

Seton Hall University School of Law

Honor Code

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PREAMBLE

The law is a learned profession that demands the highest standards of honesty and integrity. To that end, insistence on the highest ethical standards must begin in law school.

This Code furthers Seton Hall University School of Law's commitment to the public and to the profession by promoting the ethical behavior and respect for the law. With these goals in mind, this Honor Code is hereby ordained and established.

1. Purposes

The purposes of this Code are to instill in every student the values and teachings of Seton Hall University School of Law (the "School of Law" or "Law School") and the standards of the legal profession; to establish the minimum standards of conduct for students within the law school community; to preserve and enhance the School of Law's reputation; and to evaluate allegations of student misconduct that disrupts, obstructs, or interferes with the mission or functions of the Law School.

2. Applicability and Interpretation of this Code

2.01 Applicability and Jurisdiction

(a) This Code extends to all students of Seton Hall University School of Law. A student is any person enrolled at the School of Law, including an individual who has submitted a seat deposit.

(b) If a student commits academic improprieties that are not discovered until after graduation, the student's graduation will not prevent prosecution for those improprieties. Proceedings against an accused may not, however, commence later than one year after the accused's enrollment at the School of Law has ceased. Nothing in this paragraph shall be understood to impede the obligation of any person associated with the Law School to make a report to a bar admission or other disciplinary committee.

2.02 Scope of the Code

(a) Prohibited conduct committed by a law student while engaged in academic activity or participating in any University sponsored activity or event may be subject to discipline under this Code, regardless of whether or not the prohibited conduct occurs on University property.

(1) "Academic activity" is defined as any activity that may affect a grade or any law school-related extracurricular activity of a professional nature such as a journal, moot court competitions, legal clinics, and employment efforts, or which in any way contributes to the satisfaction of the requirements of graduation.

(2) Academic activity shall include but shall not be limited to the following:

(i) any examination; or

- (ii) any research or other assignment to be done for a course; or
- (iii) any work that satisfies any requirement for the receipt of credit in whole or in part; or
- (iv) any conduct relating to the misappropriation of study material, such as notes, papers, books, or tapes; or
- (v) any effort to obtain employment; or
- (vi) any documents relating to a student's 'academic career.'

(b) In cases of sexual misconduct, this Code also applies to conduct that occurs off Law School property (i.e., off campus) when the conduct is associated with a Law School-sponsored program or activity, such as travel, research, or internship programs or when such conduct is likely to have a continuing adverse effect or is likely to create a hostile environment on campus. Judgments about these matters will depend on facts of an individual case.

2.03 Other Discipline Permitted

(a) Minor Offenses

The Code shall not be construed to limit the power or duty of any member(s) of the law school administration, faculty, library, or student organizations to discipline students for a transgression of any law school or course rule or regulation or of any organizational guidelines that do not constitute misconduct under the Code.

(b) Offenses Involving Courses

Nothing in the Code shall prevent any faculty member from enforcing standards and rules established for the purpose of evaluating students' academic performance, nor shall the Code limit any faculty member's power to deny, reduce, or cancel grades, or preclude a student from sitting for an examination for any class due to a student's failure to adhere to the faculty member's rules. A faculty member's disciplinary authority exists notwithstanding the Code's authority over a student's conduct and irrespective of whether the student is acquitted of any alleged violation of the Code.

(c) Reporting Conduct

Nothing in the Code shall affect the responsibility of any member of the law school community to report misconduct to the character and fitness committees of any bar association or to any other proper authority.

(d) Offenses Involving Student Organizations

Nothing in the Code shall prevent any organization from enforcing standards and rules established for the purpose of evaluating a member's organizational performance. Nor shall the Code limit internal organizational disciplinary procedures, notwithstanding the Code's authority over a student's conduct.

(e) Health and Safety of Members of the Law School Community

Nothing in the Code shall prevent the Dean or any of the associate deans or the Dean of Students or other member of the administration of the Law School from taking action against a student that is deemed necessary to protect the health or safety of the Law School community and/or a member of the community, including the student him or herself.

2.04 Time Periods

The calculation of time periods under the Code shall not include weekends, Law School holidays, or the day on which the time period begins to run, unless otherwise specified. A period of time fixed by the Code for the doing of an act shall be shortened on the written application of the accused student.

2.05 Interpretation of the Code

(a) It is the responsibility of the Honor Council to interpret the Code. Nothing contained in the Code shall be construed as a limitation on the Honor Council's ability to properly interpret the Code. The Honor Council shall have the power to interpret all terms, phrases, determination of sanctions and overall intended meaning of the Code. Nothing in this paragraph shall limit the ability of the Dean, any of the associate deans, the Dean of Students or any other member of the faculty or administration to interpret this Code in the performance of their duties to the Law School.

(b) The term 'Associate Dean' herein shall be defined as the Associate Dean appointed by the Dean for all Honor Council matters, made at the start of each academic year. The Associate Dean who is so appointed shall not change during the course of a single academic year unless the Associate Dean leaves his or her post during the course of the academic year. The designated Associate Dean shall be identified to the Honor Council and to the student body no later than the first day of classes of each academic year as the appropriate administration contact for Honor Council matters. Nothing in this section shall abrogate Article 5.04 and the term 'Associate Dean' includes a person appointed by the Dean pursuant to Article 5.04.

