

THE HONOR CODE

ARTICLE I - PURPOSE AND DEFINITIONS

SECTION 1 - Purpose

The students of Northwestern University School of Law recognize an overriding obligation to ethical conduct. Each student shall act with honor throughout all phases of law school academic life.

Section 2 - Violations

A violation occurs when a student knowingly:

- (a) steals, destroys or defaces any materials [on university property, including but not limited to university property itself, library materials,] [personal or student organization property,]or, in contravention of library rules, removes from general circulation and accessibility any library materials with the purpose of depriving others the use of that material;
- (b) steals, reproduces, circulates or gains access to an examination or other graded assignment before it has been administered;
- (c) uses materials not permitted by the professor for an examination or other graded assignment;
- (d) [acts in contravention of rules pertaining to an] [examination promulgated by the instructor or the] [university, including but not limited to writing] [past the time allotted for the examination;] or collaborates [with another]in a manner not permitted by the instructor for that course on an examination or other assignment;
- (e) plagiarizes; [(see Article I, Section 3(a).)]
- (f) refuses to testify, or testifies falsely, at a proceeding under the Honor Code with respect to

facts within his/her knowledge. No defendant, however, shall be compelled to be a witness against himself/herself;

(g) engages in any conduct with the purpose of avoiding or circumventing other Law School rules governing academic life;

(h) undertakes any activity or course of conduct with the purpose of creating an unfair competitive advantage over other students;

(i) obtains in contravention of Law School rules, or divulges, official school information[, including\ but not limited\ to grades or exam numbers, that a reasonable student knows or should know is properly kept confidential;

[(j)] [alters an official transcript, a document] [purporting to be a transcript, or makes false] [statements, written or oral, pertaining to grades,] [class rank, or academic achievements;]

[(k)] [discloses any knowledge he/she may have of] [contemplated or pending proceedings under the] [Honor Code, except that a student may disclose] [information so long as that disclosure is made in] [accordance with the provisions under Article IV,] [Section 1(d), in accordance with any provision] [requiring testimony before the Judicial Council,] [or in cooperation with the Prosecutor's] [investigation of the charge;]

[(l)](\\) attempts to commit any of the above offenses.

[Section 3] [-] [Definitions]

[(a)] [Plagiarism][: The act of knowingly appropriating] [the ideas or words of another as the product of] [one's own mind, without crediting the source.]

[(b)] [Charge that fails to state a violation][: Even if] [all facts alleged in the charge are taken to be] [true, there is no violation of the letter of the] [Honor Code.]

[(c)] [De minimus charge][:] [If all facts alleged in the] [charge are proven to be true, there would be a] [violation of the letter of the Honor Code.]

[However, such violation would be so minor as not] [to justify further Honor Code proceedings.]

[(d)] [Probable cause][: Whether, taking into] [consideration the facts alleged and the quantity] [and quality of proof of said facts, and] [considering the letter and spirit of the Honor] [Code, a reasonable probability exists that the] [Accused would be convicted before the Judicial] [Council.]

ARTICLE II - GENERAL DUTIES OF THE PROSECUTOR, THE EXECUTIVE COMMITTEE, AND THE JUDICIAL COUNCIL

Section 1 - The Prosecutor's duties prior to the presentation of a charge

- (a) To facilitate the making of a charge, the Prosecutor (see Northwestern University Student Bar Association Constitution Article XIV) shall publicize his/her identity, phone number, and law school mail box number on the "Class Notes" bulletin board next to the Registrar's Office and in the Student Directory's "Important Phone Numbers" section [at a place easily accessible to] [all students and all members of the Northwestern] [University Community].
- (b) The Prosecutor shall appear at an orientation meeting for first year students and offer a presentation on the Honor Code, including a synopsis of violations and a brief outline of the proper procedure for reporting an alleged violation.
- (c) The Prosecutor shall be available to advise interested persons about the Honor Code. If a person is contemplating bringing a charge, the Prosecutor shall be available to counsel that person.

Section 2 - The duties of the Executive Committee and the Judicial Council prior to the presentation of a charge

- (a) The Executive Committee, (see Article IV, Section 3(a) infra), shall maintain a collection of Honor Code decisions, Judicial Council rulings, Honor

Code Amendment Committee comments, and related materials. Such collection shall be placed on file in the Reserve Library after all necessary steps are taken to ensure the anonymity of all persons taking part in the proceeding (with the exception of the Prosecutor and Judicial Council members) and shall be made available to all interested persons.

- (b) Promptly after being elected to the Judicial Council, (see Northwestern University Student Bar Association Constitution Article II) its members shall convene and select by majority vote a Chairperson from among their number. If a charge is brought before the Judicial Council has selected a Chairperson, the SBA President shall convene the Judicial Council members and direct them to select a Chairperson.

