



# HONOR CODE

2020-2021

MIAMI**LAW**  
UNIVERSITY OF MIAMI SCHOOL OF LAW

UNIVERSITY OF MIAMI  
SCHOOL OF LAW

STUDENT HONOR CODE

Academic Year  
2020-2021



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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.

It is inappropriate to attempt to utilize the Code and its procedures to deal with disputes within or between student organizations, or disputes between students that are of a civil character.

## **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 (hereafter “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 and the Faculty 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 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 (s) 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 instructor of the course).

- 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 the instructor of the course regarding examinations or assignments, or of an administrator or proctor regarding the conduct of examinations.

- d. Materially damaging 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 mis-shelving, or removing any library materials without authorization.

- f. Engaging in any act that materially disrupts a class, meeting, or other function of the School of Law, or that materially interferes with the rights of other students in the pursuit of their education.

- g. Materially misrepresenting, by act or omission, one’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 authorization any information relating to other students or to the Law School 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, anonymous 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 1.08 of this Code.

l. 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 the University's computer information systems or other electronic research sources for non-law school related activities (such as employment outside of law school) without authorization.

p. Engaging in "Prohibited Conduct" against a "Covered Person" under the University's *Sexual Misconduct Policy*.

q. Engaging in a pattern of conduct constituting stalking, harassment, or bullying of any member of the Law School community, or a single such act of a particularly egregious character, but which does not constitute a violation of paragraphs (n) or (p) of this Section.

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

s. Engaging in any other 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. This provision may be charged only if (i) its terms are met, but the conduct is not violative of any other provision

of the Code, or (ii) the conduct is of a particularly egregious character.

#### **Section 1.04**

##### **Cooperation in Honor Council Proceedings**

a. Every member of the Law School community must cooperate with the Honor Council (hereafter "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 Dean of Students under Section 3.01 or to Investigators under Section 3.02.

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 non-cooperation.

#### **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 Probable Cause Panels under Section 3.04, all discovery conferences and pre-hearing conferences held under Sections 4.04 and 4.05, and all hearings held pursuant to Sections 4.06 and 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 Council proceedings, except to the extent allowed by this Code.

c. Consultations with the Faculty Presiding Officer, the Faculty Advisor to the Honor Council, or a temporary faculty advisor, where allowed under this Code, are closed, confidential,

not subject to discovery, and cannot be used in any Council proceeding.

d. 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 School Advocates 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 violator's name and the fact that the Dean of Students dismissed the complaint acting under Section 3.01(d) or that the Council dismissed the complaint under Sections, 3.04(d) or (f), or 6.02(a); or
3. The final disposition of a matter by the Dean.

e. The duty to maintain confidentiality is ongoing and does not end with the termination of the proceedings.

f. 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, a member of the Educator Faculty, a willing member of the Emeritus Faculty, or a full-time Lecturer or Senior Lecturer to serve as the Faculty Advisor to the Honor Council.

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

d. The Faculty Advisor shall have no responsibility for the activities of the Council except to serve as

an advisor when requested in accordance with this section.

e. 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**

##### **Temporary Faculty Advisors**

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, a member of the Educator Faculty, a willing member of the Emeritus Faculty or a full-time Lecturer or Senior Lecturer as temporary faculty advisors for utilization by an accused, or by Investigators appointed pursuant to Section 3.02(a), School Advocates appointed pursuant to Section 4.03, or Student Advocates appointed pursuant to Section 4.01(a). 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.

#### **Section 1.08**

##### **Ex Parte Contacts**

a. After the filing of a complaint as described in Section 3.01, 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 Council members, the Faculty Advisor to the Honor Council, or the Dean. Such persons must refuse to engage in prohibited ex parte communications, and shall report all such contacts to the President or the Dean as appropriate.

b. In exceptional cases, the Investigators, School Advocates or Student Advocates may meet ex parte with the Faculty Advisor, or with a temporary faculty advisor appointed pursuant to Section 1.07, but only after timely written notice has been given to the President or the Faculty Presiding Officer as appropriate, and in the case of proposed meetings by School Advocates,



Student Advocates, or the accused, to the other side.

c. 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 or a School Advocate and a witness identified in accordance with Section 4.04.
3. Any communication with the President or a presiding officer seeking information, or for other administrative or procedural purposes, which purposes shall specifically not include making motions or discussing the merits of the case.
4. Any communication explicitly authorized by this Code, or any communication not related to a matter before the Council.

