

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

## A. Definitions

1. A “conflict of interest” may be present on cases where there is a teaching, advising, coaching, employee/employer relationship or when parties involved in the Conduct Code process determine they have a personal, economic or legal conflict.
2. “Probable cause” is a state of facts that would induce a reasonable and prudent person to believe that it is more probable than not that the respondent 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 Officer.
4. “Complaining party” or “complainant” the party who makes the complaint, or in cases where UNH Law is bringing the complaint, the party that signs the complaint.
5. “Respondent” or “Responding Student” is a student of the UNH Franklin Pierce School of Law (UNH Law) community identified in a complaint as having allegedly violated the Conduct Code.
6. “Formal charge” or “charge” is a document that the 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 students whose conduct is governed by the Conduct Code. It shall not refer to individuals such as alumni who are no longer active participants in the activities of the degree programs of UNH Law.
8. “Student” is any person reported by the Registrar as taking one or more courses at UNH Law. It includes:
  - i. Anyone enrolled in full-time and part-time degree, certificate or credit bearing programs;
  - ii. Non-university personnel living in University owned housing;
  - iii. Persons who have matriculated for a UNH Law degree or are taking courses for UNH Law credit or for transfer credit;
  - iv. Students in internships and legal residencies;
  - v. Persons who are not officially enrolled in credit bearing studies for a particular term but who may have a continuing student relationship with UNH Law including persons who are interim suspended, withdrawn, separated or otherwise have a reasonable expectation of resuming enrollment in courses are considered “students.”
  - vi. Students who have completed the course work to receive a degree but who remain on campus.
9. “Witness” is a person who has first-hand knowledge of an incident related to an alleged violation of this Code.

## B. Conduct Code Officer (“Officer”)

1. Appointment
  - i. The Dean shall appoint one (1) member of the faculty to serve as the Conduct Code Officer (“Officer”). The term of appointment shall be for three (3) calendar years. The Officer may be reappointed for subsequent three (3) year terms. The Dean has the authority to name more than one Officer and/or to replace the Officer(s) during their term.

- ii. The Officer may appoint a faculty, staff or student volunteer to assist the Officer in carrying out their duties.
  - iii. The Officer shall decline from participation in any case in which a conflict of interest may exist. A respondent under investigation who believes the Officer has a conflict of interest must file with the Dean or their designee a written request for disqualification at the time the facts supporting such request become known to the respondent. The decision of the Dean or their designee is final and unappealable.
  - iv. If the Officer is excused or disqualified in a particular case, the Dean will appoint another faculty member to serve as the Officer.
2. Functions
 

The Officer shall:

    - i. Investigate the charges;
    - ii. Determine if probable cause exists to allow the case to proceed. Should probable cause be found;
    - iii. Determine if the case can be resolved through the alternative dispute resolution process OR;
    - iv. Present the case to the Council Code Council.

## C. Assistant Dean of Students

1. **Role**

The role of the Assistant Dean of Students will be that of an advisor to the respondent regarding the requirements of the Conduct Code process. The Assistant Dean of Students shall not act, nor purport to act, as legal counsel. The Assistant Dean of Students is not bound by any confidentiality during these advising sessions.
2. **Conflict of Interest**

In the event that the Assistant Dean of Students has filed a conduct code complaint against a student or is in possession of information related to the matter that is the subject of a conduct code complaint, a new process advisor shall be appointed by the Associate Dean for Administration.
3. **Student right to an advisor**

Students have a right to an advisor of their choosing to guide them through the conduct process. The Assistant Dean of Students Office, in consultation with the Dean and faculty, will provide a list of potential attorneys to students.

## D. Preliminary Investigation

1. **Initiation of investigation**
  - i. Complaints of alleged violations shall be referred, in the form prescribed in subdivision A(3), to the 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.
  - ii. Within 10 business days of receiving the complaint, the Officer shall provide notice in writing to the respondent of:
  - iii. The Officer’s role in the proceeding;
  - iv. The availability of counseling with the Assistant Dean of Students on the Conduct Code Procedures;
  - v. the right of the respondent to be represented by counsel at the respondent’s expense, and the availability, if any, of volunteer counsel;
  - vi. A brief description of the nature of the complaint, the possible charges;

- vii. Potential meeting times to review the matter. The respondent may be accompanied by counsel at the meeting contemplated by this subdivision. Counsel for the respondent at this or any other stage of the proceeding can be any person without regard to whether that person is an attorney.
- viii. The expectation to cooperate in the enforcement of the Conduct Code unless such cooperation would require statements which could be reasonably understood to expose the respondent to criminal charges. Failure to cooperate to the extent required by these rules may constitute a violation of the Conduct Code.

