
LAW SCHOOL

HONOR CODE

2003-2004

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The Honor Code

Preamble

The law is a learned profession, which demands standards of honesty and integrity from its members which are far higher than those imposed on society as a whole. A dishonest attorney is a menace to society and to the profession. Since there is no reason to believe that dishonest students will become honest attorneys, insistence on the highest ethical standards must begin in law school. This Honor Code is dedicated to that end.

In addition, this Code is designed to assure that each student can be evaluated on his or her merits, free from the unfairness of competing with students who attempt to enhance their grades by cheating or plagiarism.

A university should be an intellectual sanctuary where scholarship and honest debate take place in an atmosphere of tolerance and freedom. This is especially important in the field of law, which commonly addresses controversial topics touching on the fundamental beliefs and values of individuals and society. This Code seeks to protect that environment from unreasonable disruption or physical abuse.

Because the honesty and intellectual integrity of the Law School is a matter of special concern to the student body, and because important fairness and educational benefits accrue from giving student leaders a vital role in disciplinary matters, this Code places much of the responsibility for its implementation on an Honor Council composed exclusively of elected students.

Fairness to all and the well-being of the Law School community demand that the substantive standards be reasonable, and that the procedures utilized be fair and expeditious. However, the system established by this Code is not intended as a copy of the criminal justice system. In carrying out its functions under this Code, the Honor Council is engaged in a process of administrative decision-making analogous to disciplinary investigations of the Florida Bar.

ARTICLE I

STANDARDS OF CONDUCT

Section 1.01 Purposes and Objectives

- a. Instilling and perpetuating high standards of ethics and professional conduct among students of the University of Miami School of Law;
- b. Protecting each student's right to study in an environment free from unfair and dishonest competition;
- c. Guarding the School's academic and professional integrity; and
- d. Assuring the community of the ethical qualifications of the School's graduates.

Section 1.02 Authority and Guidance

- a. The standards of this Honor Code are promulgated under the authority vested in the Dean of the School of Law.
- b. A student should be guided by the purposes of this Code, and by common sense. In cases of doubt, students should seek clarification from the Dean of Students as to what constitutes proper conduct under the Code. Such inquiries may not be directed to the Honor Council, its officers or members.
- c. This Code is binding on the students of the University of Miami School of Law and, with respect to Section 1.03(g), on those persons applying to the School for admission or financial aid.

Section 1.03 Standards of Conduct

Conduct described in paragraphs (a) through (q) below violates this Code, subjecting the violator to

sanctions imposed by the Dean.

- a. Cheating (acquiring, obtaining, giving or receiving assistance or information on examinations or assignments, except as authorized by the professor).
- b. Plagiarizing (knowingly appropriating another's words or ideas and representing them as one's own).
- c. Utilizing unauthorized materials, possessing such materials where they could be utilized, or otherwise breaching, in any manner, the instructions of a professor regarding examinations or assignments, or of an administrator or proctor regarding examinations.
- d. Materially damaging School or University property or the property of a student, faculty member, guest, or employee of the School or the University, or any act constituting common law battery directed against the same.
- e. Defacing, damaging, hiding, intentionally misshelving, or using or removing without authorization any library materials.
- f. Engaging in any act that materially disrupts a class, meeting, or other function of the School, or that unreasonably interferes with the rights of other students in the pursuit of their education.
- g. Materially misrepresenting, by act or omission, a student's academic or professional qualifications, conduct, class attendance, class or section standing, grades, honors, activities, or financial need on any document or in any oral statement, including but not limited to applications for admissions to this or any law school or to any state bar, financial aid applications, and resumes.
- h. Making a bad faith allegation that a student has violated this Code.
- i. Failing to bring information concerning a violation of this Code to the attention of the Dean of Students or the Honor Council, where a student has a substantial basis to believe that a violation of this Code has occurred.
- j. Disclosing without proper authorization any information that is required by federal or state law or by

this Code to be held in confidence, or which a student knows or reasonably should know is confidential. Confidential information includes, but is not limited to, another student's social security number, blind grading number, grades, the fact that a formal complaint has been submitted involving a student, or any other details of Honor Council proceedings, except to the extent authorized by this Code.

k. Violating the ex parte contact provisions of Section 1.07 of this Code.

1. Failing or refusing to cooperate in Honor Council proceedings, as required by this Code.

m. Engaging in conduct that is inconsistent with and could result in disciplinary proceedings under the Florida Rules of Professional Conduct, if done by an attorney.

n. Engaging in conduct which would constitute a felony in the State of Florida or under the laws of the United States.

o. Utilizing computer information systems for non-law school related activities (such as employment outside of law school) without authorization, or for assignments, projects or coursework where utilization of such systems is prohibited.

p. Engaging in conduct which casts serious doubt on the student's honesty, integrity, or fitness to be an attorney, or is otherwise incompatible with the purposes and objectives stated in Section 1.01 of this Code.

q. Conspiring, soliciting, attempting, or agreeing to commit, assist in or facilitate the commission of any violation of this Code.

Section 1.04 Cooperation in Honor Council Proceedings

a. Every member of the Law School community has an affirmative duty to cooperate with the Council when asked to testify to a possible Honor Code violation. Notwithstanding this requirement, no student shall be compelled to testify against himself

or herself at a hearing, nor may an alleged violator be required to provide statements to the Investigators under Section 3.03.

b. Should any party to a Council proceeding experience difficulty obtaining the cooperation of an alleged violator, a complainant or a witness, that party may ask the President or the Presiding Officer as appropriate to send a letter to the recalcitrant individual outlining the individual's duty to cooperate and specifying the consequences of noncooperation.