ARTICLE III - FACULTY ADVISORS

Section 1 - Appointing Faculty Advisors

The SBA will recommend to the Dean who shall appoint a Faculty Advisor for each of the following parties: the Prosecutor, the Accused and the Judicial Council. Such appointments shall be based on the faculty members' interest in the position, sensitivity to the students' needs, understanding of the Honor Code's procedures and rules, and willingness and ability to commit the requisite time and effort to the position of Faculty Advisor.

Section 2 - Duties of the Faculty Advisor

The Faculty Advisors shall be available, within reason, to advise and consult with their respective parties; they have no duty to seek out the parties when a charge is brought. All parties shall seek out their respective advisors and arrange mutually convenient meetings.

ARTICLE IV - PRE-TRIAL PROCEDURE

Section 1 - Duties arising when an alleged Honor Code violation occurs

- (a) [From the earlier of the Prosecutor's presentation]
[of the Honor Code during orientation as prescribed]
[by Article I, Section 1(b), or the first day of]
[classes of an academic semester in which he or she]

[is registered, all]\\law students[registered for]
[any law school class, regardless of whether they]
[are full-time Northwestern Law Students, and]\
former [registered]law students, and all other
persons who shall be bound by procedures prescribed herein.

- (b) A charge may be brought only by a law student, former law student, member of the faculty or an employee of Northwestern University.
- (c) A person having reason to believe that an Honor Code violation has occurred shall pursue either of two options:
 - (i) Approach the suspected violator and suggest that the suspected violator voluntarily report the violation to the Prosecutor. If the suspected violator fails to report voluntarily, then the person shall report the charge to the Prosecutor, in accordance with Section (c)(ii) below or
 - (ii) Report the alleged violation to the Prosecutor. Such report shall constitute a charge, and shall be in the form of a written statement containing a brief statement of the alleged violation, the date when the alleged violation occurred and/or first, was discovered, the accuser's signature, and the date of notification.
- (d) \[The person having reason to believe that a]
[violation has occurred may consult with either the]
[Prosecutor or the Dean of Students as to whether a]
[charge should be filed, based upon the information]
[in the possession of the person at the time. The]
[person shall not, subject to subsection (e) below,]
[discuss or otherwise reveal information pertaining]
[to the alleged violation with any other person.]
[Such disclosure of information shall constitute an]
[Honor Code violation under Article I, Section (k).]
- [(e)] Subject to Section[s] (c) [and (d)]above, a person shall not publish or disclose suspicion that a violation has occurred. If persons other than the Prosecutor, the accuser, and the Accused learn of the alleged violation, they too shall refrain from publishing or disclosing information relating to

the alleged violation. These third parties may discuss the alleged violation only if solicited by either the Prosecutor or the Accused.

[(f)] [If the Prosecutor determines that, because of] [time, workload or ethical considerations, full and] [adequate preparation of the Prosecutor's case is] [not possible, then the Prosecutor shall so inform] [the SBA President. The President then shall] [appoint one or more special Prosecutors either to] [assist or replace the Prosecutor.]

Section 2 - The Prosecutor's duty to investigate the charge following report of a charge

(a) The Prosecutor shall determine whether the accused has presented the charge within the month of discovery of the alleged violation. If the accused has failed to do so, the Prosecutor shall drop the charge against the accused.

(a) (b) Next, [T]he Prosecutor shall record receipt of the charge, and the date thereof, by opening a confidential file in the Registrar's Office. The Prosecutor shall have the Registrar notarize the charge [in the presence of the accuser], and shall notify the Accused and the Accused's Faculty Advisor that the charge was brought on that date. [In addition, the Registrar shall notify the SBA President that a charge has been filed as soon as] [practicable.]

(b) [Within three school days of the filing of the] [notarized copy of the charge, the Prosecutor shall] [notify the SBA President of the filing of said] [charge. Within three school days of such notice,] [the SBA President shall convene the Executive] [Committee for the purpose of determining whether] [the charge states a violation of the Honor Code.] [At the meeting, the Prosecutor shall present a] [copy of the charge to the Executive Committee.] [The Executive Committee shall first determine] [whether the charge has been brought within one] [year of the date of the alleged violation. If the] [accuser has failed to do so, the Executive] [Committee shall drop the charge.]

