

## Code of Academic Responsibility

# **University of Oklahoma College of Law Code of Academic Responsibility**

## **Title I**

### **The Purpose and Scope of the Code**

#### **2.1 Purpose of Code**

The purpose of this Code of Academic Responsibility is to define academic misconduct and other ethical violations, to prescribe penalties and procedures for enforcement of academic discipline, and to provide for appellate review.

#### **2.2 Scope of Code**

- a. The Code of Academic Responsibility applies to all students of the College of Law of the University of Oklahoma.
- b. Each student shall sign a pledge to comply with this Code at the time of enrolling in the College of Law. The pledge shall notify students that the College may be required to notify bar associations when a student is found guilty of violating this Code.

## **Title II**

### **Principles of Academic Responsibility**

#### **2.3 Accepted Principles of Honesty**

- a. It shall be a violation of this Code for a student to act in conscious disregard of accepted principles of honesty in any academic pursuit or prize competition.
- b. Conscious disregard. To establish a violation of this section, the Council of Academic Responsibility must present proof of a student's conscious disregard of accepted principles of honesty. Conscious disregard is a mental state embracing either
  - i. intent to deceive, manipulate or defraud;
  - ii. guilty knowledge; or
  - iii. moral awareness that the alleged conduct violated known or accepted principles of honesty.
- c. Specific intent. Nothing in this Code shall be construed to require proof of specific intent in addition to proof of conscious disregard. Specific intent is the offender's active and conscious desire to achieve certain prohibited consequences by acting or failing to act.

- d. Proof of conscious disregard. Nothing in this Code shall be construed to require a confession by the accused or any other direct evidence of conscious disregard, which may be inferred from the conduct of the accused and other circumstantial evidence.

### **Commentary to § 2.3.**

#### **Definition of principles of honesty**

Fraud and dishonest conduct appear in many forms. Legislatures and courts have avoided attempts to provide fixed and comprehensive definitions of fraudulent conduct, in part because the term "fraud" is not definable except in the most general terms and usually by reference to the state of mind of the person accused of dishonesty. In the words of the Supreme Court of Oklahoma, *Singleton v. LePak*, 425 P.2d 974 (Okla. 1967):

Fraud is a generic term, which embraces all the multifarious means which human ingenuity can devise and all resorted to by one individual to get an advantage over another. No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling and unfair ways by which another is cheated. . .

Id. at 978 (quoting *Bigpond v. Mutaloke*, 105 P.2d 408 (Okla. 1940)). See also, e.g., *Commonwealth v. Monumental Properties*, 329 A.2d 812 (Pa. 1974); *Barquis v. Merchants Collection Ass'n*, 496 P.2d 817, 830 (1972) (sweeping legislative ban on fraud and deception is designed "to enable judicial tribunals to deal with the innumerable 'new schemes which the fertility of man's invention would contrive'") (quoting *American Philatelic Soc'y v. Claibourne*, 46 P.2d 135, 140 (1935)); *Kugler v. Romain*, 279 A.2d 640 (N.J. 1971).

As a result, no comprehensive list of such principles is possible. The following examples are designed to provide fair notice to the student of the College of Law of the breadth and scope of the Code's prohibitions against dishonesty. A student is presumed to have guilty knowledge or moral awareness by engaging in the conduct listed below:

- a. No student shall give, secure or exchange any information about the contents of or answers to an examination, in advance of or during such examination, except as authorized by the instructor.
- b. No student shall consult books, papers, computer files, other electronic data or notes of any kind during an examination, except as authorized by the instructor.
- c. A student who has taken an examination and a student who will take that same examination may not discuss its contents with each other.
- d. A student may not retain a copy of any examination for the purpose of preserving questions for use by another student, except as expressly authorized by the instructor; nor may a student take notes during an examination on the contents of an essay or objective examination for the purpose of preserving questions for use by another student, except as expressly authorized by the instructor.
- e. No student shall fail to stop writing an examination with knowledge that the time allotted for writing the examination has elapsed.

- f. No student shall hide, steal or mutilate any materials belonging to the library, the University, another student, a faculty member or other member of the law school or university community.
- g. No student shall submit plagiarized work in an academic pursuit or prize competition (plagiarism being the incorporation of written work, either word for word or in substance from any work of another, unless the student writer credits the original author and identifies the original author's work with quotation marks, notes or other appropriate written designation).
- h. No student shall make any material misrepresentation to faculty or administration respecting law school matters.
- i. A student shall not falsely accuse another student of violating this Code, either with knowledge that the accusation is false or in reckless disregard of the accusation's truth.
- j. A student may not offer for credit any work prepared by another.
- k. A student may not offer for credit work that has been previously offered for credit, except as authorized by the instructor.
- l. A student may not offer for credit work prepared in collaboration with another, except as authorized by the instructor.
- m. A student may not take an examination for another student, nor may a student permit his or her own examination to be taken by another.
- n. A student may not invade the security maintained for the preparation and storage of examinations.
- o. A student who learns that he or she has come in contact with an examination subject to security must immediately inform the Dean or Associate Dean for Academics or the instructor.
- p. A student shall not falsify attendance sheets.
- q. A student shall not sign an attendance sheet for another student.
- r. A student shall not use Lexis, Westlaw or other library services for unauthorized work or activities.