Section 1.05 Closure of Meetings and Hearings; Confidentiality

a. All meetings of the Council except those which are wholly social or ceremonial, all meetings of Screening Panels and Probable Cause Panels under Sections 3.02 and 3.05, all discovery conferences and pre-hearing conferences held under Sections 4.04 and 4.05, and all hearings held pursuant to Section 4.07 shall be closed. This requirement may not be waived.

b. All information dealing with complaints and their handling and disposition, including the identity of the alleged violator, the complainant and witnesses is confidential. No person other than the Dean may, without explicit authorization, reveal any information concerning an Honor Council proceeding, except to the extent allowed by this Code.

c. Provided that the name of the complainant is not revealed and cannot be discerned from the facts, paragraph (b) of this section does not prohibit the alleged violator and his or her representative from revealing:

1. the alleged violator's name, the fact that a complaint has been brought, and the names of other witness, if doing so is unavoidable when interviewing actual or prospective witnesses, or when seeking advice;

2. the alleged violators name and the fact that the Honor Council dismissed the complaint under Sections 3.02(e) or (f), 3.05(d) or (f), or 6.02(a); or

3. the final disposition of a matter by the Dean.

d. The duty to maintain confidentiality is ongoing and

does not end with the termination of the proceedings.

e. The duty to maintain confidentiality shall neither excuse nor prevent the disclosure to bar examiners of the accused's involvement in Council proceedings.

Section 1.06 Consultation with the Faculty Advisor

a. The Dean may appoint a member of the regular faculty to serve as Faculty Advisor to the Honor Council.

b. The President, the Chief Presiding Officer, and the Vice President may consult with the Dean, other administrators specified by the Dean, or the Faculty Advisor at any time.

c. The Presiding Officer in a particular matter may consult with the Faculty Advisor at any time.

d. Upon the request of the alleged violator or an accused, or for other good reason, the President may request that the Dean appoint one or more members of the regular faculty as additional temporary faculty advisors for utilization by Investigators appointed pursuant to Section 3.03(a), School Advocates appointed pursuant to Section 4.03, or Student Advocates appointed pursuant to Section 4.01(a), (d), or (e). A temporary faculty advisor appointed under this paragraph is not an advocate or representative of an accused, and is limited to the provision of advice concerning the Code, its interpretation, and the practices of the Council.

e. The Investigators, School Advocates or Student Advocates may meet ex parte with the Faculty Advisor, or with a temporary faculty advisor appointed pursuant to paragraph (d) of this section, but only where timely prior notice has been given to the President or the Presiding Officer as appropriate, and, in the case of proposed meetings by School Advocates or Student Advocates, to the other side.

f. The Faculty Advisor shall have no responsibility for the activities of the Honor Council except to

serve as an advisor when requested in accordance with this section.

g. The Faculty Advisor may consult with the Dean or other administrators at any time, or perform any other function requested by the Dean.

Section 1.07 Ex Parte Contacts

a. After the filing of a complaint as described in Section 3.01(a), neither the complainant, nor an alleged violator, nor an accused, nor any other member of the Law School community may engage in any prohibited ex parte communication with Investigators, School Advocates, Student Advocates, panel members, presiding officers, other Honor Council members, the Faculty Advisor or the Dean. Such persons have an affirmative duty to refuse to engage in such prohibited ex parte communications, and shall report all such contacts to the President or the Dean as appropriate.

b. The following do not constitute prohibited ex parte communications for the purposes of this section:

1. Filing of written requests or motions, with service on the other party.

2. Communications between a Student Advocate and a witness identified in accordance with Section 4.04(b), or between a School Advocate and a witness identified in accordance with Section 4.04(a).

3. Any communication with the President or the Presiding Officer seeking information, or for other administrative or procedural purposes, which purposes shall specifically not include making requests or motions.

4. Any communication explicitly authorized by this Code, or any communication not related to a matter before the Council.

Section 1.08 Appeals; Non-intervention

a. Except as provided in Section 6.04, no appeal may be made to the Dean for any form of interlocutory relief.

b. All alleged irregularities in the procedures and

deliberations under this Code, and all assertions of error in law or fact are automatically preserved for the final review of the case by the Dean under Section 5.01.

c. Except as expressly provided in this Code, an alleged violator or accused may not seek the intervention of the Dean, the Honor Council Faculty Advisor, any other faculty member, or any administrator prior to, during or following Honor Council proceedings.

ARTICLE II

THE HONOR COUNCIL

Section 2.01 Duties and Powers

The duties and powers of the Honor Council are limited to the following:

- a. to promote awareness of the Honor Code among students;
- b. to investigate written complaints which, on their face, indicate that a violation of the Code may have occurred;
- c. to hear evidence and argument and determine the merits of any complaint in accordance with the procedures provided for herein;
- d. to have its President, following consultations with the Presiding Officer, comment on matters in mitigation or aggravation of an offense when a student is found to have violated the Code;
- e. to maintain the confidentiality of Council proceedings;
- f. to carry out any other responsibilities specified in this Code;

g. upon written request, to assist other officially recognized Law School organizations in conducting their elections; and

h. to carry out any other tasks requested by the Dean, or authorized by the Bylaws.

