

Charleston School of Law Honor Council Rules¹

Allegations and Trials

Self-admitted guilty plea²

If a student believes they may have committed an honor code violation they will self-report to the Vice Chair of Administration (hereinafter “the VCA”). The VCA will alert the members of the Self Report Committee, which will be composed of the VCA, the Judicial Affairs Officer³, and the Associate Dean for Academic Affairs.

The Self Report Committee will consult with the appropriate faculty/staff member to determine whether the purported violation could have occurred. The Self Report Committee will determine with the advice of the faculty/staff member whether the matter should be forwarded to the Honor Council (hereinafter “the Council”) to proceed with the formal process.

If the Self Report Committee determines the matter is best handled between the faculty/staff member and the student (due to mistake, confusion, etc.) the matter will be left to the faculty/staff member and student, with the Council considering the matter closed.

If the Self Report Committee determines the matter should be forwarded to the Council because a violation may have occurred, the Council will handle the matter as if it were an allegation by a third party, beginning with the Pretrial Determination process.

Accusation Process

The Accuser may contact any member of the Council to make a personal report; he or she must then return a typed accusation form with a statement within two business days⁴ and submit it to the VCA.

¹ All changes to the Honor Code, Rules, and Bylaws must be approved by the Dean of the Charleston School of Law.

² The rules outlined in the “self-admitted guilty plea” section apply only to a self-admission before an accusation. If a person offers a guilty plea after the accusation of a third party, these rules do not apply.

³ The Judicial Affairs Officer will be an *ex officio* member of all Honor Council Proceedings. The Judicial Affairs Officer will be available for advice at proceedings, provide secure storage for all files, notes, and evidence and be a voting member of the Self Report Committee.

⁴ A “business day” is defined as a day when the Charleston School of Law campus is open.

Upon receipt of the accusation report, the VCA will notify the Accused of the allegation within two business days. Notification occurs when the VCA personally contacts the Accused. The Accused then has three business days to select a two-person Defense Trial Team.⁵ The Accused may choose any current student at the Charleston School of Law (hereinafter “the School of Law”) to represent them. Should the Accused elect self-representation, the VCA will appoint a two-person Defense Trial Team to advise the Accused.

The VCA will also notify the Honor Chair (hereinafter “the Chair”) and the Dean of the CSOL, disclosing only the name of the Accused and the alleged offense. The VCA will discuss the matter with the Judicial Affairs Officer and keep him apprised of the matter as it develops.

The VCA will appoint a two-person Prosecution Trial Team within one business day of the selection of the Defense Team.

After both the Defense and Prosecution Trial Teams have been selected, the Judicial Affairs Officer will distribute the formal allegation and copies of any accompanying documents to both parties concurrently.

Trial Team Removal

Members of a Trial Team may dismiss themselves from proceedings with good cause, upon approval of the Chair. The Accused may enter a motion to have any member of the Prosecution Trial Team dismissed for good cause. The VCA will appoint new members to a Trial Team as necessary.

Per the School of Law Honor Council Bylaws, Trial Teams will keep separate records of the time spent on working on the trial. These records will be given to the Judicial Affairs Officer at the end of each week.

Preliminary Investigation

The Vice Chair for Investigations (hereinafter “the VCI”) shall appoint a

Additionally, the time periods provided are ministerial and are designed to promote efficiency. Failure to meet these guidelines will not dispose of a case.

⁵ If no selection is made, the VCA will appoint a two-person defense team comprised of Council members, to represent the Accused.

first or second-year member to assist in the investigation within three (3) days after the formal allegation is filed. The Investigation Team shall maintain the strict confidentiality of the investigation.

The VCA and VCI shall determine jurisdiction upon receipt of a formal allegation.

The Investigation Team shall (1) collect and preserve evidence and (2) make a presentation, along with a written report detailing the summary of their findings to the Pre-Trial Determination panel (hereinafter “PTD”). The Trial Teams and Accused may attend the interviews, but shall not participate.

The PTD Investigation Report shall not contain opinions of witness credibility, reliability of evidence, or guilt or innocence. The Accused and Accuser may submit a written statement to be included in the Investigation Report. On the day of the PTD panel, the Accused and Trial Teams will receive a copy of the PTD Investigation Report.

Neither member of the Investigation Team may testify at trial.

Pre-Trial Determination Hearing

Within a reasonable time, the Investigation Team shall make a presentation to the PTD panel, comprised of one member from each class chosen by the VCA. The PTD panel may ask questions about the Investigation and the Report.

The PTD panel shall decide by majority vote whether there is probable cause to believe a violation occurred based on the facts and evidence presented. The panel shall consider the quality of evidence offered in support of the accusation, but shall not consider the guilt or innocence of the Accused.