### **Conscious disregard & scienter**

The requirement of conscious disregard is intended to be identical to the legal requirement of scienter as commonly defined. See, e.g., DAVID WALKER, OXFORD COMPANION TO THE LAW 1107 (1980) (defining scienter as "knowingly"); Aaron v. Securities and Exchange Comm'n, 446 U.S. 680, 686 n.5 (1980) (scienter means "a mental state embracing intent to deceive, manipulate, or defraud"). The term "conscious" often has a similar meaning. RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1968) defines "conscious" to mean "2. fully aware of or sensitive to something. . . . 4. known to oneself; felt: conscious guilt. 5. aware of what one is doing: a conscious liar. . . . 8. Obs. inwardly sensible of wrong doing." In notes at the end of this definition, the authors of the RANDOM HOUSE DICTIONARY added that "knowing" was a synonym, along with the following commentary: "Conscious, aware, cognizant refer to an individual sense of recognition of something within or without oneself. CONSCIOUS implies to be awake or awakened to an inner realization of a fact, a truth, a condition, etc."

## **2.4 Accepted Principles of Good Faith**

- a. It shall be a violation of this Code for a student to act in conscious disregard of accepted principles of good faith.
- b. Accepted principles of good faith include but are not limited to the following:

- i. No student shall harass any other member of the law school community.
- ii. No student shall harass or retaliate or threaten to harass or retaliate against any other member of the law school community because the community member made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Code.
- iii. For purposes of this subsection, harassment is:
  - 1. Personal insults or "fighting words" addressed to a specific individual or individuals, which are designed to and likely to provoke an immediate breach of the peace; or
  - 2. Severe and pervasive verbal or physical conduct which is directed at a specific member or members of the law school community and which is designed to inflict and is likely to inflict emotional or psychological distress on the targeted individual or individuals; or
  - 3. Severe and pervasive verbal or physical conduct directed at a specific member or members of the law school community that unreasonably interferes with the work or educational performance of the targeted individual or individuals; or
  - 4. Severe and pervasive verbal or physical conduct directed at a specific member or members of the law school community that creates an intimidating, hostile, or offensive environment for the targeted individual or individuals.
- c. It is the intent of this section to ensure that each member of the law school community shall have the fair and equal opportunity to enjoy the benefits of association with the College without being hindered by invidious discrimination or prejudice.
- d. Expressive liberty. This section does not prohibit:
  - i. Any person's expression of views and opinions on matters of public interest unless it is proved that the expressive conduct is a sham or mere pretext for inflicting the harms or injuries identified by subsection b.;
  - ii. Expressive conduct protected from severe sanctions, punishment or other undue burdens by the Constitution of the United States or the Constitution of Oklahoma. The College reserves its rights to express views, including the right to post or publish reprimands, critical of expressive conduct believed to be unreasonable and discriminatory in character even if such conduct is otherwise protected by the Constitutions of the United States or of Oklahoma from severe sanctions, punishment and other undue burdens.

## 2.5 Misconduct Obstructing Administration of Examinations

A student taking an examination must not obstruct the administration of an examination. A student must comply with all reasonable instructions and regulations of the professor and the College respecting an examination.

### Commentary to § 2.5.

It is impossible to list all possible applications of the principles stated in § 2.5. Each regulation or rule shall provide notice to the student of prohibited conduct. If a student is guilty of conscious disregard of a rule or regulation, the student may have violated § 2.3. of this Code. This section is designed to authorize sanctions in the absence of scienter or conscious disregard.

Compliance with the principles of § 2.5. includes but is not limited to the following:

- a. A student shall not fail to turn in examination materials at the appointed time.
- b. A student shall not talk in any room during an examination except to, or at the direction of, a faculty member or other individuals administering an examination.
- c. A student shall not deliberately create an unreasonable distraction during an examination.
- d. A student shall not eat or smoke during an examination, except in rooms or areas designated.
- e. A student shall not remove an examination or examination answers from the College of Law, except with the prior approval of the instructor.
- f. A student shall not violate the rules designed to ensure that all grading of examinations is anonymous.
- g. A student shall not bring into any examination room any materials, including books, papers or notes,
- h. Or any other aid of any kind, except that expressly permitted by the instructor.
- i. A student shall not violate the rules established by the administration and the faculty of the College of Law regarding the use of computers or memory typewriters during an examination.

## 2.6 Misconduct Obstructing Enforcement of the Code

- a. Each student has an ethical responsibility to report any known or suspected violation of this Code to a member of the Council of Academic Responsibility or to another appropriate faculty member or administrator of the College of Law. Failure on the part of any student to satisfy this responsibility for enforcement of the Code is a violation of the Code.
- b. No student shall improperly obstruct enforcement of this Code. Compliance with this principle includes but is not limited to the following:
  - i. All students shall cooperate with the preliminary inquiry of the Associate Dean for Academics.
  - ii. A summoned student other than a defendant may not, without a reasonable excuse, fail to appear and give testimony before the Council of Academic Responsibility or the Hearing Tribunal.
  - iii. A student may not knowingly misrepresent material facts to the Associate Dean for Academics during a preliminary inquiry, or before the Council of Academic Responsibility or the Hearing Tribunal.
  - iv. A student may not fail to comply with a final order of the Hearing Tribunal.
  - v. No student shall request a person to refrain from voluntarily giving relevant testimony in an investigation, proceeding or hearing under this Code unless:
    1. The student is acting as representative of an accused student pursuant to § 2.15.(d)(ii) or § 2.30.(d);
    2. The person is a relative or an employee or other agent of the accused student; and
    3. The representative reasonably believes that person's interests will not be adversely affected by refraining from giving such information.

- vi. No student, whether or not acting as representative of an accused student pursuant to § 2.15.(d)(ii) or § 2.30.(d), shall improperly obstruct access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value or counsel or assist another person to do any such act.