Section 2.02 Membership

a. The Honor Council shall consist of eleven second-year students (nine from the full-time division and two from the part-time division) and eleven third-year students (nine from the full-time division and two from the part-time division).

b. Each member shall serve a maximum of two academic years.

c. The term of members who change from one division to the other shall be set in the Bylaws of the Council.

Section 2.03 Election of Members

a. Election of members shall be held annually in the spring semester, and conducted in accordance with the Bylaws of the Council.

b. All first-year students who meet the eligibility requirements of the Bylaws may become candidates for the representative of the division of which they are a member.

c. The election for the full-time and part-time members shall be done on separate ballots by division. The nine candidates for full-time division representative receiving the greatest number of votes from that division and the two candidates for part-time division representative receiving the greatest number of votes from that division shall become members of the Council.

d. In the case of a tie for ninth or second place respectively, the successful candidate shall be selected by the outgoing Council.

e. Newly elected members shall assume the offices of second-year Honor Council members on the day after the last day of classes in the spring semester.

Section 2.04

Recusal and Exclusion of Members

a. Any member who has an interest in the outcome of a proceeding, cannot be fair and impartial, is likely to become a party or a witness, or is related by blood or marriage to a party or witness, may not participate in any way in that case, and has an affirmative duty to recuse himself or herself promptly. Such recusal may take place at any point in Honor Council proceedings.

b. Following a determination of probable cause, an accused may move to exclude a member from further participation in any aspect of a matter, at any time, by submitting to the Presiding Officer a written motion stating the grounds therefore. If a majority of the Council members present and eligible to vote under this paragraph and Section 2.11(a) vote to approve the motion, the member may not participate further in the proceedings. No member shall vote on the motion for his or her own removal.

c. In the event of recusal or exclusion from participation of a member, the President shall appoint another member to fill the temporary vacancy, pursuant to Section 2.06(b).

Section 2.05

Removal of Members from the Council

Members may be removed from the Council for good cause by vote of the student body or by vote of the Honor Council.

a. A student vote for removal shall be held only after the Council receives a request for removal signed by fifty second- and/or third-year students. The request shall state the grounds for removal. The recall election shall not be held until at least 14 days after the petition is received. The ballot shall contain the name of the person whose removal is sought and "Retain []yes []no." Only second- and third-year students are eligible to vote on the question of removal. The recall election shall not be valid unless at least twenty five percent of the second- and third-year students participate. A member shall be removed upon the affirmative vote of two-thirds of all students voting on the question.

b. A member may be removed for good cause at the written request of a member of the Council upon a three-quarters vote of the full body of the Council, not including those recused or excluded from participation under Section 2.04 or excused from attendance by the President. The vote shall not be taken until at least ten days after a copy of the written request is given to the member whose removal is sought. The member whose removal has been proposed may not vote on the question.

c. Following a determination of probable cause under Section 3.05, any member of the Council accused of a violation of the Code is automatically suspended from taking any part in the judicial activities of the Council until the matter is disposed of. The participation of an accused member in other Council functions shall be allowed to the extent authorized by the Bylaws. The President may select an alternate member utilizing the procedure in Section 2.06(b).

Section 2.06

Filling of Vacancies and Selection of Alternates

a. If a permanent vacancy occurs on the Council for any reason, the vacancy shall normally be filled by the unsuccessful candidate who received the highest number of votes in the election and in the same division from which the former member was elected to the Council. If the individual is unwilling to serve, or is not confirmed by the Council, then the unsuccessful candidate with the next highest number of votes in that division shall normally be selected. To become a member of the Council, such a candidate must receive the confirming vote of one half of the full body of the Council. If the candidate fails to receive one-half the votes, or if there are no unsuccessful candidates willing to serve, the Council may, by a three-quarters vote, elect any otherwise qualified student in good standing.

b. In the event of a temporary vacancy due to the recusal, exclusion from participation or temporary absence of a member, or where extraordinary circumstances require the addition of a member or members, (as when all or nearly all of the members of the Council must seek recusal in a matter) the President or Presiding Officer as appropriate may appoint one or more alternates to serve as panel members, Investigators, School Advocates or Student Advocates. The President or Presiding Officer may appoint any of

the following students to those positions, under this paragraph:

1. SBA Senators
2. Members of the SBA Executive Board
3. Chairpersons of SBA academic committees
4. Members of Bar and Gavel
5. Members of the Executive Board of the University of Miami *Law Review*
6. Members of the Executive Board of the *Inter-American Law Review*

c. Hearings with alternate members on the Hearing Panel shall be conducted in accordance with Article IV, except that the accused shall have the right to remove no more than two such alternate panel members, with or without cause, following a brief voir dire of the non-Council members.