3. Impermissible Conduct

3.01 Deceitful or Fraudulent Conduct

No student shall engage in the following conduct:

(a) Intentionally, knowingly or recklessly make a material misrepresentation to a member of the faculty or administration or to any Law School employee respecting Law School admission, financial aid, academic credit or standing, or any matter concerning enforcement of the Code;

(b) Intentionally, knowingly or recklessly submit plagiarized work in any pursuit of academic credit or competition. For the purposes of the Code, the term "plagiarized work" shall mean any use of fifteen (15) or more consecutive words without the use of quotations and a citation to the source of such material, or any substantial reliance on the ideas or

words of another without proper attribution;

- (c) Intentionally, knowingly or recklessly offer or submit work previously submitted or concurrently submitted by that student for academic credit to another instructor or in another course, except as authorized by each instructor;
- (d) Intentionally, knowingly or recklessly falsify attendance sheets or other documents presented to any member of the faculty or administration or to any Law School employee;
- (e) Intentionally, knowingly, or recklessly sign another's name or allow another to sign one's name in any manner that can affect academic credit.

3.02 Hiding, Misappropriation, Mutilation or Damaging of Property

No student shall knowingly or recklessly hide, misappropriate, mutilate, or damage any materials or property belonging to the School of Law, the University, another student, a faculty member, or another member of the law school community. 'Materials' and 'property' include website pages and other electronic media.

3.03 Unauthorized Work for Academic Credit

No student shall offer for academic credit any work for classes taken at the School of Law or any other law school or pursuant to a study abroad program, or for any other academic activity such as moot court, journal, or clinics, that is prepared in whole or in part by another person except where expressly authorized by the instructor or where proper citations to the source of the work are contained in the submitted materials. A student shall not offer for academic credit any work for classes taken at the School of Law or any other law school or pursuant to a study abroad program, or for any other academic activity such as moot court, a journal, or clinics, that is prepared in collaboration with another person, except as expressly authorized by the instructor.

3.04 Impermissible Conduct Toward Other Members of the Law School Community

- (a) The Law School is committed to providing a learning environment that is free from violence, discrimination, harassment, retaliation and other unlawful conduct and that assures the fair and equitable treatment of all individuals. Sexual misconduct in any form will not be tolerated, as it is unlawful and undermines the character and purpose of the Law School
- (b) No student shall act contrary to general principles of acceptable conduct or good faith to the detriment of any member of the Law School community, including but not limited to the following:
 - (1) Physically assaulting a member of the Law School community;
 - (2) Discriminating against a member of the Law School community (discrimination, including harassment or disparate treatment on account of the member's age, race, color, ethnicity, gender, national origin, religion, creed, disability, or sexual orientation, may be considered a more serious offense.); or

- (3) Knowingly or recklessly interfering with the work performance of a member of the Law School community; or
 - (4) Harassing, as defined in article 3.04(d), a member of the Law School community; or
 - (5) Engaging in sexual misconduct as defined in article 3.04(e), against a member of the Law School community; or
 - (6) Soliciting a member of the faculty for sexual favors as a matter of quid pro quo; or
 - (7) Using one's position as a research assistant or employee or any position of trust and confidence to access confidential information without authorized access.
- (c) "Members of the Law School community" include the following
- (1) Members of the faculty;
 - (2) Members of the administrative staff;
 - (3) Members of the support staff;
 - (4) Members of the student body;
 - (5) Invited guest speakers; and
 - (6) Guests attending activities, panel discussions, symposia, banquets, and other events sanctioned by or sponsored by the University and/or School of Law.
 - (7) Any individual covered by (1)-(6) affiliated with another law school or study abroad program during such time as the student is a student at that law school or study abroad program.
- (d) Harassment includes:

- (1) Intentionally or knowingly
 - i. making, or causing to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm; or
 - ii. engaging in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

when such conduct has the purpose or effect of unreasonably interfering with an individual's academic performance or creating an intimidating, hostile or offensive

environment significantly impeding that individual's education or participation in a Law School activity.

(2) Intentionally or knowingly subjecting another to striking, kicking, shoving, or other offensive touching, or threatening to do so; or

(e) Sexual misconduct:

(1) Sexual misconduct includes the following specifically defined terms: sexual harassment, domestic violence, sexual assault, dating violence, and stalking. Sexual misconduct is prohibited regardless of the sexual orientation, gender, gender identity, or gender expression of the complainant or respondent.

(i) "Sexual Harassment" includes unwelcome sexual advances, requests for sexual favors, or other unwelcome written, verbal or physical conduct of a sexual nature when: (i) Submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's education or participation in a Law School activity; (ii) Submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting that individual's academic standing, or participation in a school activity; or (iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's academic performance or creating an intimidating, hostile or offensive environment significantly impeding that individual's education or participation in a Law School activity.

(ii) "Domestic Violence" in the State of New Jersey is defined as the occurrence of one or more of the following criminal offenses upon a person who is protected under the Prevention of Domestic Violence Act of 1990: Homicide – Assault – Terroristic Threats - Kidnapping – Criminal Restraint – False Imprisonment --Sexual Assault – Criminal Sexual Contact – Lewdness – Criminal Mischief – Burglary – Criminal Trespass – Harassment – Stalking. See N.J. Criminal Code NJSA 2C:25-17.