### **Section 1.09**

#### **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, fact, or interpretation of the Code 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 Faculty Presiding Officer, the Faculty Advisor to the Honor Council, any members of the faculty of the School of Law, 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 Council are limited to the following:

- a. To promote student awareness of the Honor Code, its provisions and workings;
- b. To investigate written complaints received by the Council President pursuant to Section 3.01(b) or (c);
- 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, School Advocates, and/or Student Advocates 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 Council's Bylaws.

#### **Section 2.02**

##### **Membership**

- a. The Council shall consist of twelve second-year and twelve third-year students.
- b. Each member shall serve a maximum of two academic years.

### **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 with a grade point average achieved in the first semester of 2.8 or above, and who meet the other eligibility requirements of the Council's Bylaws may become candidates. Only first-year students may vote. The Council shall, in its Bylaws, determine which students constitute first year students for the purposes of this section.

c. The twelve candidates receiving the greatest number of votes shall become members of the Council. In the case of a tie for the final place or places, the successful candidates shall be selected by the outgoing Council.

d. 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 of their first year.

### **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 must recuse himself or herself promptly. Such recusal may take place at any point in 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 Student 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 or Suspension of Members from the Council**

a. 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 calendar 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.

b. Following a determination of probable cause under Section 3.04, 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 of the Council. The President may select an alternate member utilizing the procedure in Section 2.06(b).

c. A member must resign if his or her cumulative grade point average falls below 3.0. A student who resigns pursuant to this paragraph, but brings the grade point average above 3.0 may be reappointed if a vacancy opens up on the Council.

d. If the Dean determines that a member is under suspicion of violating the Code (even if the matter is not yet before the Council), that the student is on academic or disciplinary probation, or for other good cause, the Dean may suspend a member for a specified time, not to exceed one semester.

### **Section 2.06 Filling of Vacancies and Selection of Alternates**

a. If a permanent vacancy occurs on the Council for any reason, the President shall nominate a

student to fill the vacancy. Approval of the nomination shall require the affirmative vote of two thirds of the Council members. The President shall normally nominate either a former member of the Council in accordance with Section 2.05(c), or the unsuccessful candidate who received the highest number of votes in the election to the Council. If the individual is unwilling to serve, or is not confirmed by the Council, 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 Student Presiding Officer as appropriate may appoint one or more alternates to serve as panel members, Investigators, School Advocates or Student Advocates from the following list:

1. SBA Senators.
2. Members of the SBA Executive Board.
3. Members of the Papy Moot Court Board.
4. Members of the Executive Board of one of the official University of Miami Law Reviews

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 current 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 working with the administration of the School of Law to assure the Council has appropriate administrative support, including office space, temporary use of rooms in which to meet, record storage, and audio-visual, computer, and secretarial support;
3. Appointing and, where appropriate, supervising Investigators, School Advocates, members of Probable Cause Panels and Hearing Panels, and upon the request of an accused, Student Advocates;
4. Coordinating the activities of the Council, as necessary, with the Faculty Presiding Officer, and the Student Presiding Officer.;
5. Ensuring compliance with the notice provisions of Sections 3.05, 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; and
8. Carrying out any other assignment specified by the Dean.

c. In addition to the provisions of Section 2.09(e), 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, or as provided in Section 2.07(a), the President shall not vote on any matter before the Council

e. Because of the importance of the duties of the President and the need to have those duties carried out promptly, the President may not work outside the Law School more than 10 hours per week when classes are in session, and may not hold a major student office, defined as President of the Student Bar Association, President of the Papy Moot Court Board, the Law School member of the Board of Trustees, the Law School Representative to the Faculty Senate, or Editor-in-Chief of a Law School law review.