Section 2.07

The Honor Council President

a. No later than three weeks before the end of the academic year, the membership of the Council, including the President, shall elect a President for the following year from among those students who will be beginning their second year on the Council. The new President shall be elected for a one-year term by a majority of those eligible to vote under Section 2.11(a), and shall assume office immediately following the last day of classes of the spring semester.

b. The President is the Chief Executive Officer of the Council. Powers and duties of the President include:

1. conducting the meetings of the Council, and representing the Council in Law School functions;
2. directing the business of the Council and serving as the point of coordination with the Law School administration to assure the Council has office

space, rooms in which to meet, and audio-visual, computer and secretarial support;

3. appointing and, where appropriate, supervising Investigators, School Advocates, Screening Panels and Probable Cause Panels, and upon the request of an accused, Student Advocates;

4. coordinating the activities of the Council, as necessary, with the Chief Presiding Officer, and advising the Chief Presiding Officer as to the availability of members for appointment to Hearing Panels;

5. ensuring compliance with the notice provisions of Sections 3.06, 4.11 and 6.01;

6. assuring that Presiding Officers have adequate logistical support for the conduct of hearings and pre-hearing and discovery conferences;

7. supervising the activities of the Vice President;

8. commenting to the Dean on matters in mitigation or aggravation of an offense when a student is found to have violated the Code; and

9. carrying out any other assignment specified by the Dean.

c. In addition to the provisions of Section 2.09, the President may appoint a member to carry out any other duties where the President is absent or cannot otherwise perform his or her duties.

d. Except where a tie vote exists, the President shall not vote on the questions of whether to investigate an alleged violation, or the existence of probable cause.

Section 2.08

Chief Presiding Officer

a. Following the election of the President, the Council shall elect a Chief Presiding Officer utilizing the procedure specified for the election of the President in Section 2.07(a).

b. The powers and duties of the Chief Presiding Officer include:

1. presiding at discovery and pre-hearing conferences and ruling on pre-hearing questions;

2. following consultation with the President, appointing members to serve on Hearing Panels;

3. appointing a member to serve as Bailiff at a hearing, who shall assist in the orderly conduct of the hearing. The Bailiff shall also attend the deliberations of the Hearing Panel and take notes concerning its decisions, *provided* that the Bailiff may not express any views on the merits, nor any opinion as to the meaning of the Code or past precedent;

4. presiding over Hearing Panels; and

5. informing the President of the decision of a Hearing Panel for the purposes of Section 4.11, and of any matters in aggravation or mitigation for the purposes of Section 2.07(b)(8).

c. The Chief Presiding Officer will take no part in any aspect of a case, and will not be provided any information concerning it, until informed by the President that probable cause has been found in a matter pursuant to Section 3.05.

d. The Chief Presiding Officer may not instruct a Hearing Panel on the meaning of Code Provisions or applicable law except to the extent expressly provided in this Code, but may bring applicable provisions to the Hearing Panel's attention.

Section 2.09

Temporary Presiding Officer

a. If the Chief Presiding Officer is unable to preside over a matter in which probable cause has been found because of recusal or exclusion under Section 2.04, or if the Chief Presiding Officer informs the President that the workload on other cases would make presiding over a case burdensome, the President shall appoint a third-year member to act as Presiding Officer for that matter. If no third year member is available, the President may appoint a third year student to be the Presiding Officer from the positions listed in Section 2.06(b).

b. A Presiding Officer appointed under this section shall perform all the functions of the Chief Presiding Officer with respect to the designated matter, including appointment of the Hearing Panel and Bailiff, ruling on pre-hearing matters, presiding over discovery and pre-hearing conferences, and presiding at hearings.

c. Following a decision by a Hearing Panel, a temporary Presiding Officer appointed under this section may not perform any role under the Code in any subsequent matter concerning the same accused, except as provided in Section 5.01(c).

Section 2.10

The Honor Council Vice President

a. Following the election of the President and Chief Presiding Officer, the Council shall elect a Vice President utilizing the procedure specified for the election of the President in Section 2.07(a).

b. The powers and duties of the Vice President include:

1. carrying out the functions of the President when the President is unable to perform his or her duties, and has not appointed another member to perform them in accordance with Section 2.07(c) or Section 2.09;

2. acting as Chief Administrative Officer of the Council, as specified in the Council's Bylaws; and

3. carrying out any other assignment specified by the Dean.

c. Except when acting as President, the Vice President may vote on any matter to the same extent as any Member other than the Presiding Officer in that matter and the President.

Section 2.11

Voting; Quorum Requirements

a. All votes authorized in this Code, except for those required to be taken by a Panel, shall occur at meetings of the Honor Council. Meetings of the Council shall be called by the President as deemed necessary. No formal business of the Council shall be conducted unless a quorum is present. A quorum at meetings shall consist of at least one half of the members of the

Council who are eligible to vote, but in any event, not fewer than five members. Unless otherwise provided by this Code, resolutions or decisions of the Council shall become effective upon the affirmative vote of a majority of those present.

b. Except as provided in Sections 2.04 and 2.05, no member may abstain from voting on any matter on which he or she is eligible to vote.

c. Panels must include the number of members specified in Sections 3.02(a), 3.05(a) and 4.06(a).

Section 2.12 Jurisdiction

The Honor Council has jurisdiction over all conduct throughout a student's tenure at the University of Miami School of Law. To the extent relevant under Section 1.03, the council's jurisdiction extends to conduct which occurs off campus. For a period of one year from a student's graduation, withdrawal, or dismissal from the School, the Honor Council retains jurisdiction with respect to events occurring during such tenure in which the student participated, or to which the student was a witness.

For the purposes of allegations of materially misleading statements in applications and financial aid requests under Section 1.03(g), the Council acquires jurisdiction upon a student's matriculation.

Section 2.13 Bylaws

The Honor Council shall prepare Bylaws, which shall govern internal Honor Council organization, standards of conduct and discipline, eligibility for and conduct of elections, and shall specify the detailed procedures whereby the Council's judicial functions are carried out. These Bylaws, and any amendments which may be made from time-to-time, shall become binding on the Honor Council and anyone having business before the Council upon the approval of the Dean. In the event of a conflict between the Bylaws and the Code, the provisions of the Code shall be controlling.