The "Victim" of Domestic Violence is defined as a person protected by the Domestic Violence Act and includes any person: (1) who is 18 years or older OR (2) who is an emancipated minor AND who has been subjected to domestic violence by:

- A spouse, former spouse, or any person who is a present or former household member OR who regardless of age has been subjected to domestic violence by a person:
- A person with whom the victim has a child in common OR with whom the victim anticipates having a child in common, if one of the parties is pregnant, or
- A person who regardless of age, has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

A victim may be below the age of 18. The domestic violence actor must be 18 years of age or emancipated at the time of the offense.

(iii) “Sexual assault” includes

- Non-Consensual Sexual Penetration (commonly referred to as rape): Any act of vaginal or anal penetration by a person's penis, finger, other body part, or an object, or oral penetration by a penis, without consent.
- Non-Consensual Sexual Contact (commonly referred to as sexual assault): Any sexual touching other than non-consensual sexual penetration without consent. Examples of non-consensual sexual contact may include: genital-genital or oral-genital contact not involving penetration; contact with breasts, buttocks, or genital area, including over clothing; removing the clothing of another person; and kissing.

(iv) “Dating Violence” is not defined in a separate specific statute in New Jersey. A “dating relationship” is included in the Domestic Violence Act and this part of the law has been liberally defined by the courts based on the specific facts of each case including, but not limited to: duration of the relationship, the nature and frequency of the relationship and/or the ongoing expectations between the parties.

Any criminal charges arising from a “dating relationship” in New Jersey, therefore, are part of a domestic violence complaint or are treated as a separate criminal complaint for a specific offense if the relationship does not meet the liberal interpretation as applied by the courts.

(v) “Stalking” is defined as purposefully or knowingly engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his safety or the safety of a third person or suffer other emotional distress.

“Course of conduct” means repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device, or means, repeatedly following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.

(2) Consent is defined as the voluntary, informed, un-coerced agreement through words and actions freely given, which a reasonable person would interpret as a willingness to participate in mutually agreed-upon sexual acts. Consensual sexual

activity happens when each partner willingly and affirmatively chooses to participate. Indications that consent is not present include: when physical force is used or there is a reasonable belief of the threat of physical force; when duress is present; when one person overcomes the physical limitations of another person; and when a person is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the person is in a state of incapacitation.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- The existence of a prior or current relationship does not, in itself, constitute consent.
- Consent can be withdrawn or modified at any time.
- Consent is not implicit in a person's manner of dress.
- Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
- Silence, passivity, or lack of resistance does not necessarily constitute consent.
- Initiation by someone who a reasonable person knows or should have known to be incapacitated is not consent.

Incapacitation is defined as the state in which a person's perception or judgment is so impaired that the person lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where a person knows or ought reasonably to have understood that the individual is incapacitated, constitutes sexual misconduct.

3.05 Impermissible Conduct Concerning Examinations

- (a) A student shall not intentionally, knowingly or recklessly fail to comply with all instructions and regulations for taking a law school or study abroad program examination that relate to the integrity of the examination process.
- (b) A student shall not intentionally, knowingly or recklessly obstruct the administration of any examination, or violate any exam policies designed to ensure the integrity of the academic process.
- (c) A student shall not intentionally, knowingly or recklessly engage in any of the following

activities or conversations concerning examinations:

- (1) Securing, giving, or exchanging any information about the contents of or answers to an examination in advance of or during the examination period;
 - (2) Discussing the contents of an examination with a student who is scheduled to but has not yet taken the examination;
 - (3) Possessing or consulting, during an examination, books, papers, notes, or data of any kind, except as authorized by the instructor;
 - (4) Retaining notes taken during an examination or a copy of the examination, except as expressly authorized in the instructions to the examination, by the instructor, or by a person administering the examination;
 - (5) Reading or writing answers to any examination except during the authorized time for taking the examination or as authorized by the instructor;
 - (6) Taking an examination outside the room(s) authorized for that purpose;
 - (7) Communicating in any room during an examination, except as authorized by the instructor or other individuals administering the examination or for other justifiable reasons;
 - (8) Voluntarily creating a distraction during an examination after those administering the examination request that such conduct cease;
 - (9) Making a false claim regarding examination conditions, including any alleged problem with examination software;
 - (10) Providing false information for the purpose of being excused from or for the purpose of rescheduling an examination;
 - (11) Violating any rules designed to insure the anonymity of examination grading;
 - (12) Taking an examination for another student or permitting one's examination to be taken by another;
 - (13) Invading the administrative security maintained for the preparation and storage of examinations, unless such invasion was unintentional and an associate dean, the Dean or the Registrar is promptly notified.
- (d) "Examination" means all written, oral, or other tests or assignments as part of any course at the Law School.

3.06 Misconduct Concerning the Code

- (a) A student, knowing of facts from which a reasonable person would conclude that there has been a violation of the Code, shall report such facts within a reasonable time in person

to the Associate Dean; failure to do so shall constitute misconduct. However, this Code imposes no duty to report sexual misconduct due to potential privacy concerns of victims.