#### **Section 2.08** **Faculty Presiding Officer**

a. The Dean shall appoint a tenured member of the Regular Faculty, of the Educator Faculty holding the rank of full Professor, or a willing member of the Emeritus Faculty to serve for a semester or academic year as the Faculty Presiding Officer.

b. Functions of the Faculty Presiding Officer include:

1. After being informed by the President that there is a case requiring a Hearing Panel to hear the case, receiving documents concerning the case, and being briefed by the President on the results of the Probable Cause Panel decision, and by the Student Presiding Officer on the results of the discovery conference(s), the Pre-hearing Conference, and any motion practice;
2. With the assistance, as needed, of the President and the Student Presiding Officer, scheduling sessions of a Hearing Panel;
3. Advising the Dean and the Faculty Honor Council Advisor on ways to improve the Code and the functioning of the Council; and

4. Performing such other duties as this Code requires or expressly authorizes, or as the Dean may direct.

#### **Section 2.09** **Student Presiding Officer**

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

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

1. Presiding at discovery and pre-hearing conferences;
2. Ruling on pre-hearing questions and motions brought by a party or an affected third party;
3. Appointing a member of the Council to serve as Bailiff at a meeting of a Hearing Panel, 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. Attending all sessions of a Hearing Panel;
5. Assisting the Faculty Presiding Officer in any manner not inconsistent with this Code; and
6. Informing the President of the decision of a Hearing Panel and, for the purposes of Section 4.11(a), any matters which, in his or her opinion, constitute issues in aggravation or mitigation.

c. The Student Presiding Officer may not serve on a Probable Cause Panel, as an Investigator, or a School or Student Advocate, and will in no other way take part in any aspect of a case, until informed by the President that probable cause has been found pursuant to Section 3.04.

d. Because of the importance of the duties of the Student Presiding Officer and the need to have those duties carried out promptly, the Student Presiding Officer may not work outside the Law School more than 10 hours per week when classes are in session, and may not hold a major student office, defined as President of the Student Bar Association, President of the Papy Moot Court Board, the Law School member of the Board of Trustees, the Law School Representative to the Faculty Senate, or Editor-in-Chief of an official Law School law review.

e. If the Student Presiding Officer is unwilling or unable to carry out the duties of this Section, the President shall appoint a third-year member to serve as Acting Student Presiding Officer for that matter. If no third year member is available, the President may appoint a third year student to be the Acting Student Presiding Officer from the positions listed in Section 2.06(b).

f. An Acting Student Presiding Officer appointed under this section shall perform all the functions of the elected Student Presiding Officer with respect to the designated matter, including appointment of the Bailiff, ruling on pre-hearing matters, and presiding over discovery and pre-hearing conferences.

g. Following a decision by a Hearing Panel, an Acting Student 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 the Student 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 unwilling or unable to perform his or her duties,

and has not appointed another member of the Council 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 Student Presiding Officer for 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 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 3.04(a) and 4.06(a).

## **Section 2.12**

### **Jurisdiction**

The Council has jurisdiction over all conduct throughout a student's enrollment at the School of Law, and over conduct involving materially misleading statements in admission applications and financial aid requests prior to matriculation under Section 1.03(g). 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 Council retains jurisdiction with respect to events occurring during such enrollment in which the student participated, or to which the student was a witness.

### **Section 2.13 Bylaws**

The Council shall adopt Bylaws, which shall govern internal 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 this 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 Section 1.03 of the Code may bring a complaint.

b. If the complaining party is a member of the Regular, Educator or LComm Faculty, as those terms are defined in the Bylaws of the Law School, the complaint may be filed directly with the Council President. However, such persons are encouraged to first bring the matter to the attention of the Dean of Students.

c. Any other person shall file the initial complaint with the Dean of Students.

d. Upon receiving a complaint, the Dean of Students shall take one or more of the following actions:

1. Dismiss the complaint if, in the discretion of the Dean of Students, it would be in the interests of fairness and justice to do so because the action complained of:

(a) Does not violate the Code, assuming the facts are entirely correct as alleged;

(b) Violates a provision of the Honor Code other than paragraphs (a), (n) or (p) of Section 1.03, but only in a trivial or inconsequential way, in which case the Dean of Students shall counsel the student; or

(c) Violates a provision of the Honor Code other than paragraphs (a), (b), (c), or (n), of Section 1.03, but is predominately:

(1) a dispute within or between Law School organizations, in which case the Dean of Students may mediate or decide the matter; or

(2) is a civil dispute between students over matters not directly involving the School.