ARTICLE III

Code Violations: PRELIMINARY PROCEDURE

Section 3.01 Complaints

a. Any person believing that there has been a violation of the Honor Code is encouraged to bring the matter to the attention of the Dean of Students, who may conduct a preliminary inquiry, and where appropriate, file a formal complaint. A person may alternatively file a formal complaint directly with the President.

b. Complaints must be in writing and include the name (if known) of the alleged violator, a specific description of the alleged misconduct, and the printed or typed name and address or telephone number of the complainant. It shall also contain the following statement, or words having the same meaning:

"The statements I have made are true to the best of my knowledge, and have been made in good faith."

A complaint by a student must add the following or words having the same meaning:

"I understand that making a bad faith allegation that a student has violated the Code is itself a violation of the Honor Code."

The President shall return deficient complaints for modification.

c. Neither the Council nor any of its officers or members may consider, comment on, perform any investigation of, or take any other action concerning a potential violation until the President has received a formal complaint.

d. Upon receipt of a complaint, the President shall open a file utilizing the style "In RE: [Name]," which shall be retained in confidence in perpetuity.

e. A student will not be considered "an accused" until

1. a Probable Cause Panel makes a positive determination of probable cause; or

2. prior to that determination, the student pleads guilty to the violation of one or more provisions of the Code.

f. Once submitted, a complaint may not be withdrawn. It must proceed as outlined in this Code for ultimate disposition.

Section 3.02 Initial Screening

a. Upon receipt of a complete complaint, the President shall appoint a Screening Panel consisting of five members of the Council, at least two of whom shall be second-year members.

b. The President shall convene and preside at a meeting of the Screening Panel within the time limits in Section 6.02.

c. The facts as stated in the complaint shall be made known to the Screening Panel, but the name of the alleged violator, the complainant and any other parties or principals shall not be disclosed.

d. After consideration of the allegation(s) contained in the complaint, the Screening Panel shall first determine whether the allegation(s), if true, and without regard to possible affirmative defenses, would constitute a violation of any provision of the Honor Code. This determination requires a vote of a majority of the Screening Panel. The President may not vote or express an opinion on the merits, but may bring relevant provision of the Code or the Bylaws, and any precedent and interpretations of the Code contained in the HONOR COUNCIL REPORTER to the Screening Panel's attention.

e. If the Screening Panel determines that even if the facts as alleged are true, it would not constitute a violation of the Code, the matter is dismissed.

f. If the Screening Panel determines that a violation of the Code could have taken place, and the violation is of provisions of the Code other than Sections 1.03 (a), (n), or (p), the Screening Panel shall next determine whether the conduct, if true as alleged, would constitute an inconsequential violation. If so, the matter is dismissed, but the

President shall prepare a report to the Dean of Students for use in counseling the student or for such other actions as the Dean of Students may deem appropriate.

g. A dismissal under paragraphs (e) or (f) shall bar the complainant from bringing a new or revised complaint against the same alleged violator for the same incident or occurrence, unless the Dean remands the matter for further consideration. However, such a dismissal shall not constitute *res judicata* if a separate allegation concerning the same incident or occurrence is brought by a different complainant against the alleged violator. If possible, any such subsequent complaint shall be heard by the same Screening Panel.

Section 3.03 Investigation

a. If the Screening Panel determines that a violation of the Code may have taken place, and that the violation is not inconsequential, the President shall appoint members of the Council to conduct an investigation. Screening Panel members may be appointed as Investigators. The investigating team shall normally consist of one second-year member and one third-year member, and may consist of a third member as necessary. During the course of the investigation, the names of the complainant and the alleged violator shall be known only to the President and the Investigators.

b. Any statement made to the Investigators by the alleged violator may be used in evidence before a Probable Cause Panel and before a Hearing Panel. Investigators have no duty to notify an alleged violator that statements can be used for that purpose, but may not misrepresent that fact or the student's right not to testify under Section 1.04(a).

Section 3.04 Duties of the Investigators

a. Within the time provisions of Section 6.02, the Investigators shall:

1. contact and interview in person the complainant;
2. contact the alleged violator, and accord him or her the opportunity to tell the Investigators the facts and circumstances; and

3. contact, or make a reasonable attempt to contact, all witnesses or other persons believed to have information relevant to the complaint.

b. Investigators shall conduct investigations in good faith. They shall contact only necessary witnesses. During the course of the investigation, the Investigators shall not discuss or otherwise share with other members of the Council any information required to be held in confidence, or any other information acquired in the course of the investigation that may bear on the truthfulness of assertions, or the facts concerning the conduct being investigated.

c. In no case in which he or she has been an Investigator may a member:

1. serve on a Probable Cause Panel; or
2. serve on a Hearing Panel.