## 2.7 Misconduct in Pursuit of Employment

- a. A student may not seek to obtain unfair advantage in pursuit of employment by means of misrepresentations respecting the student's academic or professional record.
- b. Conscious disregard. To establish a violation of this section, the Council must present proof of conscious disregard of accepted principles of honesty. Conscious disregard is a mental state embracing either
  - i. Intent to deceive, manipulate or defraud;
  - ii. Guilty knowledge; or
  - iii. Moral awareness that the alleged conduct violated known or accepted principles of honesty.
- c. Specific intent. To establish a violation of this section, the Council must present proof that the offender actively and consciously desired to obtain unfair advantage.
- d. Proof of conscious disregard and specific intent. Nothing in this Code shall be construed to require a confession by the accused or any other direct evidence of conscious disregard or specific intent. Conscious disregard and specific intent may be inferred from the proven conduct of the accused and other facts and circumstances.

## 2.8 Attendance Records

A student shall sign the attendance roll in a class only if present for the entire class period, except with the express permission of the professor. A student shall not sign the attendance roll for another student.

## 2.9 Miscellaneous Principles

- a. A student may not possess, transfer or duplicate keys to the College of Law or to any office in the College of Law, including the law library, without proper authorization.
- b. A student violates this Code when he or she attempts or conspires to violate the Code.

## 2.10 Library

No other violation of library rules shall be covered by this Code, but each student shall remain subject to the rule-making authority of the law librarian, the Dean, or such other authority at the university created or empowered to deal with violations of library rules.

## 2.11 Recording of Classes, Conferences or Meetings

- a. Students are prohibited from recording, in any format, any class session, meeting, or conference with a professor without that professor's explicit permission. When recording is explicitly permitted, students shall not share or disseminate the recording in any way without the explicit permission of the professor, and the student shall abide by whatever limitations are expressed in that grant of permission, including, for example, any requirement limiting the type or amount of dissemination or mandating the ultimate destruction of the recording.
- b. Students are prohibited from recording, in any format, any meeting or conference with staff members without the participants' explicit permission. When recording is explicitly permitted, students shall not share or disseminate the recording in any way without the participants' explicit permission, and the student shall abide by whatever limitations are expressed in that grant of permission, including, for example, any requirement limiting the type or amount of dissemination or mandating the ultimate destruction of the recording.

### **Title III**

#### **The Council of Academic Responsibility**

#### **2.12 Preliminary Inquiry**

- a. Upon receipt of an allegation of a Code violation or for other good cause, the Associate Dean for Academics may elect to conduct a preliminary inquiry. During the preliminary inquiry, the Associate Dean for Academics may proceed informally to gather information and to seek possible ways to resolve allegations prior to and in lieu of formal investigation.
- b. The Associate Dean for Academics may also elect to present allegations to the Council of Academic Responsibility without preliminary inquiry.
- c. The Associate Dean for Academics shall report any preliminary inquiry as well as the results of such inquiry to the Council of Academic Responsibility.
- d. After receiving the report of the Associate Dean for Academics respecting a preliminary inquiry, the Council of Academic Responsibility may
  - i. Issue a letter of admonition
  - ii. Decide to conduct a formal investigation; or
  - iii. Dismiss the allegation without further action.

#### **2.13 Duties of the Council of Academic Responsibility**

The Council of Academic Responsibility shall take care that this Code is fully enforced. The Council's enforcement duties are to:

- a. Decide whether to issue a letter of admonition after preliminary inquiry of the Associate Dean for Academics;
- b. Conduct a formal investigation of alleged violations of this Code;
- c. Decide whether an allegation of a Code violation shall be presented to the Hearing Tribunal;
- d. Appoint a representative of the Council to prosecute a case before the Hearing Tribunal;

- e. Offer such recommendations as the Council believes appropriate to the Hearing Tribunal or to the faculty respecting the matters covered by this Code;
- f. Notify any faculty member who has reported an alleged violation of
  - i. The results of the Council's investigation,
  - ii. The Council's decision whether to present an allegation to the Hearing Tribunal,
  - iii. The Council's recommendations to the Hearing Tribunal, and
  - iv. Any compromise or settlement proposed by or approved by the Council pursuant to § 2.20 of this Code;
- g. Notify the appropriate faculty member
  - i. Of any allegation of a Code violation in the faculty member's course, and
  - ii. Of all other information required by subsection (f) of this section; and
- h. recommend to the Dean whether a student who has been suspended from the University through a University disciplinary procedure (other than one conducted by the College of Law) which suspension required the student to apply for readmission to the College of Law following such suspension should be readmitted in light of the nature of the charges underlying the suspicion.

## 2.14 Membership of the Council of Academic Responsibility

- a. The Council shall consist of three members. The members are:
  - i. the Associate Dean for Academics of the College of Law or other faculty member to represent the Dean's office, except for the Dean;
  - ii. a tenured or tenure-track member of the faculty appointed by the Dean to serve for one academic year; and
  - iii. One second or third year law student appointed by the Dean from among three nominees of the Student Bar Association to serve for one academic year.
  - iv. The Dean shall also appoint one tenured or tenure-track faculty member and one student for one academic year to serve as alternate to the faculty member and student appointed pursuant to 2.14.a.ii. and iii. in the event that faculty member or student cannot serve generally or with respect to a particular case.
  - v. In the event that the faculty member or student of the Council appointed pursuant to 2.14.a.ii. or iii. and the alternate appointed pursuant to 2.12.a.iv. cannot complete his or her term of office or cannot serve with respect to a particular case, the Dean may appoint another faculty member or student either to serve with respect to a particular case or to complete the remainder of a faculty member's term.
- b. The Associate Dean for Academics or other faculty member representative of the Dean's office shall serve as chair of the Council, unless the Dean elects to designate the faculty representative as chair.
- c. Notwithstanding the expiration of his or her term, a member of the Council may continue to serve until final judgment is rendered in any proceeding in which that member has actively participated.