A dismissal under this sub-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.

2. Conduct a preliminary inquiry.

3. Return the complaint to the complaining party for modification to

bring the complaint into conformity with the Code.

4. Forward the complaint to the President, with or without modification or commentary.

5. Refer the matter for disposition under the "Investigative and Adjudicative Processes" provisions of the University's *Sexual Misconduct Policy*.

6. With the concurrence of the Dean, transfer the matter to another University authority, or to the police or the court system pursuant to the Dean's authority under Section 6.04 (a), or (b).

e. 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 of the School of Law 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."

f. The President shall return deficient complaints to the complaining party for modification.

g. Except for referrals pursuant to Sections 3.04 (g), 4.02 (e), or 4.10 (c), neither the Council nor any of its 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. Such referrals obviate the need for a formal complaint.

h. 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.

i. 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.

j. Once submitted to the President, a complaint may not be withdrawn. It must proceed as outlined in this Code for ultimate disposition. This provision does not prevent a complaining party from subsequently recommending to the Council or to the Dean a particular course of action authorized by this Code. .

### **Section 3.02 Investigation**

a. Upon receipt of a complaint meeting the requirements of this Code, the President shall appoint members of the Council to conduct an investigation. The investigating team shall normally consist of at least one second-year member and one third-year member. A third member may be appointed if appropriate. During the course of the investigation, the names of the complainant shall be known only to the President and the Investigators, and the name of the alleged violator may be revealed to witnesses only if necessary to conduct the interview.

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 3.03 Duties of the Investigators**

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

1. Contact and interview the complainant, whenever possible in person;
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, including the names of the complainant and the alleged violator, 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;
2. Serve on a Hearing Panel; or
3. Serve as a School Advocate or Student Advocate.

### **Section 3.04 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 three members of the Council, none of whom has served as an Investigator 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 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 of

the Council, 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 material violation of the provisions of the Code proposed by the Investigators to be charged, or 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 Student Presiding Officer determines that there is "new evidence" which is sufficiently relevant and sufficiently non-frivolous, 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 unanimously 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 voting members of the Council, for the purposes of this paragraph, are all Council members excluding the President, Student Presiding Officer, the Investigators, the School and Student Advocates, and any members recused



under Section 2.04, or suspended under Section 2.05.

e. If probable cause is found, the President may reveal the names of the accused and the accuser to those Council 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. To the maximum extent possible, any such subsequent complaint shall be heard by a Probable Cause Panel whose members served on the Probable Cause Panel in the prior action.

g. If, during the course of its activities, the Probable Cause Panel determines that another student may have committed a material violation of the Code, the matter shall be reported to the President, who may appoint Investigators to begin the process specified in this Article, or may seek the advice of the Dean of Students.

### **Section 3.05 Notice to the Parties**

- a. Notice of the President's decision to appoint Investigators to investigate a potential violation shall be sent to the alleged violator, the complainant, the Dean of Students, and such other 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;

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; and

5. A brief explanation of the ex parte contact provisions of Section 1.09.

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 and any evidence in the possession of the Investigators or School Advocates;

6. The name of the Student Presiding Officer or the temporary Presiding Officer who will henceforth preside over the matter up until the formal Hearing Panel consideration, and the name of the Faculty Presiding Officer who will preside at that Hearing; and

7. A brief explanation of the ex parte contact provisions of Section 1.08.

## **ARTICLE IV**

### **Code Violations; Hearing Procedure**

#### **Section 4.01 Representation**

a. One or two students – other than the President, Vice President, Student Presiding Officer, or Honor Council members who have served as Investigators or on the Probable Cause Panel in the same matter – who are in good standing, enrolled in the School of Law, and authorized to do so by the accused, may appear as Student Advocates. The accused may request the President to appoint willing members of the Council to act as one or both of the Student Advocates.

b. Individuals who agree to serve as Student Advocates shall furnish the President and the Student Presiding Officer with a written notice of appearance, which indicates their current name, address, e-mail address and telephone number(s). After a notice of appearance is filed, the advocate(s) shall be sent copies of all communications and documents which are sent to the accused, who shall be sent all original communications.

c. Nothing in this Code prohibits an accused from retaining legal counsel to assist the Student Advocates. An attorney so retained may provide advice, assist in the preparation of documents, and be present as a silent observer at hearings or discovery or pre-hearing conferences. An attorney who violates the silence requirement, and who persists after a warning from the Presiding Officer shall be precluded from further participation in the matter. In severe cases, the Dean may report such disruptive behavior to the Bar Association(s) of the jurisdiction(s) in which the Attorney is admitted.