Section 3.05 Determination of Probable Cause

a. Upon completion of their investigation, the Investigators will notify the President, who will appoint a Probable Cause Panel consisting of five members of the Council, none of whom has served as an Investigator or as a member of the Screening Panel in the same matter.

b. Within the time period allowed in Section 6.02, the President shall convene a meeting of the Probable Cause Panel, at which the Investigators shall present the results of their investigation. The President shall preside at the meeting, but may not vote or present an opinion as to the merits of the matter. The President may, however, bring relevant provisions of the Code or the Bylaws, and any precedent and interpretations of the Code contained in the HONOR COUNCIL REPORTER to the Panel's attention.

c. A majority of the Panel shall then determine, on the basis of the facts presented, whether probable cause exists. The criteria for determining probable cause shall be:

1. whether the commission of the alleged acts, if true, would constitute a violation of the provisions of the Code proposed by the Investigators to be charged, or a violation of any other provision of the Code; and

2. if so, whether the investigation has revealed sufficient, apparently trustworthy information which, if substantiated at a hearing, could support a finding by the Panel that it is more likely than not that the alleged violator has committed the alleged acts.

d. Except as provided in this paragraph or in Section 4.02, following a finding of probable cause, all accusations must go to a hearing before a Hearing Panel appointed under Section 4.06. However, if upon a motion to dismiss, the Chief Presiding Officer determines that there is "new evidence" which is sufficiently relevant and sufficiently non-frivolous, then the eligible members of the Council may dismiss a matter by:

1. simple majority, if there is new evidence which was not discovered by the Investigators prior to the probable cause vote, and the Investigators concur that the matter should be dismissed; OR
2. two-thirds vote without concurrence of the investigators, but only in extraordinary circumstances where there is clear and convincing evidence that a hearing is no longer necessary or appropriate.

The eligible members of the Council, for the purposes of this paragraph, are all Council members excluding the Chief Presiding Officer, the Investigators, the School and Student Advocates, members designated to serve on the Hearing Panel, and any members recused under Section 2.04.

e. If probable cause is found, the President may reveal the names of the accused and the accuser to those members with a need to know. If probable cause is not found, the names shall not be disclosed.

f. If probable cause is not found, the proceedings shall be dismissed. A dismissal under this paragraph shall bar the complainant from bringing a new or revised complaint against the same alleged violator for the same incident or occurrence, unless the Dean remands the matter for further consideration. However, such a

dismissal shall not constitute *res judicata* if a separate allegation concerning the same incident or occurrence is brought by a different complainant against the alleged violator. If possible, any such subsequent complaint shall be heard by the same Probable Cause Panel.

Section 3.06 Notice to the Parties

a. Notice of the Screening Panel's decision to investigate a potential violation shall be sent to the alleged violator, the complainant, the Dean and such administrators the Dean may designate. Notice shall include:

1. a general description of the violation charged;
2. the names of the Investigators;
3. a statement of the alleged violator's right to be represented in accordance with Section 4.01; and
4. a statement that the President, in confidence, is available for guidance in the selection of representation and for clarification of procedures under this Code.

b. If the Probable Cause Panel determines that the results of the investigation do not indicate probable cause that the alleged violator has violated the Code, the President shall notify the persons specified in paragraph (a) that the matter has been dismissed.

c. If probable cause is found to exist, the President shall notify the persons specified in paragraph (a) of that fact. Notice of the finding of probable cause shall include:

1. a concise description of the violation charged, including the circumstances of the alleged conduct;
2. an explanation of the change in the student's status under the Code from "an alleged violator" to "an accused";
3. a statement of the accused's right to be represented in accordance with Section 4.01;

4. a statement of the accused's right to confront and cross examine the accuser(s) and any witnesses against him or her and to present witnesses and evidence;

5. a statement of the accused's right to discover the names of witnesses or evidence in the possession of the Investigators or School Advocates; and

6. the name of the Chief Presiding Officer or the temporary Presiding Officer who will henceforth preside over the matter.

ARTICLE IV

Code Violations: HEARING PROCEDURE

Section 4.01 Representation

a. Up to two students in good standing, enrolled in the School of Law and authorized to do so by the accused, may appear as that student's advocates. Individuals so appearing shall furnish the Presiding Officer with a written notice of appearance, which indicates their current name, address and telephone number. After a notice of appearance is filed, the advocate shall be sent copies of all communications and documents, which are sent to the accused, who shall be sent all original communications.

b. Nothing in this Code prohibits an accused from retaining counsel to assist the Student Advocates. Attorneys so retained may be present as silent observers at hearings or discovery or pre-hearing conferences.

c. Except as provided in paragraph (b), attorneys may take no role in the proceedings in any manner whatsoever.

d. Following a determination of probable cause, and at the request of the accused, the President shall appoint members of the Council to act as one or both of the Student Advocates. Such representatives may not vote on any issue or serve in any other capacity with respect to the case.

e. The accused has the option of utilizing one advocate selected in accordance with paragraph (a), and one appointed in accordance with paragraph (d).

f. Student Advocates appointed pursuant to any paragraph of this section have a duty of zealous advocacy.

Section 4.02 Admissions of Guilt

a. The accused shall have the option of admitting guilt as charged without submitting to a hearing. The accused shall stipulate in writing that he or she committed the alleged acts, that the commission of the acts constitutes a violation of the Code and that the accused is waiving the right to a formal hearing.

b. Upon the concurrence of the President, and the Investigators or School Advocates, the accused may admit to the commission of one or more offenses other than as charged, in which case no hearing on them will be held, and one or more original charges may be dismissed.

c. No representation that a specific sanction will be recommended or imposed will be made in exchange for an admission of guilt under paragraphs (a) or (b) of this section.

d. Following an admission of guilt, the President shall inquire into any mitigating or aggravating factors, and make a report to the Dean, pursuant to Section 2.07(b)(8).

Section 4.03 School Advocates

Upon a determination of probable cause, the President shall appoint two Council members in the same manner as required in Section 3.03(a), to serve as School Advocates and to prosecute the

case. Such School Advocates have a duty of zealous advocacy. The School Advocates may be the appointed Investigators in the case.