## 2.15 Formal Investigation

- a. The Council shall meet in closed session. The members shall keep in confidence the content and nature of the meetings, except to the extent the Hearing Tribunal or another adjudicative body compels disclosure.
- b. When the Dean, Associate Dean for Academics, faculty member or Council member receives an allegation of a Code violation, he or she has the ministerial duty to notify the chair of the Council of Academic Responsibility.
- c. The chair has the ministerial duty to present any report of alleged violations to the Council. The Council shall decide by majority vote whether to conduct a formal investigation of allegations. The Council shall notify the accused student of its decision to conduct a formal investigation.
- d. During the Council's formal investigation, an accused student has no right to appear in person or by representative at any meetings of the Council unless the Council determines that such appearance is useful to its deliberations. If the Council determines that the response of the student is useful or appropriate to complete a formal investigation, and upon the request of the Council, the accused student shall make a written response which contains a full and fair disclosure of all the facts and circumstances pertaining to the respondent student's alleged misconduct unless the respondent's refusal to do so is predicated upon expressed constitutional grounds. Deliberate misrepresentation in such response shall be grounds for discipline. The failure of an accused student to answer within twenty (20) days after service of the Council's notice or inquiries, or such further time as may be granted by the chair of the Council, shall be grounds for discipline. The Council shall make such further investigation as the Council may deem appropriate before taking any action. If and only if the Council orders a response or appearance, the accused student shall have the following rights:
  - i. the right to a statement of the allegations;
  - ii. if the Council decides to permit an appearance, the right to be represented by counsel or some other representative, though not the right to have counsel or a representative supplied by the College of Law; and
  - iii. the right to present evidence.
- e. The Council, after formal investigation, shall either:
  - i. Dismiss the case;
  - ii. Decide to prosecute the case before the Hearing Tribunal;
  - iii. Issue a letter of admonition; or
  - iv. After negotiations, enter into a settlement or compromise agreement. This decision shall be made at a formal meeting closed to the public with all members required to be present. A majority vote is required to prosecute an alleged violation before the Hearing Tribunal.
- f. The Council must decide to prosecute, if at all, and give notice as hereinafter prescribed, within ninety days of receiving an allegation of a Code violation or specific information that identifies a specific student as an alleged violator, unless the student consents to an extension of time.
- g. The Council, if it decides to prosecute, shall give actual notice by delivering a formal complaint in writing to the alleged offender. This complaint shall include a statement of the

allegations, but need not be in any particular form. A copy of this complaint shall also be forwarded to the chair of the Hearing Tribunal.

- h. If the Council decides not to prosecute and to dismiss a case, the Council may post a notice of its decision, but shall not disclose the identity of any accused student or witness.
  - i. The Council may adopt rules of procedure to supplement this section.

## 2.16 Duties of the Chair

- a. The chair shall call and preside over all meetings of the Council.
- b. The chair shall also:
  - i. Present all reports of alleged violations to the Council;
  - ii. Serve written notice to alleged offenders of the time and place of appropriate hearings and of the alleged offenders' rights during a formal investigation and during proceedings before the Hearing Tribunal;
  - iii. Have the power to summon witnesses from among the University community and to subpoena documents from members of the university community, subject to other applicable laws and policies governing the university;
  - iv. Do such other things as may, in his or her judgment, be needed to enforce this Code and to effectuate the spirit and intent of this Code; and
  - v. Notify the Council of all actions taken by the chair.
- c. All orders, decisions and actions by the chair shall be subject to review by the Council.

## 2.17 Disqualifications

No member of the Council shall participate in any case if that member is disqualified because of a conflict of interest or any other appropriate reason.

## 2.18 Vacancies

Vacancies on the Council shall be filled in the manner prescribed for the position which is vacant under the terms of sections 2.14a. and 2.14d.

## 2.19 Representative of the Council of Academic Responsibility

The Council of Academic Responsibility shall select an individual to represent the Council and to prosecute the case alleging Code violations before the Hearing Tribunal. The Council's representative may or may not be a member of the Council.

## 2.20 Compromise or Settlement of a Complaint

- a. Nothing in this Code shall be construed to prohibit compromise or settlement of complaints alleging violations of this Code.

- b. The Council shall have the power to approve or reject proposed compromises or settlements negotiated by the Council's representative and the representative of an accused student. If the Council's representative and the representative of an accused student agree to such a compromise or settlement, the agreement must be approved by a majority of the Council of Academic Responsibility. The Council's settlement authority exists at all stages of a case, but is subject to the following limitations:
  - i. After the Hearing Tribunal has rendered a judgment and prior to a decision by the Appeals Board, any compromise or settlement must be approved by the Hearing Tribunal;
  - ii. After the Appeals Board has rendered a judgment, any compromise or settlement must be approved by the Appeals Board.
- c. Evidence of offering to compromise or settle a complaint is not admissible to prove or disprove a violation of this Code. Evidence of conduct or statements made in compromise or settlement negotiations is likewise not admissible.

#### **Title IV The Hearing Tribunal**

### **2.21 Jurisdiction**

The Hearing Tribunal shall have jurisdiction over all cases involving allegations of Code violations. Pursuant to this jurisdiction, the Hearing Tribunal shall hold a hearing to determine whether or not this Code has been violated and to prescribe penalties or remedies of any violations.

