



CODE OF STUDENT RESPONSIBILITY

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JOHN MARSHALL LAW SCHOOL

CODE OF STUDENT RESPONSIBILITY

This Code is divided into four parts:

- I. Canons of Ethics (cited as “C.E.”);
- II. Disciplinary Rules (cited as “D.R.”);
- III. Organizational Rules (cited as “O.R.”); and
- IV. Procedural Rules (cited as “P.R.”).

For the purposes of this Code, a person is deemed to be a student from the time of submitting an application for admission until graduation, expulsion, voluntary withdrawal, or academic disqualification not followed by reinstatement.

I. CANONS OF ETHICS

C.E. 1. Lawyers and law students are bound to obey the law but are free to criticize it and advocate its change.

C.E. 2. Lawyers should exemplify integrity, honor, personal morality, and responsibility. Students at the Law School ought to conform to these standards in preparing for the legal profession. Public confidence in a self-regulating legal profession depends upon the willingness of lawyers and law students to be responsible for the conduct of their colleagues. Each student at the Law School should actively discourage other students from violating the Disciplinary Rules. A student who has personal knowledge of a violation of the Disciplinary Rules should report that knowledge to an official of the Law School and should assist in the investigation and determination of any such alleged violation.

C.E. 3. Legal education demands free debate, characterized by the quick interplay of ideas, skillful use of logic, and knowledge of precedents, all tempered by compassion. Students at the Law School should respect this process and join in it actively with their colleagues.

C.E. 4. The legal profession and an open society require lawyers who are free to act and speak as independent professionals. In learning their professional responsibilities, students at the Law School should consider opposing views with tolerance and care, but should remain steadfast if convinced that their causes and their own ethical standards are just.

II. DISCIPLINARY RULES

A breach of the Canons of Ethics may not be grounds for discipline unless the breach also violates any of the following Disciplinary Rules. Expulsion, suspension, or a lesser disciplinary sanction of a student may result from the commission of any of the following offenses:

D.R. 1. Dishonesty in any academic pursuit, including examinations and the submission of work for credit or publication. Dishonesty includes the giving or receiving of unauthorized assistance.

D.R. 2. Destruction or theft of property of the Law School or of any member of the Law School community.

D.R. 3. Intentional gross disruption of academic or social functions conducted under the auspices of the Law School.

D.R. 4. Misrepresentation of a material fact with intent to deceive any person in connection with any official business of the Law School or of any co-curricular or

extracurricular activity sponsored by the Law School or a recognized student organization.

D.R. 5. Divulgence, without proper authorization, of any confidential information of the Law School, including information received as an employee of the Law School or in an official capacity on any committee of the Law School which justifiably establishes the necessity for its deliberations being confidential and so advises participants.

D.R. 6. Intentional and unjustifiable harassment of any member of the Law School community.

D.R. 7. Unprivileged failure to cooperate in the investigation or determination of an alleged violation of these Disciplinary Rules as requested by the Dean, the Presenting Counsel, or the Presiding Member of the Disciplinary Hearing Panel.

D.R. 8. Failure to comply with rules, regulations and orders respecting student conduct duly promulgated by the Law School.

D.R. 9. Conduct evidencing bad moral character that is relevant to fitness for the study or practice of law.

III. ORGANIZATIONAL RULES

O.R. 1. Disciplinary Hearing Panel. The Dean annually shall appoint a Disciplinary Hearing Panel ("Hearing Panel") consisting of three faculty members and two student members. The Dean shall designate one of the faculty members to serve as Presiding Member. The Presiding Member is entitled to vote. The functions of the Hearing Panel are to conduct hearings on alleged violations of the Disciplinary Rules and to perform other functions assigned under the Procedural Rules.

O.R. 2. Disciplinary Appeals Panel. The Dean annually shall appoint a Disciplinary Appeals Panel ("Appeals Panel") consisting of four faculty members and one student member. The Dean shall designate one of the faculty members to serve as Presiding Member. The Presiding Member is entitled to vote. The functions of the Appeals Panel are to hear and determine appeals from judgments of the Hearing Panel and to perform other functions assigned under the Procedural Rules.