Section 4.04 Discovery

No discovery shall be permitted in Honor Council proceedings except as provided in this Code.

a. After probable cause has been found, and before the hearing, the accused may request that the Presiding Officer convene a discovery conference. The Presiding Officer, the School Advocates, the accused, the Student Advocates, and the Bailiff may attend the conference. At the conference the School Advocates shall disclose the results of the prior investigation, including the identities of witnesses and the substance of their testimony, and shall produce all relevant documents for inspection and copying.

b. If the accused intends to call witnesses or rely on documents at the hearing, he or she must request a discovery conference and disclose the identity of those witnesses and the substance of their testimony, and must produce any documents for inspection and copying.

c. If the accused, the Student Advocates or the School Advocates wish to speak with the witnesses identified by the other side, such questioning shall be done only at the discovery conference, or, as necessary, at a subsequent discovery conference convened for that purpose.

Section 4.05 Pre-Hearing Conference

a. The Presiding Officer shall schedule and preside over a pre-hearing conference with the School Advocates and the accused and/or the Student Advocates to discuss procedural and evidentiary matters.

b. The Presiding Officer shall have the authority to determine procedure and rule on evidence questions presented at the pre-hearing conference.

c. A record of the pre-hearing conference shall be made by audio and/or video tape recording, or stenographic means, as determined by the Presiding Officer,

following consultations with the President.

Section 4.06

The Hearing Panel

a. A six-person panel shall be established by the Presiding Officer to sit at each hearing. The Presiding Officer should endeavor to appoint a balance of second-year and third-year members to the panel. No person may serve on a Hearing Panel who has served on a Screening Panel or a Probable Cause Panel involving the same complaint.

b. Except as provided in Section 2.06(c), no voir dire or discovery shall be allowed with respect to the Hearing Panel.

Section 4.07

Hearing Procedure

a. Hearings shall be informal and rules of procedure shall not apply.

b. The Presiding Officer shall preside at the hearing and shall establish the order of calling witnesses, the presentation of evidence, and the order and length of oral argument.

c. A record of each hearing shall be made by audio and/or video tape recording, or stenographic means, as determined by the Presiding Officer following consultations with the President.

d. Prior decisions of the Honor Council are not binding precedent, but may be cited as persuasive authority. The moving party shall have the burden of establishing the existence of such authority.

e. Except where the legality of the conduct has been placed at issue, or the existence of legal privileges is asserted, neither federal nor state case law may be cited at any point in any proceeding before the Council.

f. The Presiding Officer may not instruct a Hearing Panel on the meaning of Code Provisions or applicable law except to the extent expressly provided in this Code, as those are matters for the Hearing Panel to decide. However, the Presiding Officer may bring relevant provision of the Code or

the Bylaws, and any precedent and interpretations of the Code contained in the HONOR COUNCIL REPORTER to the Hearing Panel's attention if the School or Student Advocates have not already done so.

Section 4.08

Burden of Proof

The School Advocates have the burden of proving, by clear and convincing evidence, each violation of the Code charged.

Section 4.09

Evidence

a. Oral evidence shall be taken only on oath or affirmation, administered by the Presiding Officer.

b. Each party shall have the right to give an opening statement, to present evidence relevant to the issues, to cross-examine opposing witnesses, to impeach any witness regardless of which party first called the witness, to rebut evidence presented by the other party, and to give closing statements. Where appropriate, rebuttal statements may be authorized by the Presiding Officer.

c. Any relevant evidence shall be admitted if it is the type of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Hearsay evidence may be used to supplement or explain other evidence, if relevant and probative. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions in the State of Florida.

d. Formal rules of evidence shall not apply.

e. Irrelevant, inflammatory or unduly repetitious evidence shall be excluded, and the amount of relevant but marginally probative evidence may be limited.

f. Character witnesses or evidence is not permitted, in any form, in any proceeding under this Code.

g. Any evidence relating to polygraph examinations or their results is inadmissible, in any form, in any proceeding under this Code.

Section 4.10

Decision by the Hearing Panel

a. Immediately after all evidence has been presented and all arguments have been made, the Hearing Panel shall meet, with no one present except the Panel members and the Bailiff, to determine whether the accused has committed the violation or violations with which he or she has been charged. All decisions shall be by a two-thirds vote. A decision that a violation has occurred must be based upon the evidence presented at the hearing.

b. If, during the course of its deliberations, the Hearing Panel determines that the accused may have committed a violation different from or in addition to that charged, or that another student may have committed a violation, these possible violations shall be reported to the Council.

Section 4.11

Notice of Hearing Panel Decision

a. The Presiding Officer shall notify the President, the accused, the accuser, and the Dean of the Hearing Panel's decision pursuant to Section 6.01.

b. The notice shall include:

1. specific findings of fact; and
2. dissenting statement(s), if any.

c. The notice to the accused and the Dean shall also include the President's comments as to mitigating or aggravating factors, if any.