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

e. 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 to the President 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 imposed or recommended 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 may make a report to the Dean. The Dean may consider an admission of guilt a mitigating factor when determining an appropriate sanction.

e. If, during the course of discussions with an accused concerning an admission of guilt, the President determines that another student may have committed a material violation, the President shall refer the matter to the Dean of Students under Section 3.01.

#### **Section 4.03 School Advocates; Testimony of Investigators**

a. Upon a determination of probable cause, the President shall appoint two Council members to serve as School Advocates and to prosecute the case. Such School Advocates have a duty of zealous advocacy.

b. A Council member who has acted as Investigator pursuant to Section 3.03 and has interviewed the alleged violator may be called as a witness by either side, and the Investigator's notes are subject to discovery under Section 4.04. The

Investigator may be required to give evidence before the Hearing Panel pursuant to Section 4.09.

#### **Section 4.04 Discovery**

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

b. After probable cause has been found, and before the hearing, the accused may request that the Student Presiding Officer convene a discovery conference. The Student Presiding Officer, the School Advocates, the accused, the Student Advocates, and the Bailiff may attend the conference. A record of the discovery conference or conferences shall be made by audio and/or video recording, as determined by the Student Presiding Officer.

c. 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 by the Student Advocates.

d. 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 by the School Advocates.

e. 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 Student Presiding Officer shall schedule and preside over a pre-hearing conference with the School Advocates, and the Student Advocates (accompanied if desired by the accused) to discuss procedural and evidentiary matters.

b. The Student 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 recording, as determined by the Student Presiding Officer, which shall be retained in accordance with Section 3.01(h).

#### **Section 4.06 The Hearing Panel**

a. A six-person panel shall be appointed by the President to sit at each hearing. The President should endeavor to appoint an equal number of second-year and third-year members to the panel. No person may serve on a Hearing Panel who has served on a Probable Cause Panel, as an Investigator, or as a School or Student Advocate 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 membership of the Hearing Panel.

#### **Section 4.07 Hearing Procedure**

a. Hearings shall be informal and rules of procedure, other than those specified in this Code, shall not apply.

b. The Faculty 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 recording, as determined by the Faculty Presiding Officer, which shall be retained in accordance with Section 3.01(h).

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 as provided in this Code, neither federal nor state case law may be cited at any point in any proceeding before the Council.

f. The Faculty Presiding Officer may not instruct a Hearing Panel on the meaning of Code Provisions except to the extent expressly provided in this paragraph, as that is a matter for the Hearing Panel to decide. However, the Faculty Presiding Officer may instruct the Panel if the complaint charged common-law battery under Section 1.03 (d), a violation of a felony under section 1.03 (n), a violation of Florida's Rules of Professional Conduct under 1.03 (m), or if the existence of a rule of privilege recognized in Florida is at issue under section 4.09(c). The Faculty Presiding Officer may also bring relevant provision of the Code or the Council 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 presented to the Hearing Panel shall be taken only on oath or affirmation, administered by the Faculty Presiding Officer.

b. Each party shall have the right to give an opening statement, to present witnesses and documents 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 Faculty Presiding Officer.

c. Except as provided in this Section, 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. School Advocates and Student Advocates are entitled to the attorney-client privilege as if they were admitted to the Florida Bar.

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 are 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, the Student Presiding Officer and the Bailiff, to determine whether the accused has committed the violation or violations with which he or she has been charged.

b. A decision that a violation has occurred must be based upon the evidence presented at the hearing. A determination of guilt requires an affirmative vote of two thirds of the Panel members.

c. If, during the course of its deliberations, the Hearing Panel determines that the accused may have committed a material violation of the Code different from or in addition to that charged, or that another student may have committed a material such violation, either the Bailiff or the Student Presiding Officer shall report the matter to the President, who shall refer the matter to the Dean of Students under Section 3.01.