O.R. 3. Presenting Counsel. The Dean annually shall appoint a faculty member to serve as Presenting Counsel. The functions of Presenting Counsel are to investigate complaints of alleged violations of the Disciplinary Rules referred to Presenting Counsel by the Dean; to prepare specifications of charges; to present to the Hearing Panel evidence and argument relevant to charges set forth in a specification of charges; to file briefs and make arguments, as appropriate, in cases before the Appeals Panel; and to perform other functions assigned under the Procedural Rules. The Dean may from time to time assign additional persons to assist the Presenting Counsel in handling a heavy caseload.

O.R. 4. Defense Adviser. The Dean annually shall appoint a faculty member to serve as Defense Adviser. The Defense Adviser shall provide information about proceedings under the Code of Student Responsibility. As a matter of discretion in particular cases, the Defense Adviser may advise a student who has been charged with a violation of the Disciplinary Rules. However, the Defense Adviser shall not represent any student in proceedings under the Code of Student Responsibility.

O.R. 5. Pools. The Dean annually shall appoint three faculty members to a Faculty Pool and three students to a Student Pool. A member of the Faculty Pool or Student Pool shall serve *pro tempore* on either the Hearing Panel or the Appeals Panel when selected in accordance with the provisions of P.R. 10(a)-(b) or 18(d) or when a regular member of either Panel is otherwise unable to serve. When a member of the Faculty Pool or Student Pool is selected to serve *pro tempore* on either Panel, the Dean shall replace that member with a new appointee to the appropriate Pool.

O.R. 6. Separation of Functions and Ex Parte Communications. No person shall serve simultaneously in more than one position on the Hearing Panel, on the Appeals Panel, in the Pools, as Presenting Counsel, and as Defense Adviser, and those bodies and offices shall observe strict separation of functions. No one shall communicate *ex parte* about any pending adjudicative matter with any member of the Hearing Panel or Appeals Panel, except that Presenting Counsel, the Defense Adviser, and a respondent (or respondent's representative) may discuss procedural matters with the Presiding Member of the Hearing Panel or of the Appeals Panel, as appropriate.

O.R. 7. Annual Report. At the end of each academic year, the Presiding Members of the Appeals Panel and the Hearing Panel shall prepare for dissemination to the Law School community a report on all adjudicative matters concluded during the preceding year. The report shall contain a brief synopsis of the charges, the decision, and the discipline (if any) in each case. Except as to open hearings, the report shall be written so as to preserve anonymity of respondents and witnesses.

O.R. 8. Committee on Code of Student Responsibility. All regular members of the Hearing Panel and of the Appeals Panel, the Presenting Counsel, and the Defense Adviser, collectively, shall constitute the Committee on Code of Student Responsibility ("the Committee"). The Presiding Member of the Appeals Panel shall serve as Chairperson of the Committee. The Committee is responsible for recommending to the Faculty rules and policies relating to student conduct and discipline, including proposed amendments to this Code. A majority of the members of the Committee constitutes a quorum for conducting business, and all recommendations must be concurred in by a majority of the members of the Committee who are present and voting at a meeting duly called. The Chairperson shall call meetings from time to time as may be required by the Committee's business, and whenever requested by any three members of the Committee. Each member of the Committee shall be given two days notice and a written agenda in advance of any meeting, unless this requirement is waived. No amendment to the Code of Student Responsibility shall affect a pending adjudicative matter without the consent of the respondent.

IV. PROCEDURAL RULES

P.R. 1. Complaint. Any member of the Law School community may complain in writing to the Dean of a suspected violation of the Disciplinary Rules.

P.R. 2. Disposition by Agreement. The Dean may confer with the student charged and make such disposition as they may agree upon.

P.R. 3. Referral to Presenting Counsel. If the Dean considers that the complaint on its face charges a violation of the Disciplinary Rules that should not be disposed of pursuant to P.R. 2, the Dean shall refer the complaint to the Presenting Counsel. Both the student charged (the “respondent”) and the Defense Adviser shall be promptly notified of this action and given a copy of the written complaint.