(b) A student may report any suspected violation in person to the Associate Dean.

(c) No student shall intentionally, knowingly or recklessly interfere with the enforcement of the Code. Conduct in violation of this rule includes, but is not limited to, the following:

- (1) Accusing another student of a violation of the Code knowing that the accusation is false;
- (2) Intimidating, restraining, coercing, or bribing another student with respect to reporting an alleged violation of the Code;
- (3) Refusing reasonable cooperation in an investigation of an alleged violation of the Code;
- (4) Failing, without a reasonable excuse, to appear and give testimony before the Honor Council, the Associate Dean, or faculty;
- (5) Misrepresenting material facts to the investigator, the Honor Council, the Associate Dean, or faculty;
- (6) Misrepresenting the outcome of an Honor Code proceeding;
- (7) Failing to comply with an order of the Honor Council, the Associate Dean, or faculty, unless an appeal from that order is pending.

(d) An attempt or conspiracy to violate the Code shall constitute misconduct.

3.07 Impermissible Conduct in Pursuit of Employment

No student shall seek an advantage in pursuit of employment by means of material misrepresentation(s).

3.08 Impermissible Conduct Concerning Law School Security

No student shall, without proper authorization, possess, transfer, or duplicate keys to the Law School or any office or room in the Law School.

3.09 Impermissible Conduct Concerning Library Use

(a) No student shall unreasonably interfere with the appropriate use of the library by other members of the Law School community, including but not limited to, the following misconduct:

- (1) The hiding or damaging of library materials or property;
- (2) The unauthorized removal of materials or property from the library.

3.10 Misconduct Outside the Law School Community

(a) The commission of a violent crime or commission of a crime that involves moral turpitude whether or not committed on the Law School premises and whether or not involving other members of the law school community shall constitute misconduct. A conviction for any crime shall also constitute misconduct. Prohibition of misconduct extends to conduct during attendance of a study abroad program.

(b) It is moral turpitude for a student to:

(1) Commit a criminal act that reflects adversely on a student's honesty, trustworthiness, or fitness in other respects;

(2) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

3.11 Misconduct Concerning the Use of Technology

(a) No student shall use or access computers owned by the Seton Hall University, its faculty, or any other member of the law school community for an improper purpose from any location.

(1) "Improper purpose" includes conduct that violates any provision under the Code of Student Conduct, misuse of school resources, unauthorized access to school computer resources, and unauthorized installation, modification, or deletion of school computer programs and files;

(2) The term "computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device. The term is in no way limited to personal computers or laptop computers.

(2) "School computer" is a computer owned or controlled by Seton Hall University. It includes computers accessed remotely through a network.

(b) Nothing under this article shall limit any other provision under this Code.

(c) No student shall knowingly or recklessly circumvent or attempt to circumvent the security protocols of any program or system used by the School of Law to ensure the integrity of examinations.

(d) No student shall impair authorized computer access to other members of the Law School community.

(e) No student shall intentionally, knowingly or recklessly violate or attempt to violate the Policy on Using Laptops for Examinations.

4. Organization of the Honor Council and Hearing Panels

4.01 Honor Council: Composition, Quorum

The Honor Council ("the Council") shall be composed of five (5) tenured faculty members, appointed by the Dean; and nine (9) student members, selected by the Student Bar Association in accordance with the Student Bar Association Constitution. A quorum of the Council shall consist of nine (9) members. If there is a quorum, a vote of a majority present shall be determinative of any action or determination.

4.02 Honor Council: Officers

(a) Organizational Meeting, Selection of Officers

Prior to the beginning of each academic year, the SBA President, in consultation with the Associate Dean, may fix the time and place of the organizational meeting of the Council. At such meeting, the student members of the Council will elect one of its student members as Chair, one as Vice-Chair, and one as Secretary.

(b) Duties of Chair

The Chair shall determine the date, time, and place of all subsequent meetings of the Council and the student composition of any Hearing Panel ("Panel"), preside over all Council meetings, and perform such other duties as are hereinafter specified.

(c) Duties of the Vice-Chair

If the Chair is unable to fulfill his or her duties, the Vice-Chair shall act in his or her stead. The Vice-Chair shall perform any duties so delegated by the Chair.

(c) Duties of Secretary

The Secretary will keep minutes of all Council meetings and perform such other duties as are hereinafter specified or as delegated by the Chair.

4.03 Hearing Panels: Composition and Quorum

The Chair shall select three (3) student members of the Council to serve on a Panel to consider an alleged violation of the Code. The Dean shall select two (2) faculty members to serve on each such panel. The chair shall further designate one of the Panel members to act as secretary of the Panel's proceedings, unless a court reporter is retained. The Panel shall make all determinations relating to a particular report. Each member of the Panel shall be entitled to one vote on any action or determination.

A quorum of a Panel shall consist of three (3) members, two (2) of whom shall be faculty members. If there is a quorum, a vote of a majority of the voting members present shall be determinative of any action or determination.

4.04 Voting Requirements for Action or Determination

Unless otherwise specifically provided in the Code, any action of the Council or a Panel, including the determination that an accused student has violated the Code, shall require a

majority of the members present entitled to vote.