The PTD panel shall provide a written statement of whether probable cause was found and submit it to the VCA.

Dismissal by the PTD panel does not preclude initiation of any other, or future, investigation based on the same set of circumstances, should new evidence or allegations be presented.

The Trial Teams and Accused may attend the hearing, but shall not

participate.

Pre-trial Disclosure to School

Disclosure will be made to the School of Law regarding allegations of Honor Council violations if the PTD panel finds probable cause.

Disclosure will include only a notice that an allegation has been made, an investigation by the Council is underway, and a reminder to students they are to follow the Honor Code.

At this time the VCA will inform the Judicial Affairs Officer of the outcome of the proceeding, and ask for advice or help as needed.

Pre-trial Discussions

Arbitration or mediation may produce recommendation, and will be considered by the Chair, but such recommendations will not be binding.

Trial Team Interviews

Within a reasonable time after the PTD panel and before the Pre-Trial Conference, the VCA shall provide the Trial Teams the concurrent opportunity to interview any potential witness. The interviews shall not constitute formal testimony.

Pre-Trial Conference

Within a reasonable time after PTD panel, the Chair shall convene a Pre-Trial Conference with both Trial Teams. The Trial Teams shall determine the witnesses, the order in which they will testify at trial, the nature and scope of evidence to be presented during trial, and other measures that will serve the interest of a fair and efficient trial. If no mutual agreement can be reached, the Chair shall make such determinations.

Selection of the Honor Court

Honor Court members (hereinafter “the Court”) are chosen from current members of the Council currently enrolled in classes at the School of Law.⁶

The Court sitting will consist of a total of six members: a Vice Chair and

⁶ All Council members must attend a yearly training session before serving on the Court.

five members of the Council, with at least one member from each class. The VCA will select three alternates, to serve on the Court if needed.

Alternate Court Members

Should a member of the court be challenged by the Accused, an alternate will take his or her place on the court.

Alternate Honor Court members are able to take notes, ask questions (through the Chair), and hear all testimony in the event that another Court member is removed.

Alternate Honor Court members are not allowed to participate in the deliberation process unless the Alternate has replaced another member of the Court.

Circumstances Affecting Composition of the Court

If a trial occurs during the summer months, recent graduates shall represent the 3L class, and students who have completed the requisite courses as 2Ls or 1Ls will serve as 2Ls or 1Ls, respectively.

If a trial occurs before a new 1L class of Honor Council members has been selected, representatives will be chosen from the 1L class by the VCA.

If there are not enough members from any particular class available to serve, the VCA may appoint members of the Council from other classes to fill the Honor Court.

Recusal

Appointed members of the Court may recuse themselves from participation in the Court for good cause with the approval of the Chair.⁷

If the Chair feels that he or she is unable to participate in the proceedings, the VCA will appoint another Vice Chair as Acting Chair for the remainder of the trial and any post-trial appeals.

The Trial

⁷ "Good cause" may include, but is not limited to, a conflict of interest or a personal relationship with the Accused that the Council member feels would affect his or her impartiality.

Duties of the Court

The Court shall hear allegations pertaining to the accused.

The Court shall serve as finders-of-fact.

The Court shall weigh evidence presented at trial.

The Court shall vote to acquit or convict the Accused by a majority with equal weight accorded to each member's vote. A unanimous vote is necessary for a recommendation of expulsion. In the case of a split Court, the Chair shall cast the deciding vote.

The Court shall determine the appropriate penalty in the event of a conviction.

Pre-trial Motions

After the Court is called to order, but prior to opening statements, the Chair will receive pre-trial motions from both parties.

Procedural Motions

Either party can submit a motion to the VCA to be ruled on by the Chair within 24 hours.

These motions may include, but are not limited to, change of venue, change of time, or challenges of the Court members.

Either party may move to continue for cause; continuance is to be ruled upon by the Chair.

Motions to Exclude Evidence

The Trial Teams may submit objections prior to, or during, the Pre-Trial Conference to be ruled on by the Chair.

Motions to Remove a Member of the Court

The Accused may challenge, for good cause, a member of the Court, excluding the Chair.

Any challenge to a member of the Court must be made when the Chair opens proceedings to receive motions. If no challenge is made the opportunity to challenge is waived.

The Chair shall rule upon any challenge.

Motions to Dismiss

Either party may submit a Motion to Dismiss prior to, or during, the Trial to be ruled on by the Chair.

Oath of Confidentiality

All Council members will take an oath of confidentiality regarding the evidence prior to the trial proceedings. Breach of that confidentiality will be considered grounds for removal from the Council.

Setting the Trial Date

The VCA will set a date for trial no less than two weeks and no more than four weeks from the date he or she distributes the case materials to both Trial Teams, regardless of school being in session.

