Code Officer, in conjunction with any validly delegated person, will perform all functions necessary to present the case to the Conduct Code Council and Appeals Panel.

3. Initiation of Charges
 - a. Complaints of alleged violations shall be referred, in the form prescribed in subdivision A(3), to the Conduct Code Officer, who shall promptly conduct a preliminary investigation. No anonymous complaints may be accepted by the Officer, and no investigation may be initiated on the basis of such complaint.
 - b. The Conduct Code Officer should discuss the complaint with the accused at the earliest opportunity and inform the accused of the Conduct Code Officer’s role in the proceeding, the availability of counseling with the Assistant Dean of Students on the Conduct Code Procedures, the right of the accused to be represented by counsel at the accused’s expense, and the availability, if any, of volunteer counsel. The accused may be accompanied by counsel at the meeting contemplated by this subdivision. Counsel for the accused at this or any other stage of the proceeding can be any person designated by the accused without regard to whether that person is an attorney at law.
 - c. The Conduct Code Officer shall also inform the accused of the obligation to cooperate in the enforcement of the Conduct Code unless such cooperation would require statements which could be reasonably understood to expose the accused to criminal charges. Failure to cooperate to the extent required by these rules shall constitute a violation of the Conduct Code.
 - d. Following an appropriate preliminary investigation, the Officer shall determine whether probable cause exists to believe that a violation of the Conduct Code has occurred. Should the complaining party wish not to confront the accused directly prior to filing charges and not to testify in any subsequent proceedings, the Conduct Code Officer may not consider the information provided by that complainant in determining probable cause. The Officer may, of course, use that information to locate other witnesses who do not seek anonymity. Should the Conduct Code Officer determine that the complainant filed the charges without a good-faith belief that such charges were well founded, the Conduct Code Officer shall file Conduct Code charges against the complainant.
 - e. Upon determining that probable cause exists, the Officer shall inform the accused promptly. The finding of probable cause is not appealable. The Officer shall then deliver to the Conduct Code Council and the accused party, a formal charge. Charges are sufficient only if they state specific facts which are alleged to constitute a violation of the Conduct Code and specifically identify the provisions of the Conduct Code alleged to be violated.

C. Assistant Dean of Students

1. Role

The Assistant Dean of Students shall be available to counsel accused individuals about the Conduct Code Procedures. The role of the Assistant Dean of Students will be that of an advisor to the accused regarding the requirements of the Conduct Code process. The Assistant Dean of Students shall not act, nor purport to act, as legal counsel.
2. Confidentiality

Any person accused as defined in subdivision A(5) shall be referred by the Conduct Code Officer to the Assistant Dean of Students at the earliest possible stage of the proceeding. All communications

between the accused and the Assistant Dean of Students shall be confidential. Said communications are not discoverable or admissible in any Conduct Code proceeding except on waiver by the accused of the right of confidentiality.

3. Panel of Volunteer Attorneys

The Assistant Dean of Students, in conjunction with the Dean, shall make reasonable efforts to locate attorneys who are willing to represent on a pro bono basis, individuals accused of Conduct Code violations. An individual who is eligible for financial aid and who is unable to afford private counsel shall be eligible for referral to any available volunteer. Additionally, students who do not meet the requirements for financial aid may be referred to any volunteer lawyer who has agreed to accept such referrals.

D. Conduct Code Council

1. Establishment

- a. A panel shall be established to hear charges and render decisions concerning violation of UNH Law's Conduct Code. The panel shall be known as the Conduct Code Council and shall be composed of five (5) members, three (3) of whom will be students, one (1) of whom will be a staff member, and one (1) of whom will be a faculty member. The faculty member shall serve as chair of the Council.
- b. The faculty member and staff member shall be appointed by the Dean. The faculty member shall be appointed for a term of three (3) years. The staff member shall be appointed for a term of two (2) years. Alternates will also be designated for similar terms.
- c. Student members will be selected by election and must be in good academic standing. The election of the three (3) student members and the three (3) student member alternates will be held prior to the end of the fall term each year. One (1) student member will be from the first-year class and the remaining two (2) members shall be elected from the second-year class. The alternates will be the runner-up candidates from each class. The term of office will be one (1) year. A successful first-year candidate is eligible for reelection in the second year. The term of office shall begin on the first day of classes in the spring term and last until the beginning of the following spring term. Students seeking election must commit to being available during the summer months. If student elections cannot be held, despite good-faith efforts to do so, the Dean shall appoint eligible students to serve on the Conduct Code Council.
- d. The Conduct Code Officer or the accused may challenge the composition of the Conduct Code Council by asserting that one or more of its members have a conflict of interest. Motions to disqualify members of the Conduct Code Council must be filed with the Chair as soon as practicable following discovery of the information giving rise to the claim. Following denial of a motion to disqualify, the moving party must file an immediate appeal with the Appeals Panel (see subdivision E) or waive any further claim regarding the composition of the Conduct Code Council. Proceedings before the Conduct Code Council shall be stayed pending disposition of the appeal. The Appeals Panel shall promptly hear and dispose of these appeals.
- e. Should a duly appointed member of the Conduct Code Council be unavailable to sit on a particular case, the Chair shall attempt to replace that member with the alternate most closely analogous to the Council member's role in the school. However, if that individual is unavailable, the Chair may appoint any other

available alternate even if such appointment changes the composition of the Council.