P.R. 4. Investigation by Presenting Counsel. After a referral under P.R. 3, Presenting Counsel shall investigate the complaint. Presenting Counsel is not required to interview the respondent but shall consider any timely written submission that the respondent may elect to make. The nature and scope of Presenting Counsel’s investigation is within Presenting Counsel’s discretion and is not subject to review.

P.R. 5. Representation of Respondent. After a referral under P.R. 3, the Defense Adviser shall promptly communicate with the respondent and inform the respondent of the Defense Adviser’s functions under O.R. 4. Throughout all proceedings under these Rules, the respondent shall have the right to independent representation by a representative of the respondent’s choice. The Law School has no obligation to provide representation. (All references herein to the respondent include, where appropriate, the respondent’s representative.)

P.R. 6. Determination by Presenting Counsel. If, on the basis of investigation under P.R. 4, Presenting Counsel determines:

- (a) in consultation with the Dean, that the complaint should be disposed of under P.R. 2, the complaint shall be referred back to the Dean for that purpose;
- (b) that there is not probable cause to believe that the respondent violated the Disciplinary Rules, the complaint shall be referred back to the Dean with an explanation of Presenting Counsel’s determination; or
- (c) that there is probable cause to believe that the respondent violated the Disciplinary Rules, Presenting Counsel shall prepare a specification of charges.

P.R. 7. Specification of Charges. A specification of charges shall contain a short and plain statement of the charge or charges and a citation of the Disciplinary Rule involved as to each charge. A specification of charges may include more than one charge and more than one respondent where joinder is fair and convenient. (When two or more respondents are joined, all references herein to the respondent include each respondent.)

P.R. 8. Filing and Service of Specification of Charges. Presenting Counsel shall file the specification of charges with the Presiding Member of the Hearing Panel and shall deliver a copy to the respondent. If hand delivery is not practicable, first-class mail to the address listed by respondent on the official records of the Law School is sufficient.

P.R. 9. Pre-hearing Conference. Promptly after the filing and service of a specification of charges, and from time to time thereafter as may be appropriate, the Presiding Member of the Hearing Panel shall convene a pre-hearing conference to be conducted as follows:

(a) The purposes of a pre-hearing conference include determining the composition of the Hearing Panel pursuant to P.R. 10, scheduling the hearing, determining whether the hearing will be open or closed, discussing hearing preparation, and taking whatever further steps may be appropriate to simplify the issues and expedite the hearing.

(b) A pre-hearing conference shall be conducted in person, by telephone conference call, or by any other convenient medium of communication as determined by the Presiding Member.

(c) If the respondent admits the truth of the specification of charges, the hearing may be confined to determining the recommendation of discipline.

(d) The Presiding Member shall endeavor to facilitate agreement as to all matters that may arise at a pre-hearing conference but in the absence of agreement, the Presiding Member shall make all necessary orders to promote a just, speedy, and inexpensive determination of the proceedings. Substantive challenges to the legality of the proceedings or the sufficiency of the specification of charges shall be postponed to the hearing on the merits unless the Presiding Member determines that a different procedure would be appropriate.

(e) The respondent, respondent's representative, and the Presenting Counsel shall be notified and shall be entitled to participate in any pre-hearing conference. The Defense Adviser may attend if requested by the respondent.

P.R. 10. Composition of the Hearing Panel. The charges set forth in a specification of charges shall be heard and determined by the Hearing Panel, the composition of which shall be adjusted as appropriate in each case as follows:

(a) Upon the timely filing of an affidavit swearing to specific facts establishing that a member of the Hearing Panel, because of personal bias or prejudice, cannot fairly sit, that member shall be excused. In cases of dispute, the Presiding Member shall determine the sufficiency of any such affidavit. In the event that an affidavit challenges the Presiding Member, one of the two remaining faculty members of the Hearing Panel shall be selected by lot to serve as Presiding Member *pro tempore* for the purpose of determining the sufficiency of the affidavit and for the purpose of continuing to act as Presiding Member in the event that the regular

Presiding Member is excused. Any member excused for cause shall be replaced by a member *pro tempore* drawn by lot from the Pool corresponding to the excused member's affiliation.