### **2.22 Membership**

- a. The Hearing Tribunal shall have six members. The members are:
  - i. One member of the faculty appointed by the Dean to serve as chair for two academic years;
  - ii. Two members of the faculty appointed by the Dean to serve for two academic years; and
  - i. three students appointed by the Dean from among six second-year law students nominated by the Student Bar Association to serve for one academic year.
- b. An alternate for each member of the Hearing Tribunal shall be appointed by the Dean to serve for one academic year.
- c. Under no circumstances shall a member or alternate of the Hearing Tribunal also be a member or alternate of the Council or the Appeals Board.
- d. Notwithstanding the expiration of his or her term, a member of the Hearing Tribunal may continue to serve until final judgment is rendered in any proceeding in which that member has actively participated.
- e. Vacancies on the Hearing Tribunal shall be filled in the manner prescribed for the position which is vacant under the terms of this section.

## 2.23 Disqualifications

- a. No member of the Hearing Tribunal shall review any case if that member is disqualified because of conflicts of interest or other appropriate reasons.
- b. Either the representative of the Council or the accused student may request disqualification of a member of the Hearing Tribunal.
- c. Each member of the Hearing Tribunal must decide whether he or she can judge the case with fairness and objectivity.
- d. The Hearing Tribunal may, by majority vote of all members of the Hearing Tribunal other than the challenged member, disqualify a member of the Hearing Tribunal for appropriate reasons.

## 2.24 Confidentiality of Tribunal Proceedings

The Hearing Tribunal shall meet in closed session unless the student charged with violating the Code requests an open hearing. The members shall keep in confidence the contents and nature of the meetings unless the Appeals Board or other adjudicative body compels disclosure.

## 2.25 Scheduling of Hearing

The Hearing Tribunal shall hold its initial hearing on any formal written complaint within thirty (30) calendar days of its receipt by the chair unless reasonable cause for delay is shown by the accused student or the Council's representative.

## 2.26 Hearing Procedures

In conducting a hearing, the Hearing Tribunal:

- a. Shall proceed informally and provide reasonable opportunities for witnesses to be heard;
- b. shall receive all probative oral, documentary, and real evidence without regard to the legal rules of evidence, except that the Hearing Tribunal may exclude irrelevant, immaterial, and unduly repetitious evidence, and shall give effect to the rules of privilege recognized by law;
- c. Shall, on request of either the accused student or the Council's representative, exclude witnesses from the hearing when not testifying;
- d. Shall engage a court reporter to make a record of its hearings so as to enable review of its proceedings in the event of appeal;
- e. Shall presume an accused student innocent of the alleged violation until the Hearing Tribunal, four members concurring, is convinced that the student violated the Code by clear and convincing evidence;
- f. Shall decide the issue of guilt or innocence and an appropriate penalty solely on the basis of admitted evidence;
- g. Shall decide the issue of guilt before determining an appropriate penalty; and shall offer the opportunity to offer evidence or argument regarding an appropriate penalty;
- h. shall not be bound to follow penalty recommendations made by the Council, and may impose any penalty authorized by this Code upon majority vote, taking into

consideration the Council's recommendation, the facts of the case, the gravity of the offense, and any prior misconduct;

- i. shall state in writing, signed by each concurring member of the Hearing Tribunal, each finding of guilt or innocence and the penalty determined, if any;
- j. May write an opinion giving reasons for its decision in cases warranting an opinion; and
- k. Shall deliver a copy of the findings and opinions, if any, to the Dean, to the chair of the Council and to the accused student.

## 2.27 Clear and Convincing Evidence

To prove a fact by clear and convincing evidence means to demonstrate that the existence of a disputed fact is highly probable and free from serious doubt.

### Commentary to § 2.27

The adoption of the clear and convincing evidence standard by the College of Law is recognition of the importance that is placed on high ethical standards by the legal profession. A law student's interest in maintaining a reputation of honesty and integrity and, therefore, not being found to have violated this Code of Academic Responsibility is an important and substantial interest. Therefore, the Council bears the burden of proving by "clear and convincing evidence" sufficient facts to persuade the Hearing Tribunal that a violation of this Code occurred.

The definition of clear and convincing evidence is taken from Oklahoma Uniform Jury Instruction (OUJI) - Civil (2d) No. 3.2. Clear and convincing evidence is more demanding than proof by the typical civil standard of preponderance of the evidence, which is proof that a fact is more probable than not. It is less demanding than proof by the standard of "beyond a reasonable doubt," which is the standard in criminal cases. See *Addington v. Texas*, 441 U.S. 418 (1979). When determining whether the Council has presented clear and convincing evidence of guilt, the Hearing Tribunal must have a greater degree of confidence in the correctness of its factual conclusions than under the preponderance of evidence standard, but the Hearing Tribunal may have less confidence than that confidence required for decision under the beyond reasonable doubt standard.

Under Oklahoma law, clear and convincing evidence "is that measure or degree of proof which will produce in the mind of the trier of fact the firm belief or conviction as to the truth of the allegations sought to be established." *In re C.G.*, 637 P.2d 66, 71 n.12 (Okla. 1981). This standard requires proof not only that the existence of a disputed fact is probable, but that it is highly probable. See also LEO H. WHINERY, 2 OKLAHOMA EVIDENCE: COMMENTARY ON LAW OF EVIDENCE, §§ 8.20, 8.23 (West 1994).

## 2.28 Finality of Tribunal Decisions

The Hearing Tribunal's decision is final in any case not appealed.

## 2.29 Default Judgments

The Hearing Tribunal may proceed with a hearing and render a default judgment in any case in which a student defendant fails to appear after receiving reasonable notice of a hearing of allegations. Such a default judgment may be appealed as this Code provides, but is final if no appeal is taken.