ARTICLE V

Final Review AND SANCTION

Section 5.01

Final Review by the Dean

a. No decision of the Hearing Panel is final until the Dean has approved the findings, of fact and decided which sanctions, if any, should be imposed. The accused may submit written material documenting mitigating circumstances, and may request a meeting with the Dean, limited to matters in mitigation.

b. The Student Advocates or the School Advocates may also submit written objections to any aspect of the proceedings before the Council, including allegations of newly discovered evidence which could not have been discovered through due diligence at the time of the hearing. Any such objection must be filed within 10 days of the date of notification to the accused of the Hearing Panel's decision. The President shall be served with these submissions and shall have 10 days from receipt of the submissions to file a written response. After reviewing these submissions, the Dean will decide whether a meeting addressing the merits of such objections, if requested, should be held. If not, the Dean's decision will be based on the record.

c. The Dean will review the Hearing Panel's findings and determine if they were arrived at utilizing procedures, which did not breach fundamental notions of fairness. The Dean may enter a final decision or remand the case with written instructions. If the matter is remanded, the Hearing Panel, which heard the case, shall reconvene to reconsider the case, unless the Dean directs that a different panel hear the case.

Section 5.02

Sanctions

a. The imposition of sanctions for violations of the Honor Code is within the sole discretion of the Dean. Specific sanctions may include but are not limited to one or more of the following:

1. informal or formal warning;
2. private reprimand, including a letter for the student's

permanent school file, and/or notice to student organizations for the purpose of invoking paragraph (c);

3. public reprimand;

4. public or University service;

5. disciplinary probation;

6. a failing grade in any course in which cheating, plagiarizing, disruptive behavior or violation of examination rules took place;

7. suspension or loss of specific Law School benefits, privileges, memberships, and or honors, including financial aid and scholarships;

8. suspension from the School of Law with or without a refund of tuition; and

9. expulsion from the School of Law with or without a refund of tuition, and with or without the right to apply for re-admission at a later date.

b. No record or indication of a student's involvement as an accused in Council proceedings shall be made a part of the student's permanent file unless and until the Dean accepts the Hearing Panel's decision.

c. Notwithstanding the provisions of paragraph (a), any official student organization may suspend, expel, expel with retroactive effect, or terminate any honors accorded a member found to have violated this Code.

ARTICLE VI

Miscellaneous PROVISIONS

Section 6.01 Notice in General

a. The President has an affirmative duty to ensure that adequate notice of Council actions is given to concerned parties.

b. Notice to the alleged violators shall be accomplished by one of the following means:

1. verbally, with confirmation in writing provided by the President by hand, or with written confirmation sent by regular mail; or

2. by certified mail.

Any notice or confirmation sent by mail shall be prominently marked "PERSONAL AND CONFIDENTIAL" on the envelope.

c. Notice shall be sent to all interested parties listed in Section 3.06(a) within 72 hours of:

1. a decision to investigate a complaint;

2. a finding of probable cause;

3. a decision to dismiss or otherwise terminate action on a complaint or accusation; or

4. a Hearing Panel decision.

Section 6.02 Timeliness of Proceedings

a. The Council shall dispose of all matters brought before it in a timely manner. Except as specified in Section 6.03, and provided the alleged violator or accused has not caused substantial delay, if the following time limits are exceeded without consent of the alleged violator or accused, the Student Advocates may, by written motion filed with the Council, request the charges be dismissed. If the Council finds, by a simple majority, that the time limits have been exceeded without justification, the case shall be dismissed. If the

matter is not dismissed the Dean shall take such delay into account as a mitigating circumstance when imposing sanctions.

1. Within two weeks of receiving a written complaint, a Screening Panel shall determine whether the matter should be dismissed or investigated.
2. Within three weeks of voting to investigate the complaint, the investigation shall be concluded and a Probable Cause Panel Council shall determine whether there exists probable cause to believe that the Code has been violated.
3. Within four weeks of determining the existence of probable cause, a hearing shall be held.
4. Within three weeks of remand, either the original or a new Hearing Panel shall reconvene to consider the case, as determined by the Dean.

b. The alleged violator or accused may waive the time periods under paragraphs (2), (3) and (4) of paragraph (a).

Section 6.03 Tolling Provisions

- a. Upon the affirmative vote of two-thirds of the Council members present, the time limits set forth in Section 6.02 may be extended because of exceptional circumstances. The extension must be approved before expiration of the Section 6.02 time frames. The tolling provisions of this paragraph shall not be available if the delay is attributable to the acts or absence of diligent effort by the Council, faculty, or administration.
- b. Non-cooperation or waiver of the time requirements by the alleged violator or accused are a basis for suspension of the time frames of Section 6.02.
- c. Except for good cause shown or as otherwise directed by the Dean, the time frames of Section 6.02 shall be suspended during reading, examination, and recess periods, and the summer session.

Section 6.04 Suspension of the Code

- a. The Dean retains the authority to withdraw a matter from the Council's jurisdiction where the Council cannot act because of recusals, where disposition or initial consideration of the matter by a University-wide adjudicatory body or by state or federal courts is more appropriate, or for other good cause.
- b. The Dean may suspend or modify any provision of the Code with respect to any matter before the Council.
- c. Where the Dean exercises authority under (a) or (b) of this section, he or she will provide notification to the Council and all affected parties in writing, including a brief statement of the reasons for doing so.

Section 6.05 Ratification and Revision

- a. This Honor Code is effective when approved by the Dean, who retains the power to make such revisions as he or she deems appropriate.
- b. The Associate Dean, the Honor Council Faculty Advisor, the President, or a majority of the members of the Council may propose revisions of the Code to the Dean. Students are encouraged to submit proposed changes in writing to the Honor Council for its consideration.
- c. The HONOR COUNCIL REPORTER containing certain past decisions of the Dean and the Honor Council is available to any party upon written request to the President of the Honor Council.