## 2. Probable Cause

Following the 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 respondent directly prior to filing charges and not to testify in any subsequent proceedings, the Officer may not consider the information provided by that complainant in determining probable cause. The Officer may use that information to locate other witnesses who do not seek anonymity. Should the Officer determine that the complainant filed the charges without a good-faith belief that such charges were well founded, the Officer may file Conduct Code charges against the complainant.

If probable cause is found, the Officer shall:

- i. Promptly inform the respondent;
- ii. Deliver a formal charge to the respondent and Conduct Code Chair ("Chair");
- iii. Charges should state sufficient facts which are alleged to constitute a violation of the Conduct Code.
- iv. Provide all supporting documents and/or evidence.
- v. Inform the respondent that the finding of probable cause is not appealable.

If probable cause is not found, the Officer shall promptly inform the respondent that the complaint is dismissed.

## 3. Alternative Resolution

If in the judgement of the Officer, the complaint appears to warrant disciplinary action, the Officer, with approval of the Conduct Code Council Chair ("Chair") may enter in an agreement with the student to resolve the matter by a stipulation. This shall clearly indicate the specific charge or charges and the sanction that the student agrees to accept. Should a stipulation be discussed or offered but not accepted, evidence of such discussion will not be discussed during the hearing or with the council.

## 4. Interim Sanction

The Dean or Assistant Dean for Students may impose interim sanctions. For charges of Unprofessional Conduct, these may include limiting access to campus, class, or other university activities or privileges. For Academic Misconduct charges, these may include the withholding of credit for a course, marking of a course as Incomplete 'I', withholding the award of honors or other academic privileges, delay the award of a degree or suspend the student involved pending completion of an investigation and hearing of alleged student misconduct. The Dean shall consider the gravity of the charge, the physical or emotional safety of the UNH

Law community, and the apparent strength of the case against the student.

## 5. Effect of a Pending Code of Conduct Violation

If a respondent has withdrawn or withdraws after the filing of charges either (1) a "hold" will be placed on the responding student's academic record and the student notified that disciplinary action may be initiated upon the responding student's application for readmission, or (2) UNH Law may proceed to resolve the disciplinary action.

# E. Conduct Code Council ("Council")

## 1. Establishment

- i. A council shall be established to hear charges and render decisions concerning violation of UNH Law's Conduct Code. The Conduct Code Council ("Council") and shall be composed of three (3) students members, one (1) staff member, and one (1) faculty member who shall serve as the Conduct Code Chair ("Chair").
- ii. 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. The Dean has the authority to replace the faculty or staff member.
- iii. Student members will be selected by election and must be full-time students and in good academic standing. The election of three (3) student members and three (3) student alternates will be held each fall term. The alternates will be the runner-up candidates. The term of office will be one (1) year. The term of office shall begin on the first day of classes in the spring term and last one year. If student elections cannot be held, the Dean shall appoint eligible students to serve on the Conduct Code Council. Students may be removed and replaced if their academic status changes.
- iv. The Officer or the respondent may challenge the composition of the 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.

## 2. Hearing date

Upon presentation of charges against a student, the Conduct Code Council shall promptly set the earliest possible for a hearing. The date should be no earlier than four weeks after the student is formally charged.

## 3. Pleading and Evidence

- i. 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.

- ii. The respondent shall file a written, truthful answer to the charges in writing within three weeks 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 shall state any defense or any mitigating factors which the respondent expects to raise at the hearing stage of the proceedings. If the respondent fails to file an answer, the Conduct Code Council may construe the charges as admitted. The respondent may file a written response asserting the right against self-incrimination on matters which reasonably could be understood to expose the respondent to criminal charges; such response shall be deemed adequate for the purposes of this subdivision.
- iii. The Officer shall promptly, after filing the charge, reveal to the respondent 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 respondent 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.
  - a. 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. Hearing