## 2.30 Rights of the Student before the Hearing Tribunal

A student accused of violating the Code has the following rights in all proceedings before the Hearing Tribunal:

- a. The right to a statement of allegations;
- b. the right to a fair hearing;
- c. the right to appear personally before the Hearing Tribunal;
- d. the right to counsel or a representative of the accused's choice (although not the right to be supplied with an attorney-at-law at the expense of the College of Law), or a representative chosen by the Hearing Tribunal from among the student body;
- e. the right to present oral, documentary or real evidence;
- f. the right to examine and cross-examine witnesses;
- g. the right to choose whether the hearing shall be open to the public, or closed and confidential;
- h. the right to be presumed innocent until the Hearing Tribunal has considered all evidence and is convinced that the student violated the Code by clear and convincing evidence;
- i. the right to a copy of the Hearing Tribunal's written decision, and opinion, if any, to be delivered or mailed as soon as practicable; and
- j. the right to waive any of these rights by notice of such waiver in writing to the Hearing Tribunal, or by failure to appear after being duly served.

## 2.31 Duties of the Chair

The chair of the Hearing Tribunal shall:

- a. Receive written complaints from the Council alleging violations of the Code;
- b. Set the date, time and place for hearings of the Hearing Tribunal;
- c. notify the members of the Hearing Tribunal, the Council, the accused student and other appropriate individuals, such as witnesses known to the chair, of the date, time and place of hearings;
- d. Notify the accused student of all rights before the Hearing Tribunal as provided by Section 2.30.;
- e. appoint a representative from among the student body at the request of the accused student, if the accused student is not otherwise represented, as provided in Section 2.30d.;
- f. Have the power to summon witnesses from within the university community and to subpoena relevant documents in the possession of members of the university community, subject to other applicable laws and policies governing the university;
- g. have the power to order a prehearing conference, to be scheduled no later than five days prior to a scheduled hearing, at which the parties may be required to exchange a list of witnesses;
- h. Preside over Tribunal hearings;
- i. direct the course of hearings;
- j. Instruct the members of the Hearing Tribunal on the principles of law to be applied to a particular case;
- k. Take care that a court reporter is employed to develop a written record of tribunal proceedings;
- l. Rule on challenges, motions, pleas, and the admissibility of evidence and testimony;
- m. Assign the duty of preparing decisions and opinions and approve the final product;

- n. notify the proper persons, including the Dean, the Associate Dean for Academics and the tenured and tenure-track faculty of the Hearing Tribunal's decisions and of any penalties imposed; and
- o. take care that the final orders and decisions of the Hearing Tribunal are executed, including but not limited to directing the change of official records of a student adjudged to be guilty of a violation where such change is required by a final decision and penalty.

## 2.32 Ex Parte Communications

Ex parte communications with the members of the Hearing Tribunal by any party, by any member of the Council or alternate, by any student, by any witness or by any faculty member or administrative officer of the college concerning matters relevant to a case before the Hearing Tribunal are strictly prohibited. All such communications shall be disclosed by the Hearing Tribunal to the parties. Every pleading, motion, or other paper filed with the Hearing Tribunal shall be served on all other parties.

## Title V

### Penalties

## 2.33 Penalties

The Hearing Tribunal may impose any of the following penalties in light of the facts, the severity of the offense, mitigating circumstances and the dictates of fairness:

- a. reprimand;
- b. Probation;
- c. A monetary penalty not to exceed \$250 over and above the value of any property damage or value of any property destroyed or taken and not returned;
- d. Temporary or permanent suspension of rights or privileges deriving in whole or in part from the university;
- e. Temporary or permanent suspension of eligibility for official extracurricular activities;
- f. Temporary or permanent suspension of eligibility for any student office or honor;
- g. Cancellation of credit for scholastic work done;
- h. Reduction of the grade assigned in a course, unless the professor or instructor has exercised the right to specify a grade penalty pursuant to § 2.5;
- a. Suspension from the College of Law or the university;
- i. Prevention of an individual adjudged to be guilty of a violation from resuming student status in appropriate cases;
- j. Expulsion;
- k. Recommendation that the regents withdraw recognition of the student's degree, and that the Dean and the President take all actions appropriate upon official withdrawal of recognition;
- l. Such alternative penalties or remedies as are appropriate to a particular case, including but not limited to restitution and community service; and
- m. Any combination of the foregoing penalties which, in the judgment of the Hearing Tribunal, is deemed appropriate to punish the student for the offense or offenses committed.

## 2.34 Penalties: Definitions and Miscellaneous Provisions

- a. An admonition consists of a formal written warning by the Council of Academic Responsibility to be included in the student's file. The letter of admonition is a warning to the student. It is not a finding of probable cause, a finding of guilt, a penalty, or any other form of disciplinary action. An admonition is reported to bar associations or other similar entities. .
- b. A reprimand is a formal written censure to be included in the student's file. The reprimand is a penalty or remedy for a violation of this Code. A reprimand is reported to bar associations or other similar entities.
- c. (c)The College recognizes its legal duty to notify bar associations and other appropriate similar entities when a student has been found to have violated any provision of this Code.
- d. Disciplinary probation is for a definite period and indicates that further violations may result in suspension or expulsion.
- e. Cancellation of credit for scholastic work done and reduction of a grade assigned in a course are imposed only for courses in which the defendant was found guilty of academic dishonesty.
- f. A money penalty is assessed in cases such as those involving misappropriation of university property, use of university property without authorization, or abuse of or destruction of university property or of the property of a member of the law school community.
- g. Suspension from the university means that a suspended student may not receive credit at the university for work done at either this or any other educational institution during the period of suspension, except when allowed by the Hearing Tribunal.
- h. Preventing an individual adjudged to be guilty of a violation of the Code from resuming student status is the minimum penalty that shall be imposed on a person subject to this Code who is not a student at the time disciplinary proceedings are instituted and who fails to appear before the Hearing Tribunal for the hearing of a complaint against that person. This penalty is the same as the penalty of suspension from the university except that the period of the penalty continues until the affected individual submits to the jurisdiction of the Hearing Tribunal. Submission to this jurisdiction involves either accepting the adjudication of violation made earlier or requesting a new hearing by the Hearing Tribunal for the purpose of contesting that adjudication of violation.
- i. Expulsion from the university means permanent severance from the university.