Administration

The VCA will administer procedure during the trial. He or she will escort all witnesses in and out of the Courtroom. The VCA will defer to the Chair for questions of procedure that have not already been discussed by the parties in the Pre-Trial Conference.

There will be no oaths or affirmations taken for witnesses, accused, or participants.

The Chair will preside over the trial and will be the only member of the Court who will speak to witnesses and Counsel. All communications of other Court members must be made to the Chair by written note. The Chair may interrupt proceedings at any time to consult privately with Counsel, the VCA, or simply to take a break.

Breaks will be taken every 45-60 minutes. During that time, all participants are free to leave the Court, but are not allowed to discuss the case in any respect. An exception shall be made if a Court member wishes to discuss a matter with the Chair or if the VCA needs to address a matter with Counsel or the Chair. Counsel and the Court may not communicate ex parte.

Outline of Trial Schedule

The VCA will make a brief introduction of the participants.

The VCA will make a brief overview of the Trial Procedure and distribute the Evidence and Trial Materials.

The Chair will call the Court to order.

The VCA will distribute and read the PTD panel finding and any Pre-Trial Discussion Statement agreed upon by the Parties. Any other germane issues are presented by the VCA at this time.

Counsel will present any Pre-Trial Motions, which will be heard and ruled on by the Chair.

The parties will give their opening statements.⁸

Arguments will consist of both penalty and verdict arguments concurrently. The trial shall not be bifurcated.⁹

The VCA will escort witnesses in and out of the courtroom.

Witnesses will be questioned in the following manner: (1) Counsel who calls the witness will question first; (2) Opposing counsel will cross-examine the witness; (3) Members of the Court will question the witness, through the Chair; and (4) Counsel who called the witness may re-direct.

Parties will give their closing statements.¹⁰

At the Conclusion of the trial, all parties will be dismissed except the VCA and the Court.

The VCA will briefly meet with the Chair and the Court to answer any procedural questions.

The Court will deliberate and concurrently determine a verdict and possible

⁸ The Prosecution Team will present its opening statement first, followed by the Defense Team.

⁹ Parties will present their arguments and call their witnesses. The Prosecution Team will present first, followed by the Defense Team.

¹⁰ The Prosecution Team will present its closing statement first, followed by the Defense Team.

penalty.

Deliberations are not taped and will be completely confidential except for the ultimate decision.

There is no requirement that deliberations occur at the site of the trial, as long as they retain their character of privacy, discretion, and confidentiality.

Upon reaching a verdict and penalty, the Court will be dismissed by the Chair. The Chair will then notify the VCA of the decision

The VCA will make a notification to both Trial Teams, the Judicial Affairs Officer, and any relevant faculty/staff members.¹¹

Evidentiary Rules

Willful and malicious attempts to subvert these Rules are considered acts of cheating.

Witnesses may consist of any member of the School of Law student body, faculty, or staff member, as well as any member of any organization associated with the School of Law, including but not limited to individuals involved in any extern program or pro bono program.¹² Because the Council has no subpoena power, it may be necessary to restrict the questioning of certain witnesses or may be impossible to hear their testimony.

Gathering of Evidence

The VCA shall not actively gather evidence, but shall assist members of the Trial Teams within reason. All evidence shall be delivered to the Judicial Affairs Officer and shall be made available to the Trial Teams as soon as possible. If there is evidence or testimony which the VCA is made aware of,

¹¹ The Defense Team will notify the Accused, and will include in this notification a reminder that the Accused has the right to appeal the decision of the Honor Court within five days of the release of the opinion.

¹² The overriding policy of the Council evidence rules is to allow any student at the School of Law to understand the rules and allow any student to effectively represent either the Accused or the School of Law. Having simply a rule, which will allow all evidence to be heard by the panel sitting in judgment, along with a rule which allows counsel to point out that the evidence may not be reliable, ensures that the fact-finders will have all facts in order to make an appropriate determination. Further, the intent of the Council is to sever the Federal Rules of Evidence and the S.C. Rules of Court from its proceedings.

but which the Trial Teams are not, the VCA shall pass on that information to both Trial Teams as soon as reasonably possible.

Voluntary Discovery and Delivery of Evidence

All evidence gathered by any member of either Trial Team shall be delivered to the Judicial Affairs Officer within one business day or as soon as reasonably possible. The members of the Trial Teams must share all evidence.

All evidence to be used at trial shall be delivered to the VCA no less than 36 hours before trial. If new evidence comes to light on the eve of a trial, a motion for a continuance must be for deliberation on the admissibility of that evidence.

A list of individuals who may be called as witnesses at trial will be exchanged among the Trial Teams and be shared with the Chair at the Pre-Trial Conference.