(c) [Next, the Executive Committee shall determine] [whether the charge states a violation under the]

[Honor Code. If the Executive Committee, by vote]
[of three members, determines that the charge fails]
[to state a violation under any part of the Honor]
[Code, assuming all facts alleged in the charge are]
[true, the SBA President shall direct the]
[Prosecutor to drop the charge. The SBA President]
[shall prepare, or direct another member of the]
[Executive Committee to prepare, a written opinion]
[fully and completely stating the Executive]
[Committee's reasons for finding that the charge]
[does not state a violation of the Honor Code. A]
[copy of said opinion, after having been purged of]
[all references to the identity of all parties]
[other than the Prosecutor and the members of the]
[Executive Committee, shall be placed on file in]
[the library in accordance with the provisions of]
[Article VI, Section 4(b).]

14] [(d)] [If the Executive Committee finds that the charge]
[states a violation under the Honor Code,]T[t]he
Prosecutor shall investigate the facts and
allegations fully, interview potential witnesses,
and consult with the Prosecutor's Faculty Advisor
on an ongoing basis. The Prosecutor shall conduct
the investigation in such a manner as to ensure
that information relating to the alleged violation
is kept as confidential as practicable. The
Prosecutor shall advise all persons interviewed in
connection with an investigation regarding the
provisions in the Honor Code relating to
confidentiality.

14] [(e)] Within ten school days] of receiving
the Executive Committee's]
[determination whether the charge states a]
[violation under the Honor Code,]the Prosecutor
shall present the results of the investigation in
writing to the Executive Committee, including all
evidentiary materials and the substance of any
interviews] [in order for the Executive Committee to]
[determine whether probable cause exists to]
[prosecute the charge].

14] [(f)] The
Prosecutor lacks any] discretion to dismiss the
charge. [Until jurisdiction passes to the Judicial]
[Council,]T[t]he Executive Committee shall [have the]
[sole power to]decide whether [the charge states a]
[violation under the Honor Code, whether]probable

cause exists to prosecute the charge[, and whether]
[to drop the charge].

Section 3 - The presentation to, and decision of, the
Executive Committee

- (a) The Executive Committee consists of the President, Vice-President, Secretary, and Treasurer of the Student Bar Association. If any of these elected representatives are unable to fulfill their responsibilities with respect to the Honor Code, the SBA President shall have the sole power to appoint students to service in their absence. Furthermore, any member of the Executive Committee who becomes aware of the Accused's identity, either before or during the proceedings, shall not participate in the proceedings. The Prosecutor shall take every precaution to prevent the Executive Committee from discovering the Accused's identity.
- (b) After having read and compared the materials, and having listened to the Prosecutor's presentation, the Executive Committee first shall determine whether the Prosecutor has investigated the matter adequately. If less than three members of the Executive Committee determine that the Prosecutor has fully investigated the charge, then the Executive Committee, in a written letter to be included in the Accused's confidential file, shall:
- (i) point out the deficiencies and order a full investigation, and/or
 - (ii) direct the SBA President to remove the Prosecutor and to appoint a replacement to continue the investigation.

Should the Executive Committee determine that further investigation is needed due to either Prosecutorial inadequacy or deficiencies in the prosecution's investigation, this letter shall establish a date by which the Prosecutor or the replacement Prosecutor shall complete the investigation. This date shall be set for the earliest practicable time given the status of the investigation but shall not be later than two weeks after the Executive Committee determination

pursuant to this section.

- (c) If three or more members of the Executive Committee determine that the Prosecutor has fully investigated the charge, then the Executive Committee shall decide whether there is probable cause to believe that the Accused violated the Honor Code[, as defined in Article I, Section 3] [(d)]. When the charge concerns a violation alleged to have been committed in connection with an exam or other ~~graded~~ assignment, [or in connection with] [an extracurricular activity having a Faculty] [Advisor,]the Executive Committee may, [sua sponte][,] [and]without disclosing the identity of the ~~a~~[A]ccused, transmit[, pursuant to Section 3(e)] [below,]to the instructor of the course [or the] [Faculty Advisor of the activity]a statement setting forth the charge and the nature of the violation[, and thereby solicit a written statement] [by the instructor or Faculty Advisor]. The Executive Committee may then consider, in its determination of probable cause, ~~a~~[said] written statement from the instructor [or Faculty Advisor] [stating whether]~~that~~, in the instructor's [or] [Advisor's]opinion, the alleged violation is de minimis[, as defined in Article I, Section 3(c)] [above,] and that the charges should be dropped.
- (d) If two or more members of the Executive Committee believe that probable cause exists, then the Committee shall direct the Prosecutor to proceed as required by Section (4)(b), below. Subject to Article IV, Section 3(a), all members of the Executive Committee shall vote; no member may abstain from voting. If ~~less~~ [fewer]than two members of the Executive Committee believe that probable cause exists, then the Committee shall notify the Prosecutor that the charge has been dropped.[Upon a finding of probable cause,] [jurisdiction over the matter passes to the] [Judicial Council.]
- [(e)] [In the event that the Executive Committee,][sua] [sponte][,] solicits a written statement from the] [instructor or Faculty Advisor pursuant to Section] [3(c) above, the SBA President shall make, or] [direct another member of the Committee to make,] [such solicitation to the instructor or Advisor in] [writing within three school days of the Executive]