### **Title VI**

#### **Appeals Board**

## 2.35 Right of Appeal

- a. A student adjudged to be guilty of a violation of the Code has the right to appeal to the Appeals Board of the College of Law. The Appeals Board may affirm, modify or set aside the judgment of the Hearing Tribunal.
- b. If a student is found guilty of violating the Code, the Council of Academic Responsibility may appeal or cross-appeal the judgment of the Hearing Tribunal regarding remedies ordered or penalties imposed.

## 2.36 Membership of Appeals Board

- a. The Appeals Board shall consist of five members.
- b. The Dean shall appoint four members of the Appeals Board from the faculty of the College of Law. Each faculty member shall serve three years. The Dean shall arrange appointments and terms of service so that one or two members are appointed each academic year for full three-year terms. The Dean shall appoint replacements for additional vacancies for either the remainder of unexpired terms or for a particular case if faculty members are unable to serve or are recused.
- c. The Student Bar Association shall designate fifteen second-year law students to serve as potential members of the Appeals Board for a one year term. The Dean shall appoint the student representative on the Appeals Board for a particular case by selection from among the potential members designated by the Student Bar Association.
- d. The Dean shall appoint one person to serve as chair from among those faculty members who served on the Appeals Board during the immediately preceding academic year. The chair shall serve for one academic year or until a replacement is appointed by the Dean.
- e. Notwithstanding the expiration of his or her term, a member of the Appeals Board may continue to serve in any case in which that member has actively participated until final judgment is rendered.

## 2.37 Disqualifications on Appeal

- a. No person who is serving on the Council or the Hearing Tribunal shall be a member of the Appeals Board.
- b. No person who participated in the proceedings of the Council or the Hearing Tribunal in a particular case may be a member or potential member of the Appeals Board in the same case.
- c. No member of the Appeals Board shall review any case if that member is disqualified because of conflicts of interest or other appropriate reasons.
- d. Either the representative of the Council or the accused student may request disqualification of a member of the Appeals Board.
- e. Each member of the Appeals Board must decide whether he or she can judge the case with fairness and objectivity.
- f. The Appeals Board may, by majority vote of all members of the Appeals Board, disqualify a member of the Appeals Board for appropriate reasons.

## 2.38 Notice of Appeal

Appeal is taken by giving written notice to the chair of the Appeals Board, the chair of the Hearing Tribunal and the chair of the Council within ten (10) school days after the date on which the Hearing Tribunal issues its written decision under § 2.26(i). The written notice need not be in any particular form, but must identify the student's name and the grounds for appeal.

## 2.39 Effect of Timely Appeal

- a. Notice of appeal timely given does not suspend the imposition of penalty until the appeal is finally decided, except as follows:

- i. A student may not be suspended or expelled while an appeal is pending;
  - ii. A student may not be required to complete community service while an appeal is pending; and
  - iii. A student may not be prevented from continuing studies or assigned work while an appeal is pending.
- b. The College shall delay graduation and other recognition of work of a student adjudged to be guilty of violating the Code despite a pending appeal, if the Hearing Tribunal has assessed a penalty delaying graduation or other recognition of work completed.

## 2.40 Preparation of Record on Appeal

If notice of appeal is timely, the chair of the Hearing Tribunal shall prepare the record of Tribunal proceedings and deliver copies of the record to the Dean, the student appellant, the chair of the Council of Academic Responsibility and the chair of the Appeals Board. If the decision is affirmed, the appellant shall pay the cost of preparing a transcript, unless the chair of the Appeals Board determines that the student is unable to pay.

## 2.41 Contents of Record on Appeal

The record on appeal is the record of all proceedings before the Hearing Tribunal. This record is confidential and consists of:

- a. A copy of all notices to the accused student and to the Council's representative;
- b. A transcription of the hearing record, and all documentary and other evidence offered and admitted in evidence;
- c. Written motions, pleas, and any other materials considered by the Hearing Tribunal;
- d. The Hearing Tribunal's written decision; and
- e. The Hearing Tribunal's opinion, if any.

## 2.42 Standard of Review

- a. The Appeals Board shall consider an appeal on the basis of the record on appeal.
- b. Factual issues. The Appeals Board shall sustain the Hearing Tribunal's findings regarding disputed factual issues, unless the Appeals Board concludes that the findings were clearly erroneous. When reviewing factual determinations on the basis of the record on appeal, the Appeals Board shall consider all evidence in a light most favorable to the prevailing party and it shall not disturb the factual findings, unless the Appeals Board reaches the definite and firm conviction that a mistake has been committed. The Appeals Board may not conduct a trial de novo regarding factual issues in any case.
- c. Review of sufficiency of evidence. When the Appeals Board reviews the sufficiency of evidence supporting the Hearing Tribunal's judgment that a student violated this Code, the Appeals Board shall determine whether it was clearly erroneous for the Hearing Tribunal to conclude that all essential allegations were proven by clear and convincing evidence. The critical inquiry required by this subsection is whether a reasonable trier of fact could have found that the facts constituting the essential elements of the offense were highly probable.