4.05 Recusal

(a) No member of the Council may participate in the investigation or hearing concerning an alleged violation if disqualified because of conflicts of interest or any other reason that may infringe upon a member's objectivity. The Council member shall provide the Associate Dean with a brief description regarding recusal.

(b) Each member shall generally have the responsibility for determining whether to recuse himself or herself from participating either in the deliberations or voting of the Council or of a Panel with respect to a particular matter. However, a majority of the other voting members of the group may determine, based on reasonable grounds, that a particular member shall not be permitted to participate in deliberations or voting. If necessary, the Chair or Dean, as appropriate, may appoint a replacement for a particular case, but the failure to make such an appointment shall not render invalid any action or determination otherwise valid.

(c) In sexual misconduct cases, either party may request an all faculty Panel. In that case, in both the hearing and appeal procedures, the students will be replaced by one additional faculty member.

4.06 Vacancies

In the event a student seat on the Council becomes vacant, the Student Bar Association shall appoint a replacement in accordance with its Constitution. In the event a faculty seat on the Council becomes vacant, the Dean shall appoint a replacement.

4.07 Student Bar Association Prohibition

No member may serve as a Senator or Executive Board member in the Student Bar Association during his or her tenure as a member of the Council.

5. Reporting and Investigation of Reported Violations

5.01 Reports of Violations to Associate Dean

All reports of student misconduct shall be referred to the Associate Dean, who shall be the prosecuting authority, or his or her designee. The Associate Dean shall refer cases of sexual misconduct to the Law School's Title IV officer. The initial report by a student may be made orally, but prior to any investigation the student must give a signed, written report to the Associate Dean and shall do so at the Associate Dean's request. Reports of a student's misconduct by any other member of the law school community – faculty or staff – shall also be by a signed writing. The Associate Dean shall have the authority to commence an investigation solely upon his or her signed report.

5.02 Interim and Remedial Measures in Cases of Sexual Misconduct

Upon receipt of a complaint involving sexual assault or misconduct, the Law School's

Title IX officer may provide the victim with interim and remedial measures or other appropriate accommodations.

Interim measures include, but are not limited to, a change in class schedules, academic support and/or no contact orders.

Remedial measures are published on the Law School's website.

5.03 Investigation

Upon the receipt or creation of a written report, the Associate Dean shall conduct an investigation of all allegations contained therein.

5.04 Replacement of Associate Dean

If, in any case, the Associate Dean is unable or unwilling to act, or if the accused student objects to the Associate Dean's investigation and on a showing of reasonable cause, the Dean shall appoint another associate dean or a full-time faculty member to act instead. If the accused student objects to the Dean's appointment and on a showing of reasonable cause, the Dean shall appoint another associate dean or full-time faculty member.

5.05 Determination of the Associate Dean: Reference to Council

(a) If, upon completion of the investigation, the Associate Dean determines that the report is without merit, he or she shall dismiss the matter and so advise the accused student, the reporting person(s), and any faculty member whose course may have been affected by the alleged violation(s). A dismissal, however, shall not preclude the filing of a second report against the accused student and further action if additional information comes to the attention of the Associate Dean or the reporting person(s).

(b) If, upon completion of the investigation, the Associate Dean determines that the report falls short of an Honor Code violation but still merits a reprimand, the Associate Dean has complete discretion to fashion an appropriate reprimand.

(c) If, upon completion of the investigation, the Associate Dean determines that the report may be well-founded, he or she shall file a written statement of his or her investigation with the Council and shall give a copy thereof to the accused student, the reporting person(s), and any faculty member whose course may have been affected by the alleged violation(s). The statement shall include:

- (1) The nature and basis of the allegation(s), including the specific provision(s) of the Code allegedly violated;
- (2) The identity of the person(s) making the claim;
- (3) The response of the accused;
- (4) The reasons for the Associate Dean's determination that there is sufficient basis for action by the Council;

(5) Any other information deemed relevant.

6. Reference to a Panel; Pre-Trial Deliberations

5.06 Standard Procedures in Cases of Sexual Misconduct

The Law School will provide cases of sexual misconduct a fair, prompt, and impartial process from investigation to final result. The investigation and any hearing will be conducted by those who receive appropriate training on issues of sexual misconduct, how to conduct a sexual misconduct investigation, and a hearing process that protects student safety and promotes accountability.

Complaints regarding sexual misconduct will be filed with Law School's Title IX Officer who will decide whether to refer the matter to the Law School's Title IX investigators. The Law School's Title IX investigators will conduct an investigation and decide whether to refer the matter to the Honor Council. In all Sexual Misconduct cases, the Law School's Title IX investigators will take over the role of the Associate Dean from the beginning of the investigation to the resolution of the case.

5.07 Reports of Sexual Misconduct to Law Enforcement

Students may report sexual misconduct to the Newark Police Department, the Essex County Prosecutor's Office, or the local law enforcement agency where the misconduct occurred if the misconduct occurred outside of Newark. The Law School and the criminal justice system work independently from one another. Law enforcement authorities do not determine whether a violation of this Honor Code has occurred. The Law School's public safety personnel and the other resources listed in the resources listing are familiar with local and state law enforcement processes and can explain what happens when misconduct is reported to law enforcement. They cannot serve as a substitute for legal advice on these matters.