2. Pleading and Evidence

- a. Neither the formal rules of pleading nor the formal rules of evidence shall apply to proceedings before the Conduct Code Council. The purpose of these rules is to fully develop the facts relating to, and to reach a just and proper determination of, matters brought to the Conduct Code Council. Therefore, all evidence which is deemed by the Chair to be relevant, competent and not privileged, shall be admissible.
- b. The accused shall file a written, truthful answer to the charges in writing within twenty (20) days of written notice of the charges filed pursuant to subdivision B(3)(e). The answer shall deny, admit, or admit in part and deny in part, the allegations set forth in the charge. In addition, the answer must set forth any special pleas in defense which the accused expects to raise at the hearing stage of the proceedings. If the accused fails to file an answer, the Conduct Code Council may construe the charges as admitted. The accused may file a written response asserting the right against self-incrimination on matters which reasonably could be understood to expose the accused to criminal charges; such response shall be deemed adequate for the purposes of this subdivision.
- c. The Conduct Code Officer shall promptly, after filing the charge, reveal to the accused any exculpatory evidence discovered during the investigation. The Officer shall also, no later than three (3) days prior to the scheduled hearing, disclose any documentary evidence planned to be used and the names of any witnesses to be called. The accused shall provide similar information to the Officer at the same time. Evidence discovered which cannot be revealed within the above period may be admitted in accordance with subdivision (3)(e) of this subdivision.

3. Hearing

- a. The Conduct Code Officer shall have the responsibility for the presentation of the case to the Conduct Code Council. In carrying out that responsibility, the Conduct Code Officer shall have the right to present witnesses and documentary evidence pursuant to rules established by the Conduct Code Council and shall have the right to cross-examine witnesses for the accused and to challenge documentary evidence submitted by the accused.
- b. The accused shall have the right to a hearing on all charges and the right to be present during the taking of evidence at the hearing. The accused shall have the right to confront and examine witnesses by direct or cross-examination and to present witnesses and documentary evidence. The accused shall have the right to representation, pro se or by counsel of choice, but the expense of such representation shall be borne by the accused. An accused unable to afford an attorney, can apply to the Assistant Dean of Students for the name of any volunteer attorneys willing to assist in cases of this type.
- c. Hearings shall be closed for the protection of the accused; however, the hearing shall be opened to the public upon written request by the accused. The Conduct Code Council may limit access to the hearings, if necessary, to maintain an atmosphere conducive to fairness and to ensure due process.
- d. Upon motion of the accused, the complaining party or any member of the Conduct Code Council, a record of the hearing shall be taken by audio tape recording. The accused may arrange for the taking of a written transcript; the expense of any such transcription shall be borne by the accused.

- e. Nothing in this section is intended to impair the ability of the Conduct Code Officer or the accused party to submit evidence by affidavit or deposition. However, the Chair may exclude such evidence if not provided to the other party three (3) days prior to the hearing, or if admission of such evidence would violate the accused's right to a fair hearing. Notwithstanding the above, the Chair may permit introduction of newly discovered evidence not revealed three (3) days prior to the hearing if the Chair finds that the evidence was not available at the prior time, that the evidence was revealed to the opposing party as soon as practicable prior to the request to admit, and that no undue prejudice to the opposing party would be caused by such admission.
4. Burden of Proof
 - a. The burden of presentation and proof shall be upon the Conduct Code Officer and shall so remain throughout the proceeding.
 - b. The standard of proof shall be by clear and convincing evidence.
 5. Decision
 - a. Following deliberation, the Conduct Code Council shall make one of two findings: violation or no violation. Four (4) members of the Conduct Code Council must agree that the violation alleged has occurred for there to be a finding of violation. Should three (3) or less members of the Council vote that a violation has occurred, the finding of no violation shall be rendered.
 - b. In appropriate cases, the Conduct Code Council may make a finding of no violation without the necessity of a hearing.
 - c. The Conduct Code Council shall make findings of fact and rulings of law upon which the determination of violation or no violation under subdivision (a) or (b) was made. The findings of fact and rulings of law shall be reduced to writing, signed by all members of the Conduct Code Council who supported the decision and provided to the accused within a reasonable time following the close of evidence.
 - d. Following a determination by the Conduct Code Council that the accused has violated the Conduct Code and before a determination of disposition is made, the accused and the Conduct Code Officer shall be entitled to present evidence and arguments regarding disposition. The Conduct Code Council shall specify a time and place for the presentation. The hearing on disposition must be held within a reasonable time of the issuance of the decision.
 - e. The Conduct Code Council may impose appropriate sanctions for a violation, including but not limited to, that: (1) nothing else be done; (2) a private letter of reprimand be issued; (3) the accused receive an F (Fail) in any course work involved in the charges; (4) the accused be suspended from UNH Law for a specified period of time; (5) a letter fully setting out the facts of the case be made a part of the accused's official transcript; (6) the accused be expelled from UNH Law; (7) any degree granted by UNH Law be revoked; (8) the accused be subjected to a combination of any of the above sanctions.
 - f. A copy of the decision shall be provided to the accused at the earliest practicable time along with notice of the rights to appeal and shall specify the date by which an application for appeal must be filed pursuant to subdivision E(2)(a).