(b) The respondent may peremptorily excuse up to two members of the Hearing Panel, but not including the Presiding Member. Any peremptorily excused member shall be replaced by a member *pro tempore* drawn by lot by the Presiding Member from the Pool corresponding to the excused member's affiliation.

(c) The respondent is not entitled to *voir dire* the Hearing Panel.

(d) All references to the Presiding Member or the Hearing Panel include, as appropriate, persons serving in a particular case *pro tempore* because of the application of this rule.

P.R. 11. Hearing Preparation. There is no formal discovery. Presenting Counsel and the respondent shall disclose to one another the evidence upon which the charges or the defense are based to the extent necessary to avoid unfair surprise.

P.R. 12. Hearing. The hearing shall be conducted as follows:

(a) The hearing shall be closed unless the respondent timely requested an open hearing and in writing consented to the disclosure of the respondent's education records to the extent required for such a hearing.

(b) All members of the Hearing Panel shall be present at all times unless the respondent and Presenting Counsel by stipulation agree that a member may be absent. The hearing may be recessed from time to time.

(c) The Presiding Member shall conduct the hearing and shall rule on all procedural and evidentiary questions. The Presiding Member shall refer all substantive questions to the Hearing Panel, whose rulings shall be determined by majority vote.

(d) The stages of the hearing and of the examination of witnesses shall follow the sequence generally observed in Georgia non-jury trial practice.

(e) Except for rules of testimonial privilege recognized in Georgia, formal rules of evidence do not apply, and all relevant evidence is admissible except evidence whose probative value is outweighed by the danger of unfair prejudice, confusion of issues, or waste of time. For purposes of this paragraph:

1. Communications between a student (or a student's representative) and the Defense Adviser and communications between the respondent and the respondent's representative are privileged to the same extent as communications between a client and a lawyer; and

2. The immunity of newsmen from citation for contempt is not a testimonial privilege.

(f) All witnesses shall testify under oath or affirmation.

(g) The respondent is entitled to cross-examine witnesses, to call witnesses, and otherwise to introduce evidence.

(h) The respondent has no privilege not to testify and shall testify if called upon to do so.

(i) Members of the Hearing Panel may ask questions of witnesses.

(j) Unless otherwise stipulated, an audio or video tape recording of the proceedings shall be made, but no transcript will be prepared unless specifically ordered by either the Presiding Member or the Appeals Panel. Respondent may arrange for copies of the recording or for the attendance of a stenographic reporter at respondent's own expense. In the absence of a stenographic reporter or other person authorized to administer oaths, the Presiding Member shall swear or affirm all witnesses and mark and preserve all exhibits.

P.R. 13. Deliberation and Determination. Immediately after the hearing, the Hearing Panel shall deliberate privately and decide whether each charge in the specification of charges has been sustained by the evidence. The Hearing Panel may return a verdict as to any charge only upon the concurrence of three or more members. In order to find a charge sustained by the evidence, the presumption of innocence must be overcome by strong proof of guilt. Proof beyond a reasonable doubt is not required, but a bare preponderance of the evidence is not enough. Except as otherwise provided by this Code, deliberations of the Hearing Panel are confidential.

P.R. 14. Statement of Decision. The Hearing Panel shall prepare and adopt a statement of decision, which shall summarize the charges and state the Hearing Panel's decision as to each charge and may briefly state the evidentiary basis for each decision. Detailed findings of fact are not required. Copies of the statement of decision shall be served on the respondent and Presenting Counsel.

P.R. 15. Determination of Discipline. If the statement of decision finds any of the charges to be sustained by the evidence, the Hearing Panel shall then take steps to determine appropriate discipline as follows:

(a) The Presiding Member shall first confer with the respondent and Presenting Counsel to determine what further proceedings are required. Either party is entitled upon request to a hearing for the purpose of presenting evidence and making arguments as to appropriate discipline. The hearing shall follow the procedures of P.R. 12 to the extent practicable.