- d. Legal issues. The Appeals Board shall consider all issues of law, including interpretation of the Code, de novo.
- e. Remedies or penalties. The decision of the Hearing Tribunal regarding penalties or remedies shall be affirmed, unless the Appeals Board concludes that the penalties and remedies constituted an abuse of discretion.
- f. Mixed questions of law and fact. If the Appeals Board reviews a mixed question of law and fact, the clearly erroneous standard of subsection (b) is appropriate, if the Appeals Board concludes that the question involves primarily a factual inquiry. If, however, the Appeals Board concludes that the mixed question primarily involves the consideration of legal issues, then de novo review is appropriate.

### **2.43 Oral Argument on Appeal**

The student appellant and the Council's representative may request in writing an opportunity to appear and present argument before the Appeals Board. Oral argument on appeal before the Appeals Board shall be scheduled no more than twenty (20) school days following a timely notice of appeal, unless the chair of the Appeals Board grants an extension of time for good cause. The student appellant may appear by a representative consistent with § 2.30(d). Ordinarily, oral argument for a party appearing before the Appeals Board should last no longer than one-half hour.

### **2.44 Finality**

The decision of the Appeals Board shall be final within the College of Law. There is no appeal to the faculty of the College of Law or to the Dean of the College of Law.

### **2.45 Appeal to the President**

A decision of the Appeals Board may be appealed to the President of the University of Oklahoma, if the Appeals Board's decision affirms or approves any penalty or remedy under § 2.33 other than a reprimand. The President's decision shall be final. Pending appeal to the President, the decision of the Appeals Board may be stayed in whole or in part by the Dean.

### **2.46 Confidentiality of Appeals Board Proceedings**

The Appeals Board shall meet in closed session unless the student charged with violating the Code requests an open hearing. The members shall keep in confidence the contents and nature of the meetings unless the President or other adjudicative body compels disclosure.

## **Title VII**

### **Powers and Duties of the College of Law**

### **2.47 Jurisdiction**

- a. The Associate Dean for Academics, the Council of Academic Responsibility, the Hearing Tribunal and the Appeals Board shall have subject matter and personal jurisdiction to

investigate and resolve any and all allegations of Code violations brought against students and former students according to the provisions of this Code.

- b. A student who is discovered to have made misrepresentations to law school officials during the process of applying for admission to law school shall not be subject to the provisions of this Code, but shall be subject to expulsion or other appropriate discipline by the Dean and Admissions Committee of the College of Law.

## 2.48 Academic Regulations

Nothing in this Code shall be construed to restrict the powers and duties of the faculty and administration of the College of Law to adopt reasonable rules and regulations to protect the integrity and fairness of all examinations, academic programs, academic evaluations and competitions.

## 2.49 Faculty Duties

- a. A professor or instructor who observes or is notified of an alleged violation of this Code in a particular course shall have the academic freedom to specify a grade penalty to be imposed after and only if the student involved is found guilty by the Hearing Tribunal, defaults in the responsibility to respond to allegations, or admits the allegations. The professor or instructor may specify a grade penalty by notifying the Associate Dean for Academics in writing at any appropriate time prior to the final decision of the Hearing Tribunal.
- b. A professor or instructor shall assign a grade, to be effective after an accused student has been found not guilty of violating this Code, on the basis of legitimate and adequate academic grounds independent of any allegation or belief that a student violated the Code. Ordinarily and to the extent feasible, while a case involving allegations of Code violations is pending, a professor or instructor should complete grading of an accused student's examination or other academic work. Also, to the extent feasible, the College and professor should take care to attempt to preserve the anonymity of the student's examination in compliance with the College's grading policy. It is understood that the discovery of an alleged violation may compromise the anonymity of grading. The professor or instructor should assign a grade other than a specified grade penalty governed by subsection (a) of this section according to the College's schedule for reporting grades.
- c. The College may implement any reasonable procedure for reporting and recording a grade for a student accused of violating this Code while proceedings are pending.

## 2.50 Notice to the Law School Community

Each academic year, the office of the Dean shall publish or post a list of cases occurring in the previous five academic years. The list shall include cases in which students were found guilty of violations of this Code, cases in which students were found not guilty of violations, and cases which were settled by negotiated agreement. This list shall include a summary description of penalties imposed or remedies ordered for violations. The office of the Dean shall take care to redact any information that would identify students accused or adjudged guilty, but the College assumes no responsibility for unintended identification of students beyond that imposed by law.

## 2.51 Miscellaneous Definitions

### 2.51.1 "Dean"

"Dean" means the Dean of the College of Law or the Dean's delegate or representative.

### 2.51.2 "Associate Dean"

"Associate Dean" means the Associate Dean for Academics, or the Associate Dean's delegate or representative.

### 2.51.3 "Student"

"Student" means a person enrolled at the College of Law of the University of Oklahoma, or a person who was enrolled at the College of Law, or a person accepted for admission at the College of Law at the time he or she is alleged to have violated this Code.

### 2.51.4 "School days"

"School Days" are days Monday through Friday in which the College of Law is in session during the fall and spring semesters.

### 2.51.5 "Prize competition"

"Prize Competition" includes any competition for an extracurricular award, honor or prize, including but not limited to competition for scholarships, intra-school moot court and trial competitions, competition for financial aid and competition in relation to law review.