E. Appeals Panel

1. Establishment

The three (3) faculty members appointed by the Dean to serve as the Appeals Panel to hear all appeals from the decision of the Conduct Code Council shall be the same Appeals Panel appointed

to hear selected appeals from decisions of the Committee on Academic Standing and Success as discussed in Rule VI J(2). One (1) faculty member of the Appeals Panel should be designated as the Chair. Should a member of the Appeals Panel be unable to sit on a particular case, the Chair, exercising sole discretion, may designate the alternate. The Chair shall also rule on any motion to disqualify a member for a conflict of interest. There shall be no review of this ruling. Should the Chair be disqualified, the Dean shall promptly appoint another member of the Panel to serve as Chair for the case in question.

2. Appeals Process

- a. An application for appeal must be filed with the Chair of the Appeals Panel within the time specified in the notice provided pursuant to subdivision D(5)(f). The application must allege with specificity the grounds for the appeal and the alleged legal error. The Appeals Panel may deny any defective application. A statement of reasons for such denial shall accompany any such order. The appellants shall be granted five (5) days following notice of the denial to refile a proper application. Should the appellant fail to refile a proper application within this time period, the appeal shall be dismissal with prejudice, subject only to reopening for good cause.
- b. The Conduct Code Officer may appeal a finding of no violation only on grounds that the Conduct Code Council improperly construed the Conduct Code. Nothing in the language of this section is intended to limit the right of the Conduct Code Officer to challenge the sanction imposed following a finding of a violation as provided in subdivision (d) of this section.
- c. The accused party shall have the right to appeal any finding that a violation occurred. The Panel may reverse a finding of violation only when the accused can either prove that the Conduct Code Council abused its discretion, committed an error of law, or lacked substantial evidence to support material findings.
- d. The sanctions imposed may be appealed by either party. The appealing party bears the burden of demonstrating that the Council abused its discretion by imposing a particular sanction or set of sanctions.

F. Confidentiality

1. Proceedings

All information in the possession of the complainant, the Conduct Code Officer and the Conduct Code Officer's assistants, persons who participate in the proceedings in any way, the Conduct Code Council, the Appeals Panel, or the accused shall be kept confidential. Faculty members with a compelling need to know this information, such as Legal Residency supervisors, may obtain such information from the Conduct Code Officer upon a showing of need. However the duty of confidentiality is then imposed on that faculty member.
2. Decisions
 - a. The decisions of the Conduct Code Council and the Appeals Panel are available for use by those bodies, and the Conduct Code Officer in subsequent proceedings. An accused individual or the individual's counsel must be given access to these opinions with the name of the party deleted. Revelation by the accused of any confidential information contained in prior decisions of the Conduct Code Council to any person other than the person's counsel shall constitute a violation of the Conduct Code.
 - b. The Conduct Code Council or Appeals Panel may, by a majority vote, publish a decision, finding, or violation if it is of widespread interest to the community. Such decisions must be capable of

being “sanitized” so that the identity of any party to the matter is kept confidential. If this is not possible, the decision may not be published. However, in all cases some notice of the substance of the decision will be provided to the community. Notwithstanding the provisions of this paragraph, the accused may, as a matter of right, require publication of the decision the accused's case, provided that the decision is “sanitized” to protect others who are entitled to protection under these rules.

- c. Faculty members shall be provided with a copy of any decision rendered by the Conduct Code Council or the Appeals Panel and shall be bound by the rules of confidentiality with respect to such decisions until those decisions are made public.
- d. All recipients of information relating to a Conduct Code proceeding and known to be confidential have a duty of confidentiality. Any violation of this duty shall be considered a Conduct Code violation.

G. Supplemental Rules of Procedure

The Conduct Code Council may adopt additional rules and procedures not inconsistent with these rules, provided that such rules and procedures do not impose undue hardships or injustices on the accused. The adoption of such rules and procedures may be immediately appealed to the Appeals Panel.