

SOUTHWESTERN LAW SCHOOL

L O S A N G E L E S

Student Conduct Policy and By-Laws of the Honor Code Committee (HCC)

Revision history: Formerly a part of the annually revised Student Handbook. Established as a standalone policy August 2022.

Related policies: Sexual Misconduct Policy; Policy to Prevent Discrimination, Harassment, and Retaliation.

Scheduled Review Date: June 2024 (Dean of Students and Diversity Affairs Office)

Student Conduct in General

Students enrolled in the law school are subject to the ethical requirements governing the legal profession as well as to the policies and procedures of Southwestern Law School, including those expressed in this *Student Handbook*, and the provisions regarding student conduct and student discipline contained in the Student Honor Code.

Conduct proscribed by the Student Honor Code is set forth below. General information and specific procedures for Honor Code violations are set out in the By-Laws of the Honor Code Committee (HCC).

Most student discipline matters will be handled by the Honor Code Committee. However, the ultimate decision in any disciplinary matter is not delegable. Whenever the law school administration determines that a student's continuance in the law school would not be in the best interests of the institution, or that they are not a person of such character or integrity to be qualified for admission to the legal profession, it may terminate the student's enrollment or refuse to award a degree. In such cases, the notation "Disciplinary Expulsion" will be entered on the student transcript. The procedures set out in the HCC By-Laws do not apply to such determinations. Rather, such matters will be dealt with expeditiously and with procedures which provide notice and an opportunity to respond.

The legal profession regulates the conduct of those licensed to practice. As future lawyers, developing and maintaining professional competence includes the expectation to act with integrity and respect towards your coursework, classmates, colleagues and community.

By-laws of the Honor Code Committee (HCC)

A. Article I

Preamble

WHEREAS, for the purpose of developing and inculcating in students at Southwestern the personal responsibility needed by the legal profession, the Student Body and the Faculty are to establish a forum for discussion of matters relating to students and faculty, and the students as a body are to assume, together with the faculty, responsibility over student disciplinary matters concerning students, and

WHEREAS, the Student Body and the Faculty are to assume said powers and responsibilities, within the limits of standards external to Southwestern, which includes, without limitation, the academic freedom of the professors and the inherent general duties of the Dean with respect to maintenance of ethical standards, and

WHEREAS, the Law School Community is to provide for itself recourse to vindicate its rights and interests as hereinafter set forth against student behavior which is antithetical to the interests of the Law School, the Faculty, or the Students, individually or collectively, and

WHEREAS, administration of the said powers over disciplinary matters will depend upon petitions voluntarily submitted by individual members of the Law School Community to the committee herein empowered to redress the rights and standards herein set forth according to the procedures herein established, said committee alone will take action upon such petitions, and will justify such action upon these principles and rights;

NOW THEREFORE, in furtherance of the goals and powers aforesaid, there is hereby constituted a committee of the Law School to be known as the Honor Code Committee (hereinafter referred to as the "Plenary Committee"), together with a sub-committee thereof empowered to hear student disciplinary matters, and to be known as the Hearing Sub-Committee (hereinafter referred to as the "Sub-Committee").

B. Article II

Composition and Procedure of the Honor Code Committee

Section 1: Purpose

The purpose of the Plenary Committee is to make recommendations to the Dean of the law school concerning student discipline. If another policy has a specific procedure (such as the Sexual Misconduct Policy or the Policy to Prevent Discrimination, Harassment, and Retaliation), then this procedure will not apply.

Section 2: Composition

The Plenary Committee will consist of six (6) faculty members and nine (9) student members. The faculty members will be appointed by the Dean of the law school. Vacancies in the student membership will be filled through an annual application process open to all students. Completed applications are presented to the Committee for approval by majority vote. Faculty members will serve for one calendar year. Student members will ordinarily serve for their remaining law school enrollment, unless they step down from service for any reason, recuse themselves or are removed for cause.

The Chair will be a student elected by the members.

Section 3: Procedure for the Plenary Committee

1. Meetings

Meetings of the HCC will be called as circumstances require. Reasonable notice of meetings will be given.

During the school year when the Committee membership is fully constituted, a quorum of the Committee will be seven (7), including at least one (1) faculty member. During the months of May through October (generally), when the Committee membership has been reduced due to student graduation and summer unavailability, and until full membership is able to be met, a quorum will consist of five (5), including at least one (1) faculty member. No vote will be held unless a quorum is present.

2. Petitions

The Plenary Committee procedures for handling petitions will be as follows:

- a. The Committee will determine whether the petition involves a disciplinary or non-disciplinary matter. If the matter is disciplinary, it will be handled in accordance with Article III.
- b. The Plenary Committee will formulate its recommendation based upon the discussion of the situation in accordance with parliamentary procedures and the By-Laws of the Honor Code Committee. All motions, including the ultimate recommendation, will be decided by a majority vote.