The Judicial Affairs Officer will secure all evidence, notes, and related documents at the end of each day.

Admissibility of Evidence

Governing Authority: The Honor Court Rules of Evidence is the governing authority for all evidence issues presented before the Court.

Relevant Evidence: All evidence must be relevant to be admissible. All relevant evidence is admissible unless otherwise proscribed by these rules.

Testimonial Evidence: Any and all testimony shall be heard by the Court without objections, except for one exception. A party may object to testimony given, or about to be given, but only on the ground that *it is not reliable*. From there, the Court shall hear the testimony and note the objection. During deliberation, the Court as a whole shall determine the reliability of the evidence.

Example: A witness is about to testify about what someone has told him while he was part of an earlier conversation.

Counsel: “Mr. Chair, I would like to point out to the Court that Mr. Smith is about to testify to what he heard in a conversation, I would object to this testimony since its reliability for accuracy is diminished at this time.”

Chair: “Thank you Counsel, we will hear the testimony and then it is up to each individual

member of the Court to decide whether to accept the testimony as reliable or discount the witnesses' testimony.”

Character Evidence: Character evidence is only admissible in favor of the accused. Once his character is sufficiently established, the Chair may rule that his/her character is sufficiently established and no more character witnesses may then testify.

At no time, may the Prosecution Team attack the character of the Accused. However, they may still cross-examine the character witnesses.

At no time may either party attack a witness with evidence of character.

Standard of Guilt

In order to find a violation, the Court must determine by a majority vote that facts sufficient to constitute a violation have been proven by clear and convincing evidence.

Penalties

Upon a finding of “guilt,” the Court may impose the following penalties:

(1) **Warning:** A warning is written statement to the convicted which may be imposed when an individual commits an Honor Code violation, but does so innocently, unknowingly or unintentionally. A simple majority of the Court shall be sufficient to impose a warning.

(2) **Sanctions:** Sanctions are penalties left to the discretion of the Court, and may include, but are not limited to:

- (a) Extra community service,
- (b) A ban from participating in school activities,
- (c) A public address,
- (d) A letter of reprimand to be made a permanent part of the student’s record, and/or
- (e) Suspension.

The aforementioned sanctions increase in severity from (a) to (e). A simple majority of the Court shall be sufficient to impose a sanction.

(3) **Expulsion:** Expulsion by unanimous vote of the Court may be imposed when an individual knowingly or intentionally violates the Honor Code or

when an individual displays a pattern of behavior that is inconsistent with the Honor Code or its principles.

Post-trial Process

Disclosure will be made to the School of Law community following any Honor Court proceeding. Such disclosure will be made via TWEN with emailed notice sent to students. The Court must unanimously agree on the content and wording of the disclosure. All disclosures will include at minimum a notice that a conclusion has been reached, judgment of guilty or not guilty was made, and a reminder that students are to follow the Honor Code.

Opinion

Following the trial, the Chair shall write and issue an opinion.

Written opinions will be available to, and read by, all members of the Council and distributed to the Dean of the School of Law, the Dean of Academic Affairs, the Dean of Students, the Dean of Admissions, and the Judicial Affairs Officer. The School of Law students will receive the opinion and faculty or staff will have it disseminated to them as necessary on a discretionary basis.

The Chair shall disclose all necessary information to the proper parties.

Trial Materials and Record

To provide a proper record for appeals and inquiries by relevant authorities, for all proceedings a Trial Record must be prepared by the Council and provided to the Dean of the School of Law.

The Trial Record should include all trial documents, the written notice to the Accused of the allegation, any correspondence between the Accused and the VCA, the Formal Allegation, the PTD Investigation Report, the PTD opinion, all trial documents and evidence presented (even that which is not admitted), the Trial Opinion, written notice of the disposition provided to the Accused, and written notice of the disposition to the Students of the School of Law.

The Trial Record shall begin with a summary of the case, stating the name of the accused, the date of disposition, the allegation, and the disposition,

including any punishment. Following this summary it shall be organized chronologically with a copy of each item listed in the "Trial Materials and Record" section of the Rules of the Council, with each item clearly labeled. Evidence excluded from consideration by the Trial Court shall be labeled as such.

The Judicial Affairs Officer and Secretary shall compile the Record and provide it to the Dean of the School of Law.

Following Conviction

Upon a finding of guilt, the convicted will have two courses of action: (1) he or she may appeal within five business days of the conviction to the Dean of the School of Law, or (2) in the recommendation of expulsion, the convicted may resign.

Appellate Process

All appeals from the Court rulings shall be submitted to the Dean of the School of Law for review.

Changes to Honor Code and Honor Council Rules

All changes to the Honor Code, Rules, or Bylaws must be approved by the Dean of the School of Law.