6.01 Reference to a Panel

Upon receipt of the statement of the Associate Dean given pursuant to Article 5.05 (c), the Chair and the Dean shall select the membership of a Panel and refer the statement to them for their consideration.

6.02 Pre-Trial Determination of the Panel

(a) Upon consideration of the statement of the Associate Dean, the Panel shall do one of the following:

(1) Request a further investigation; in so doing, it may request the Dean to appoint another person to gather the additional information it deems relevant to come to a determination; or

(2) Set the matter for a hearing on the merits; in so doing, the Panel may amend that part of the statement pertaining to the specification of the provision(s) of the

Code allegedly violated.

(b) If the Panel requests a further investigation, it shall, upon receipt of the additional information, determine whether to dismiss the report or set the matter for a hearing on the merits as promptly as feasible under the circumstances. In the event of dismissal, the Chair shall promptly furnish a copy of such action to the persons to whom notice was given pursuant to 5.05(c). A dismissal, however, shall not preclude the filing of a second report against the accused student and further action if additional information is forthcoming.

6.03 Notice

If the Panel has set the matter for a hearing, the Chair shall:

(a) Provide a written notice of the hearing at least ten (10) days prior thereto to the persons set forth in article 5.04(a). Such notice shall include:

- (1) The date, time, and place of the hearing; and
- (2) A statement of the alleged violation(s), together with a citation of the provision(s) of the Code alleged to have been violated; and
- (3) A statement that the presence of the accused is required; and
- (4) A statement that the accused may be represented by counsel or by some other person; and
- (5) A statement that the accused shall have the right to present evidence regarding all relevant issues; and
- (6) A statement that the accused shall have a right to question any witness and to examine and discuss any information presented concerning the alleged violations.

(b) Notify the reporting person of the requirement that he or she be present at the hearing;

(c) Notify other persons known to have relevant information of the hearing and request that such persons be present at the hearing.

6.04 Informal Resolution

(a) Rights of Accused Students after an Admission of Guilt

Any student accused of violating the Code shall have the option of admitting guilt as charged without a formal Hearing on the Merits.

(b) Admission Procedure

- (1) If the accused student chooses to admit guilt, he or she shall stipulate in writing the following:

- (i) That he or she committed the acts alleged; and
- (ii) That the commission of such acts constituted a violation of the Code; and
- (iii) That he or she waives the right to a formal Panel Hearing on the merits.
- (iv) That he or she understands the admission will be reported to the character and fitness committees of any bar association.

(2) Upon such written stipulation, the Panel to which the matter was referred shall proceed to impose an appropriate sanction(s) in accordance with Article 8 of the Code, but subject to such post-determination review as provided in Articles 9-11.

(c) Effect of Admission on Sanctions

- (1) The Panel shall consider an admission of guilt as a mitigating factor when determining the sanction to be imposed.
- (2) Neither the Panel nor any Council member shall be permitted to promise to impose a particular sanction in return for an accused student's admission of guilt. This prohibition does not apply to a settlement accepted by the Panel pursuant to Article 6.04(e) herein.

(d) Settlement Agreements

The Associate Dean shall be authorized to negotiate a settlement agreement with the accused student in any matter in which he or she sees fit.

(e) Settlement Procedure

- (1) If the Associate Dean and the accused student reach a settlement agreement, the Associate Dean shall submit a written copy of such agreement to the Chair of the Honor Council. The Chair shall appoint a Settlement Committee, consisting of him or herself and two other student members of the Honor Council. The Settlement Committee may choose either to accept or to reject the settlement terms by a majority vote.
- (2) If the Settlement Committee rejects the terms, both the Associate Dean and the accused student shall have the opportunity to meet with the Settlement Committee simultaneously to discuss the rejected settlement terms and any proposed modifications thereto.
- (3) No settlement agreement shall become final unless and until the Settlement Committee approves the terms contained therein.
- (4) The "simultaneous" requirement serves the following purposes:

(i) To ensure that the Settlement Committee has an equal opportunity to direct questions and comments to both parties, and

(ii) To minimize any possibility that the Settlement Committee will feel pressured to accept or reject certain settlement terms.

(f) Finality of Informal Resolution

If the accused student admits guilt or reaches a settlement agreement with the Associate Dean that is subsequently approved by the Settlement Committee, the matter shall be considered final and the procedures set forth in Article 9 shall become applicable.

(g) Failure to Reach Informal Resolution

If the accused student chooses not to admit guilt and fails to reach a settlement agreement with the Associate Dean, the matter shall proceed to a Hearing on the Merits in accordance with Article 7 of the Code.

(h) Application

This provision applies to cases resolved without a formal Panel Hearing.

7. Hearing on the Merits

7.01 Presiding Officer

At the outset the Panel shall select one of its members to act as the presiding officer. In any case where an attorney represents the accused student, the presiding officer shall be a tenured faculty member.

7.02 Right to Counsel

An accused has a right to counsel. An accused student may appear pro se, with retained counsel, or be represented by a student.

7.03 Hearings

(a) The Hearing on the Merits shall not be open to members of the public unless the Hearing Panel decides otherwise, or if the accused so requests.