## **Section 4.11**

### **Notice of Hearing Panel Decision**

a. The Faculty Presiding Officer, or the Student Presiding Officer acting on the instructions of the Faculty Presiding Officer, shall notify the President, the accused, the accuser, the Dean of Students, and the Dean of the Hearing Panel's decision pursuant to Section 6.01.

b. The notice shall include:

1. The conclusion of the Panel as to whether a violation has taken place;
2. Specific findings of fact; and
3. Dissenting statement(s), 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 decided which sanctions, if any, should be imposed.
- b. The accused, the Student and School Advocates, and the President may submit written material documenting mitigating or aggravating circumstances.
- c. 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 prior to or at the time of the hearing. Any such objection must be filed within seven calendar days of the date of notification to the accused of the Hearing Panel's decision. The Faculty Presiding Officer shall be provided with copies of these submissions and shall have seven calendar days from receipt of the submissions to file a written response. After reviewing these submissions, the Dean will decide whether a meeting addressing only the merits of such

objections, if requested, should be held. If not, the Dean's decision will be based on the record.

d. The Dean will review the Hearing Panel's findings and determine if they were arrived at utilizing procedures that 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, to the maximum extent feasible, the members of the Hearing Panel who heard the case shall reconvene to reconsider the case, unless the Dean directs that a different panel hear the case. If there are vacancies, the President shall appoint replacements.

#### **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. University service;
5. Disciplinary probation;
6. A failing grade in any course in which violations of Sections 1.03 (a), (b), (c), or (f) 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 imposes a sanction.
- c. Notwithstanding the provisions of paragraph (a), any official student organization may suspend or terminate (with or without retroactive effect) the membership of – or any honors accorded to – a member of the organization found to have violated this Code.

## **ARTICLE VI**

### **Miscellaneous Provisions**

#### **Section 6.01**

##### **Notice in General**

- a. The President shall 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 by the President, whether in person or telephonically, with confirmation in writing provided by hand, or with written confirmation sent by regular mail; or
  - 2. By certified mail.
- c. Any notice or confirmation sent by mail shall be prominently marked "PERSONAL AND CONFIDENTIAL" on the envelope.
- d. Notice shall be sent to all interested parties listed in Section 3.05(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 one calendar week of the receipt of a complaint, the President shall designate Investigators.

- 2. Within three calendar weeks of the designation of Investigators by the President, the investigation shall be concluded and a Probable Cause Panel Council shall be named.

- 3. Within two calendar weeks of being named, the Probable Cause Panel shall determine whether there exists probable cause to believe that the Code has been violated.

- 4. Within two calendar weeks of determining the existence of probable cause, a hearing shall be held.

- 5. Within two calendar 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 sub-paragraphs (4) and (5) 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. Obstruction of the work of the Council (such as refusal to provide information required by Section 4.04(d) or repeated failure to schedule or attend required meetings), or waiver of the time requirements by the alleged violator or the 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.

### **Section 6.04**

#### **Suspension of the Code**

a. If the alleged violator is charged with violating Section 1.03(p), and the University's *Sexual Misconduct Policy* sets forth investigative and adjudicative processes dealing with the prohibited conduct, the Dean shall withdraw the matter from the Council and refer it instead to the University's process.

b. The Dean retains the discretion to withdraw a matter from the Council's jurisdiction where the Council cannot act because of recusals, or where disposition or initial consideration of the matter by a University-wide adjudicatory body, by the

police, or by state or federal courts is more appropriate, or for other good cause.

c. The Dean may, for good cause, suspend or modify any provision of the Code with respect to any matter before the Council.

d. Where the Dean exercises authority under paragraphs (b), or (c) of this section, he or she will provide notification to the Council and all affected parties in writing, including a 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. Any change in the standards of conduct under Section 1.03 requires the concurrence of the Voting Faculty as that term is defined in the Bylaws of the School of Law.

b. The Vice Dean, the Faculty Advisor to the Honor Council, the President, a Faculty Presiding Officer, three members of the Voting Faculty, or a majority of the members of the Council may propose revisions of the Code to the Dean. Students are encouraged to submit suggested changes in writing to the Honor Council for its initial 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