- i. **Presentation of the case.** The Officer shall have the responsibility for the presentation of the case to the Council.
- ii. **Right to hearing.** The respondent shall have the right to a hearing on all charges and the right to be present during the taking of evidence at the hearing.
- iii. **Right to remain silent.** The respondent shall have the right to remain silent at the hearing or to not attend the hearing. No inferences shall be drawn from a decision by the student to remain silent or not attend the hearing.
- iv. **Opening Statement.** The Officer shall have the right to present an opening statement concerned the allegations and the evidence that has been submitted. The respondent shall have the right to present an opening statement concerning their defense. Opening statements should be no more than 10 minutes long.
- v. **Witnesses.** The respondent and the Conduct Code Officer shall have the right to present, confront, and examine witnesses by direct or cross-examination and to present witnesses.
- vi. **Evidence.** The respondent and the Conduct Code Officer shall have the right to present documentary evidence and to challenge documentary evidence submitted by the other party.
- vii. **Representation.** The respondent shall have the right to an advisor of their choosing.
- viii. **Confidentiality. Students have the right to confidentiality.** Hearings shall be closed for the protection of the respondent and the complainant.
- ix. **Record Keeping.** Conduct Code Council hearings will be recorded in full. The respondent may arrange for the taking of a written

transcript; the expense of any such transcription shall be borne by the respondent.

#### 5. Burden of Proof

- i. The burden of presentation and proof shall be upon the Officer and shall so remain throughout the proceeding.
- ii. The standard of proof shall be by clear and convincing evidence.

#### 6. Decision

- i. **Findings.** Following deliberation, the Conduct Code Council shall make one of two findings: responsible or not responsible. 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. 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 respondent within a reasonable time following the close of evidence.
- ii. **Sanctions.** The Conduct Code Council may impose appropriate sanctions for a violation, including but not limited to, that:
  - a. Nothing else be done;
  - b. A private letter of reprimand be issued;
  - c. The respondent receive an F (Fail) in any course work involved in the charges;
  - d. The respondent be suspended from UNH Law for a specified period of time;
  - e. A letter fully setting out the facts of the case be made a part of the respondent's official student file;
  - f. The respondent be expelled from UNH Law;
  - g. Any degree granted by UNH Law be revoked;
  - h. The respondent be subjected to a combination of any of the above sanctions.
- iii. **Mitigating and Aggravating Factors.** The Council will apply mitigating and aggravating factors in determining the final penalty. Mitigating factors include but are not limited to, admitting, and accepting responsibility and providing an honest explanation of the conduct. Aggravating factors include but are not limited to, lying, trying to cover-up the conduct, and attempting to blame others.
- iv. **Notice to the respondent.** A copy of the decision shall be provided to the respondent at the earliest practicable time along with notice in writing of the rights to appeal within 10 days of receipt of the decision.

## F. Appeals Panel

### 1. Establishment

The Dean shall appoint (3) faculty members to serve as the Appeals Panel "Panel". 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 Dean or designee will appoint another faculty member. The Chair shall 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

- i. An application for appeal must be filed with the Chair of the Appeals Panel within 10 days of receipt of the decision. The application must allege with specificity the grounds for the appeal and the alleged 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 dismissed.
- ii. The respondent party shall have the right to appeal any finding that a violation occurred. The Panel may reverse a finding of violation only when the respondent can either prove that the Conduct Code Council abused its discretion, committed a procedural error, or lacked substantial evidence to support material findings.
- iii. 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.

confidentiality. Any violation of this duty shall be considered a Conduct Code violation.

## H. Supplemental Rules of Procedure

1. 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 respondent. The adoption of such rules and procedures may be immediately appealed to the Appeals Panel.

## G. Confidentiality

### 1. Proceedings

All information in the possession of the complainant, the Officer and the Officer's assistants, persons who participate in the proceedings in any way, the Conduct Code Council, the Appeals Panel, or the respondent 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 Officer upon a showing of need. However, the duty of confidentiality is then imposed on that faculty member.

### 2. Decisions

- i. The decisions of the Conduct Code Council and the Appeals Panel are available for use by those bodies, and the Officer in subsequent proceedings. A respondent's counsel must be given access to these opinions with the name of the party deleted. Revelation by the respondent 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.
- ii. 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 respondent may, as a matter of right, require publication of the decision the respondent's case, provided that the decision is "sanitized" to protect others who are entitled to protection under these rules.
- iii. 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.
- iv. All recipients of information relating to a Conduct Code proceeding and known to be confidential have a duty of