(b) The Chair, upon a majority vote of the Panel, may exclude any person in attendance at the Hearing whose behavior the Panel considers to be disruptive of the orderly progress of the Hearing.

7.05 Presentation of Evidence

(a) The Associate Dean shall present the evidence supporting the alleged violation(s) of the Code. The accused student shall follow.

(b) The Panel shall have the power to sequester witnesses.

7.06 Procedure

While the rules of evidence shall not apply, the hearing shall be conducted in a manner which will allow the Associate Dean and the accused student a reasonable opportunity to present all relevant information, to question witnesses and to review and discuss all material and information presented. A ruling by the presiding officer shall govern the course of proceedings unless overruled by a majority of the Panel.

7.07 Burden of Persuasion; Burden of Proof

The prosecuting authority shall have the burden of persuasion. The burden of proof shall be by clear and convincing evidence. In cases of sexual misconduct, the burden of proof shall be by preponderance of the evidence.¹

7.08 Record of Proceedings

The secretary designated by the Chair shall record the proceedings and keep a written and audio record thereof, which shall include a list of the names of the witnesses, a summary of their testimony, and the decision(s) of the Panel. At the conclusion of the proceedings, the secretary shall deliver the tapes and records to the Associate Dean for safe keeping. Such records shall be confidential and shall be treated accordingly.

7.09 Decision on the Merits

The Panel shall, promptly issue a written decision, explaining the reasons for its determination and, where the Panel determines the accused has violated the Code, the sanctions to be imposed.

If the Panel determines that the accused has violated the Code both the Associate Dean and the accused shall have an opportunity to be heard regarding the imposition of the sanction. The Panel shall follow the procedures and record requirements established for the Hearing on the Merits.

If the Panel determines that an accused has not violated the Code, the Secretary shall promptly give written notice of that determination to the accused, to the reporting person(s), the Associate Dean, and to any faculty member whose course grade is affected by the action.

All deliberations of the Panel shall be private and confidential.

7.10 Authority of the Associate Dean

The decision of the Associate Dean to investigate or prosecute a charge pursuant to this Code shall not be the ground for a grievance against the Associate Dean. The Probation &

¹ See Russlynn Aly, "Dear Colleague" Letter, U.S. DEP'T OF EDUC. 10-11 (Apr. 4, 2011),

Grievance Committee shall have no authority over matters conducted under this Code.

8. Sanctions

8.01 Sanctions for Offenses

(a) For any violation of the Code, the Panel may impose any of the following sanctions deemed appropriate in light of the facts, the severity of the offense, and any aggravating or mitigating circumstances:

- (1) Restitution for all damages done;
 - (2) A private or public reprimand;
 - (3) Disciplinary probation; as a condition thereof the accused student shall be notified that another violation of the Code while on probation may result in a more serious sanction than the second offense might otherwise carry, including suspension or expulsion from the School of Law. The Panel may attach to disciplinary probation other conditions it deems appropriate;
 - (4) Suspension, temporary or permanent, of eligibility for any student office or honor;
 - (5) Cancellation of grades for scholastic work done or assignment of a grade of F for the course;
 - (6) Suspension from the School of Law, either for a definite or indefinite period;
 - (7) Expulsion from the School of Law;
- (8) Any combination of the foregoing penalties deemed appropriate punishment.

8.02 Suspended Sentence

With the exception of the sanction prescribed in Article 8.01, the Panel, in its discretion, may suspend any one or more of the above sanctions for a period not to exceed one year. If the accused student refrains from any violation of the Code during the term of the suspended sentence, the sentence shall be considered to have been satisfied.

8.03 Violation of Sanction

Failure of the student to comply with a sanction imposed by the Panel shall constitute a separate violation of the Code and shall be treated accordingly, unless the student demonstrates to the Panel that the failure to comply was involuntary. In such a case, the Panel may convene a new hearing to consider the imposition of a different sanction.

8.04 Implementation of Sanctions

Once a matter is resolved finally, the Dean, or his or her designee, shall promptly implement any sanctions imposed.

9. Records and Confidentiality

9.01 Confidentiality; Council Records

- (a) All members of the Council shall keep in confidence all aspects of each case.
- (b) All records of Council proceedings in cases in which there were no Panel Hearings or in which the hearings were closed to the public shall be kept confidential, unless the Dean or the full faculty authorizes otherwise.
- (c) Breach of the requirement of confidentiality shall constitute a violation of this Code.
- (d) Convictions under articles 3.04(a)(2), (4) and 3.11 shall be reported by the Associate Dean to the Office of Compliance of the University.
- (e) Council records are to be kept and maintained by an Associate Dean designated by the Dean and are to be made available upon request to the Chair or his or her designee for the purposes of enforcement or application of the Code.

9.02 Posting

At the beginning of each academic year, but in any case no more than three (3) weeks after the beginning of classes, the Associate Dean shall, except in cases when an appeal is pending, post in a conspicuous place a list of violations found and sanctions imposed since the last posting. The names of the student violators shall not be included, however, unless a direction to that effect shall be included as part of the sanction, but such posted information shall include the specific article of the Code alleged to have been violated, the final disposition, and the sanctions imposed, if any.

9.03 Safe Environment

At no time during the investigation or proceeding shall any witness, complaining party or the individual subject to investigation be subject to retaliation or other adverse action except to the extent necessary to prevent any continuation of the alleged harassment or discrimination.