C. Article III

1. Treatment of Student Disciplinary Matters Jurisdiction and Preliminary Matters

Section 1.1: Petitions

The Plenary Committee will first consider whether petitions state facts which if proved would be a basis for disciplinary action. The petition and all matters referred to therein will remain confidential. If the Plenary Committee determines that no further action is warranted, it will notify the petitioner of that determination.

Section 1.2: Examiner

If, after examining the statements in the petition, the Plenary Committee has reason to believe a disciplinary violation has occurred, the Dean will be notified of that determination. Upon receipt of such notice, the Dean will appoint a member of the faculty to act as the Examiner in the matter. The Examiner will investigate the grievance and determine whether a factual basis exists in support of the petition. In such event, the Examiner will prepare a written Notice of Disciplinary Action stating the allegations and the Honor Code provisions upon which the charges are based. The Notice will be served upon the respondent in person, or by first-class mail to the respondent's address as shown in law school records. Within 10 calendar days after service of such notice, the respondent may file a written response thereto. If no such response is filed, all allegations contained in the notice will be deemed denied. Thereafter, the grievance will be prosecuted in the name of the Law School.

In the event the Examiner determines that the facts will not provide a basis for disciplinary action, the Examiner will communicate this to the Discovery and Settlement Officer and both will discuss the merits of the Examiner's position. If the Officer concurs with the Examiner, their recommendation of dismissal of the grievance will be sent to the Dean. If the Officer disagrees with the Examiner's position, the opinions of both will be communicated to the Dean who will make the final determination of whether or not to proceed with the grievance.

Section 1.3: Speedy Hearing

The respondent has a right to a speedy hearing. To that end, the Committee will dismiss the grievance and refuse to conduct a hearing if it appears that too much time has elapsed, without justifiable cause, between the alleged violation and the date the grievance was filed.

2. Pre-Hearing Procedures

Section 2.1: Respondent's Right to Counsel

The respondent has the right to be represented at all stages of the proceedings by counsel of their own choosing, other than employees of Southwestern. In the alternative, respondent may act as their own counsel.

Section 2.2: Discovery and Settlement Officer

A faculty member of the Plenary Committee will be appointed by the Dean as Discovery and Settlement Hearing Officer. It will be the responsibility of this Officer to decide matters of discovery and to facilitate and determine settlement of the disciplinary matter. All settlements are subject to the Dean's approval.

Section 2.3: Discovery Hearing

If either party wishes to interview witnesses or conduct other discovery outside the law school community, they will first request that the Discovery and Settlement Officer conduct a discovery hearing. Ten-day notice of the hearing will be given to all parties. Prior to the discovery hearing, the parties will identify the persons to be interviewed or other discovery to be conducted outside the law school community, and the reasons therefore. The Discovery and Settlement Officer will determine whether to allow such discovery in accordance with Section 2.4, below. Except as specifically authorized by the Discovery and Settlement Officer, no witness interviews or other discovery outside the law school community will be conducted. Additional discovery hearings may be held upon request of a party, at the discretion of the Discovery and Settlement Officer.

Section 2.4: Discovery Policy

It is the policy of this law school that all sides in a disciplinary matter be fully apprised of all witnesses and other evidence long enough before the hearing to allow adequate investigation and preparation. Thus, no request or demand for discovery is necessary. The Examiner and respondent (or anyone representing the respondent's interests) will disclose to the other as soon as possible in writing, but not later than one week before the hearing, the names, addresses and telephone numbers of all persons who may testify at the hearing. In addition, the parties will exchange copies of all documents they anticipate introducing into evidence. Except for good cause shown, no witness may be called to testify nor any documents introduced unless the disclosure of the same has been made. This mutual disclosure policy is a continuing one up to and including the hearing.

3. Settlement

Section 3.1: Settlement Conference

Within 30 calendar days after the Discovery Hearing concludes, a mandatory settlement conference will be held. The settlement conference will be conducted by the Discovery and Settlement Officer. The Examiner, respondent, and respondent's counsel will attend the settlement conference.

Section 3.2: Settlement Policy

The policy of this law school is to encourage reasonable informal resolution of student disciplinary matters. When no Discovery Hearing takes place and no mandatory settlement conference is held, such informal settlement efforts may nonetheless take place between the Discovery and Settlement Officer and respondent (and respondent's counsel) to the degree parties reasonably believe fruitful resolution may be reached. Such resolutions, however, remain subject to the Dean's approval.