(b) At least three members of the Hearing Panel must concur in the determination of discipline, which shall be set forth in writing. Expulsion shall not be imposed unless at least four members of the Hearing Panel concur in the determination.

(c) When adopting its determination of discipline, the Hearing Panel may, upon the concurrence of three or more members, amend the statement of decision.

P.R. 16. Final Judgment. The statement of decision together with the determination of discipline (if any) shall constitute the final judgment of the Hearing Panel. The Presiding Member of the Hearing Panel shall deliver the final judgment of the Hearing Panel to the Dean and shall cause copies to be delivered promptly to the respondent, Presenting Counsel, the Presiding Member of the Appeals Panel, and all full-time members of the Faculty of the rank of Assistant Professor or above. Except for typographic errors, the Hearing Panel has no jurisdiction to change a final judgment unless authorized by the Appeals Panel.

P.R. 17. Appeal From Final Judgment. The final judgment becomes conclusive on the tenth day (excluding Sundays and holidays observed by the Law School) after it is delivered to the Dean and served upon the respondent unless an interested person within the ten-day period files with the Presiding Member of the Appeals Panel a written notice of appeal specifying the issues as to which review is sought. For good cause shown, the Presiding Member of the Appeals Panel may extend the time for filing a notice of appeal. Interested persons include the respondent, Presenting Counsel, and all full-time members of the Faculty of the rank of Assistant Professor or above. The Presenting Counsel may not seek review of the sufficiency of the evidence to support a decision that a charge was not sustained by the evidence. A member of the Faculty who is not otherwise interested may seek review only of the discipline imposed.

P.R. 18. Procedure on Appeal. If a timely notice of appeal is filed, the Appeals Panel shall proceed as follows:

(a) The Presiding Member of the Appeals Panel, in consultation with other members of the Appeals Panel and other interested persons, shall establish a briefing schedule and shall notify all interested persons of the schedule and of the issues as to which review has been sought.

(b) The Presiding Member of the Hearing Panel shall promptly deliver to the Appeals Panel the complete record of its proceedings, which shall be made available to all interested persons. The record shall include the specification of charges, the recording or transcript of the hearing, exhibits received in evidence or otherwise made a part of the record at the hearing, the statement of decision and determination of discipline.

(c) Interested persons who wish to participate in the appeal shall so inform the Presiding Member of the Appeals Panel so that copies of all briefs may be made available to all participants.

(d) The Presiding Member of the Appeals Panel may (and, if requested by either the respondent or Presenting Counsel, shall) schedule a hearing for oral argument after the conclusion of the briefing schedule. The Presiding Member may make such other and further orders as may be necessary for a just, speedy, and inexpensive review of the final judgment of the Hearing Panel. P.R. 10(a), adapted as may be necessary for application to the Appeals Panel, shall be employed for the purposes of excusing for cause any member of the Appeals Panel and replacing any member of the Appeals Panel who is excused for cause or who is otherwise unable to serve.

P.R. 19. Decision by Appeals Panel. The Appeals Panel shall review the final judgment of the Hearing Panel on the basis of the record and shall not receive additional evidence. The Appeals Panel shall affirm, reverse, modify, or remand to the Hearing Panel for further proceedings according to the dictates of the case and subject to the following requirements:

- (a) The Hearing Panel's factual determinations are conclusive if supported by substantial evidence.
- (b) Harmless procedural errors shall not be grounds for reversal.
- (c) The determination of discipline shall be modified only if the Appeals Panel finds that a different discipline would be clearly preferable in the light of all the facts and circumstances and in view of the purposes of the Code of Student Responsibility.
- (d) The Presiding Member of the Appeals Panel shall deliver the decision of the Appeals Panel to the Dean and shall cause copies to be delivered promptly to the respondent, Presenting Counsel, and all full-time members of the Faculty of the rank of Lecturer or above.
- (e) If the decision of the Appeals Panel directs that the proceedings be remanded to the Hearing Panel, the Hearing Panel shall promptly comply with the Appeals Panel's decision. Otherwise, the decision of the Appeals Panel shall be the final determination of the proceedings by the Law School.

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