10. Post-Determination Relief

10.01 Application for Post-Determination Relief

(a) At any time the accused student, the reporting person(s), a faculty member whose course has been directly affected by the alleged violation(s), or the Associate Dean may ask the Council to review a Panel's determination of an alleged violation of the Code by submitting in writing evidence to the Chair of one of the following:

- (1) That the moving party has newly discovered evidence that would likely have altered the final disposition, was unknown by the moving party at the time of the

hearing, and could not with due diligence have been discovered; or

(2) That the decision of the Panel or final disposition was procured through fraud, misrepresentation, collusion, or other misconduct, such as neglect or wrongdoing by one or more members of the Council; or

(b) The moving party shall give written notice of such application to all parties in interest within five (5) days.

10.02 Council Determination

If the Council determines that the request has merit, the Chair shall select a new Panel and refer the matter to it for further proceedings in accordance with the procedure established in Article 7. If the Council determines that the request does not have merit, the Council shall determine that no further action will be taken. Written notice of any such determination shall be given to all parties in interest.

11. Review by Council

11.01 Nature of Review

(a) Power to Review

(1) Upon appeal made in accordance with this Article, the Council shall have full power to review all Panel determinations. When reviewing Panel determinations, the Council must have at least six (6) members present. In cases of sexual misconduct, the appeal panel shall include three (3) members, comprising of two students and one faculty member.

(2) No appeal shall be made to the Council for any form of interlocutory relief. Any claims of error shall be reviewed only after the Panel has made a final determination.

(b) Grounds for Appeal

An accused student shall have the right to appeal either the Panel's finding of a violation or the Panel's imposition of a particular sanction. The following shall constitute grounds for such an appeal:

(1) The Panel's finding of a violation was based on clearly erroneous findings of fact;

(2) The Panel's finding of a violation was based on an erroneous interpretation of the Code;

(3) A substantial departure from the required procedures occurred, which materially affected the fairness or reliability of the decision-making process;

(4) There exists previously unavailable evidence which, if proven, would substantially alter the Panel's finding of a violation or the appropriateness of a particular sanction;

(5) The sanction imposed was disproportionate to the gravity of the accused student's conduct.

While the accused student may raise more than one ground for appeal, all objections should be consolidated into one appeal for the convenience of both the Council and the parties involved. The Associate Dean or tenured faculty member acting in his or her place shall have no right to appeal to the Council.

(c) No appeal shall occur where the Panel has found no violation. But in cases of sexual misconduct, either party may appeal.

11.02 Appellate Procedure

(a) Notice of Appeal

Within ten (10) days after receipt of notice of a Panel's final action, the student may appeal by serving written notice on the Chair. The notice to appeal shall set forth the ground(s) on which the appellant relies for relief, including a request for a review of the Panel's finding of the facts, and the relief requested.

(b) Date of Hearing

The Chair shall set and notify all parties in interest of the place, date, and time for the hearing of the appeal, which ordinarily shall be no more than fifteen (15) days after receipt of the notice of appeal.

(c) Record

At least five (5) days before the hearing, the Chair shall deliver to all Council members the record made of the hearing on the merits, if one has been held, and of the sanction hearing, copies of all materials delivered to the accused student and a written copy of the Panel's statement of its reasons, if any, for its decision.

11.03 Argument

The appellant, either on his or her own behalf or by an attorney or other appointed representative of the appellant, shall speak first, followed by the Associate Dean or the faculty member who presented the case against the accused before the Panel, and finally a member of the Panel on its behalf. The appellant shall be given an opportunity for rebuttal. The hearing shall then conclude.

11.04 Action of the Council

(a) After reviewing the record below and the arguments presented, the Council shall affirm, modify, or reverse the action of the Panel or remand the matter for further action, including a further factual determination.

(b) The Council may increase or decrease the sanction imposed.

(c) The Council may supplement the record and admit additional testimony whenever

(1) It finds that the panel erroneously excluded testimony offered by the accused, or

(2) The record under review is partially unintelligible or defective.

11.05 Notice of Council Action

The Chair shall give written notice of its decision to the appellant, the reporting person(s), the Associate Dean or prosecuting faculty member defending the action of the Panel, and any faculty member whose course may have been directly affected by the alleged violation(s).

11.06 Hearings

Council hearings and deliberations shall be governed by the appropriate provisions of Article 7 governing the conduct of Panel hearings and deliberations.

11.07 Finality of Council Action

The Council's disposition of the appeal shall be considered final.

12. Student Compliance

All students continuing or starting their education at the Law School shall be required to sign and file with the school a statement that they will comply with this Code as a prerequisite to starting or continuing their education.

13. Ratification and Amendment

(a) Ratification

The Code shall take effect upon approval by the Student Bar Association and the faculty of the School of Law. Neither the Code nor subsequent amendments thereto shall become effective until the academic year following any vote securing student and faculty approval.

(b) Amendments

Amendments may be proposed by the Council, the faculty of the School of Law, or the Student Bar Association, and shall become effective upon approval by the faculty of the School of Law and the Student Bar Association. Amendments to the Code shall be approved in the same manner as the Code itself.