4. Hearing

Section 4.1: Hearing Subcommittee

If efforts at settlement are unsuccessful, the Discovery and Settlement Officer will notify the Plenary Committee Chair. To the extent circumstances permit, within 10 calendar days after the end of the settlement efforts, the Chair will appoint a Hearing Subcommittee, comprised of three (3) students and two (2) faculty members of the Plenary Committee, provided, however, that the Discovery and Settlement Officer may not serve on the Hearing Subcommittee. The Chair will appoint one of the faculty members of the Hearing Subcommittee as its Chair. In instances where the Chair is unavailable (for example, if the matter takes place over summer months and the Chair has recently graduated), appointments will be made by majority vote of current student committee members.

Section 4.2: Commencement of Hearing

The Hearing will commence no later than 20 calendar days after appointment of the Hearing Subcommittee, to the extent circumstances permit. The Hearing will be closed to the public, unless respondent requests otherwise.

Section 4.3: Evidence

The Examiner will have the burden of going forward and the burden of proof at the Hearing. The rules of evidence may be referred to as guidelines but will not be determinative of admissibility. Rather, all relevant evidence upon which reasonable persons rely in the conduct of their affairs may be received.

Evidence obtained in violation of the discovery provisions (§ 2.3 et seq.) above will be excluded. All witnesses will testify under oath.

Section 4.4: Record of Proceedings

Unless otherwise stipulated by the parties, a stenographic record of the proceedings will be kept. A transcription of the record will be made available to the respondent upon the completion of the proceedings.

Section 4.5: Rights of the Respondent

At the Hearing, the respondent will have the right to present evidence, to confront and cross-examine witnesses, to testify on their own behalf, or to refrain from testifying. No inference adverse to the respondent may be drawn from respondent's exercise of their right to refrain from testifying.

Section 4.6: Conduct of Hearing

The examiner will have the right to cross-examine all witnesses presented by respondent. The Hearing Subcommittee Chair may ask questions of all witnesses and request the production of further witnesses or evidence by either party. At the conclusion of the presentation of evidence, each side may present argument.

5. Deliberation

Section 5.1: Determination of Honor Code Violations

Upon conclusion of the Hearing, the Hearing Subcommittee will retire and deliberate. All members of the subcommittee must be present during all deliberations. Four of the five members must be convinced by clear and convincing evidence that a violation of the Honor Code has occurred in order to sustain the charges against the respondent. In matters alleging a violation of Southwestern's Sexual Misconduct Policy under Title IX, four of the five members must be convinced by the preponderance of the evidence (i.e., that is more likely than not) that a violation of the Honor Code has occurred in order to sustain the charges against the respondent. In either circumstance, if fewer than four votes find such a violation, the petition will be dismissed.

Section 5.2: Penalty Recommendations

If the Hearing Subcommittee finds that an Honor Code violation has occurred, the recommendation of each Hearing Subcommittee member as to penalty will be recorded. Possible penalties recommended will be those contained in the Law School Honor Code.

6. Final Disposition

Section 6.1: Opinion

If the Hearing Subcommittee finds that an Honor Code violation has occurred, a written opinion will be prepared stating the findings of the Subcommittee. Dissenting opinions may also be prepared and appended. The record of the Subcommittee's penalty recommendations will appear at the conclusion of the majority opinion.

Section 6.2: Notice

The Examiner and the respondent will be promptly serviced with notice of the Hearing Subcommittee's findings and its opinion and penalty recommendations.

Section 6.3: Transmittal to Dean

The transcript of proceedings, the Hearing Subcommittee's opinion and penalty recommendations, and all other relevant matters including evidence admitted at the hearing will be transmitted to the Dean promptly upon conclusion of the hearing. Final determination of penalty to be imposed will be made by the Dean.

D. HCC Disciplinary Hearing Case Examples

The following are examples only. All disciplinary matters are highly individualized and these examples are not offered as determinative of outcomes in present or future circumstances.

1. Petitioners established clear and convincing evidence that a student had torn and removed pages from books belonging to the Law School Library. The Committee recommended expulsion. This recommendation was accepted and implemented by the Dean.
2. Two students were found to have talked to one another during the administration of an examination.

The Committee was persuaded by clear and convincing evidence that the conduct of the students (Respondents) was antithetical to the best interests of the law school, the faculty and the student body, as well as contrary to the general custom and conduct of students in taking exams, and contrary to what the Committee perceived to be the ethical standards of the legal profession in regard to law school exams.

The Committee recommended the following disciplinary action be taken:

- a. The Respondents receive no credit for the course in question and were required to retake the course from a different professor with no reimbursement of fees;
- b. The Respondents be suspended beginning with the summer session and not be allowed to re-enroll until the spring semester.

The Dean accepted the findings and recommendations of the Committee in this matter and implemented them.

3. A grievance was filed against a student (Respondent) who claimed to have seen another student (Complainant) cheat during an examination. Instead of reporting the alleged cheating to a proctor, the professor, or the HCC, the Respondent chose to speak with his faculty advisor. The Respondent sought his faculty advisor's opinion about the propriety of a personal confrontation with the Complainant. Specifically, the Respondent planned to tell the Complainant that he would not report the cheating to the HCC if the Complainant would relinquish the Student Bar Association post that he held. Describing the plan to his advisor, however, the Respondent was not explicit about the nature or the frequency of the proposed confrontations.

The faculty advisor strongly recommended that the Respondent report the incident to HCC. The student was reluctant to take this approach for he feared that it might result in the Complainant's expulsion. Although the faculty advisor indicated that he could not see anything particularly wrong with a personal confrontation, he reiterated that the Respondent should file a grievance with the HCC.

The Respondent confronted the Complainant on three occasions seeking his resignation. The increasingly persistent manner in which the Respondent pursued the Complainant appeared to go far beyond the type of confrontation envisioned by the Respondent's faculty advisor.

Instead of resigning, the Complainant filed a grievance with the HCC. The Complainant's grievance about the Respondent's conduct and demands was considered in light of the HCC By-Laws, Student Honor Code, and the American Bar Association Code of Professional Responsibility Disciplinary Rules. Under Article III, Section II of the By-Laws, the Subcommittee had to determine whether the Respondent's conduct was "antithetical to the interests of the law school." The Subcommittee found that:

- a. The Respondent's conduct violated the Honor Code and ABA Disciplinary Rule 1-102 (A)(5). The Honor Code was breached, for the Code specifically provides that "all student discipline matters be handled by the HCC... (or) administratively by the Dean." A violation of the Honor Code occurred, for

the student's conduct was prejudicial to the administration of Southwestern's disciplinary hearing process;

- b. Although the Respondent consulted with his faculty advisor and eventually filed a grievance with the HCC, he did not discharge his obligation under the Honor Code and Disciplinary Rules. The student failed to promptly inform the proper disciplinary authorities and failed to follow the strong urgings of his faculty advisor to initially file a complaint with the HCC;
- c. The Respondent had no authority to arrange a private settlement of a fellow student's alleged cheating. Thus any effort by the Respondent to obtain Complainant's resignation was an exercise of authority he did not possess.

The subcommittee unanimously concluded that the Respondent's conduct was antithetical to the interests of the law school. But in view of the student's good faith in seeking his faculty advisor's advice and his lack of ulterior motives, the subcommittee recommended that he be given an oral reprimand, and that no notation of the reprimand be placed on his records.

- 4. A grievance was filed against three students alleging that two of the students had collaborated and submitted Legal Research and Writing (LRW) papers which were substantially identical in structure, presentation of points, use of cases and quotes, citation forms, and in several instances, verbatim language. The students, therefore, violated the course requirement to submit works of individual and unique effort.

In addition, the third student had submitted LRW papers containing verbatim paragraphs taken from a paper that had been prepared by another student and thereby violated the same requirement.

All three students admitted to the facts contained in the grievance. The Committee recommended that:

- a. All three students be suspended from enrollment at Southwestern for a period of one year;
- b. Following re-enrollment by each student, each will be on Disciplinary Probation for the remainder of the entire period of their study at Southwestern. Such probationary status will be noted on their records and transcripts;
- c. If, following the re-enrollment, the students complete all requirements for graduation with no further disciplinary proceeding or action against them, Southwestern will cause its certificate attesting to their satisfactory

completion of said Disciplinary Probation to be made part of their records and transcripts.

The Dean accepted the recommendations of the Committee and implemented them.

In other cases where students were caught cheating, their cases were disposed of by the settlement officer and the Dean in a similar manner. In his letters of reprimand, the Dean stated his dismay that these students were unaware of the Honor Code. He was also shocked that the students could not distinguish between collaboration in the research (which was encouraged) and collaboration on the written work product (there had been no approval for joint participation in the written work product in this particular assignment).

5. A student was caught by his professor signing another student's name to the class daily attendance sheet. The student (Respondent) confessed to his professor's allegation. The Committee recommended that:
 - a. The student receive both an oral and written reprimand;
 - b. The reprimand be filed in the student's record;
 - c. The student be placed on probation for the remainder of his legal studies, subject to automatic expulsion should he be found guilty of another Honor Code violation after a full hearing.

The Dean accepted and implemented the recommendations.

6. A student made a false report to both Southwestern Security and staff that an unknown person robbed her of her laptop. The student admitted to providing false information in order to obtain an extension on a seminar paper. The Committee recommended that the student:
 - a. be prohibited from participating in any honors programs at Southwestern,
 - b. receive a permanent notation of "Disciplinary Action" on her transcript,
 - c. write a paper on professional responsibility.

The Dean accepted the recommendations of the Committee and implemented them.