[Committee meeting in which it was decided to]
[solicit such statement. In addition, the]
[President shall direct the Prosecutor to prepare]
[such information as is sufficient to enable the]
[instructor or Advisor to make a]de[]minimum
determination, so that the Committee may transmit
the same along with its solicitation. In so
doing, the Prosecutor shall take due care to keep
the identity of the Accused confidential pursuant
to Section 2(d) above. In the solicitation, the
President or designated member of the Committee
shall request the instructor or Advisor to respond
as soon as practicable. After the receipt of such
written statement, the President shall reconvene
the Committee within three school days to complete
the Committee's determination of probable cause.

Section 4 - The Prosecutor's duties following the Executive
Committee's decision

- (a) If the Executive Committee does not find probable cause to prosecute the charge, then the Prosecutor shall notify the accuser and all witnesses interviewed in conjunction with the investigation that the charge has been dropped. The Prosecutor shall collect all evidence relating to the charge and the investigation and shall return all personal property to its owners. All other evidence or material relating to the investigation[, including, but not limited to the] [confidential file,] shall be destroyed.
- (b) If the Executive Committee finds probable cause to prosecute the charge, then the Prosecutor, within a ~~week~~ [five school days] of the Executive Committee's decision, shall draft a formal written complaint and present a copy of the complaint to both the Accused and the Judicial Council Chairperson. The complaint shall include the date and nature of the alleged violation, the accuser's name, notice that trial before the Judicial Council is pending, and the name of the Accused's appointed Faculty Advisor. [The Prosecutor shall] [place a copy of the complaint in the confidential] [file.]
- (c) After presenting the complaint to the Accused and the Judicial Council Chairperson, the Prosecutor shall finish the investigation, prepare the

prosecution's case for trial and arrange for the witnesses to be present at trial. If the Prosecutor fails to do so, the Accused shall be entitled to a continuance of the trial. The Prosecutor shall also provide the Accused with a copy of the complaint and any evidence in the case. The Accused shall have the right to cross-examine the witnesses and to present evidence in his or her own defense. The Accused shall also have the right to call witnesses and to present evidence in his or her own defense. The Accused shall also have the right to a fair and impartial trial.

- (d) The Prosecutor shall attach to a copy of the complaint to be served on the Accused all information relating to the Accused's innocence or guilt. Such information shall include but is not limited to i) the names of all witnesses ii) the substance of their testimony or their substantially verbatim statements, and iii) any documents or tangible evidence relating to the charge. [If the nature of the documents or [tangible evidence is such that the Prosecutor is] [not able to turn them over to the Accused, the] [Prosecutor shall arrange for the Accused to] [inspect them.]

Section 5 - Graduating and Former Law Students

The Prosecutor shall investigate pursuant to these rules, and upon a finding of probable cause by the Executive Committee pursuant to Article IV, Section 3(c), shall relinquish all materials to the Dean for consideration and adjudication if:

- (a) the alleged violation is reported within the two months prior to the graduation of the Accused or,
- (b) the Accused has graduated [or withdrawn]from the law school at the time the alleged violation is reported.

Section 6 - Pre-Trial Duties of the Judicial Council and its Chairperson

- (a) Within ~~a week~~ [five school days]of receiving the complaint from the Prosecutor, the Judicial Council Chairperson shall convene both the Prosecutor and the Accused to determine mutually convenient times for the pre-trial hearing and the trial.

- (i) If the parties agree to mutually convenient times to meet, then the Chairperson shall enter a written order establishing the dates and times for the various meetings.
 - (ii) If the parties fail to agree to any or all times to meet, then the Chairperson shall convene the entire Judicial Council to set the dates and times for the disputed meetings. The Council shall resolve disputes by a majority vote, with the Chairperson voting only to break a tie.
- (b) The parties and their faculty advisors shall not engage in ex parte communications regarding the proceeding with members (including the Chairperson) of the Judicial Council, Executive Committee, witnesses and others involved in the proceeding, except that the parties may communicate to the Chairperson information relating to the dates and times of the pre-trial hearing and the trial.
 - (c) For good cause, any member of the Judicial Council shall recuse himself[/herself] from a case. If the Chairperson disqualifies [himself/]herself, then the Judicial Council shall elect a Chairperson pro tem from among their number.
 - (d) The Judicial Council shall take no action without at least a quorum. A quorum shall consist of six members of the Council. If, for any reason, the Judicial Council cannot convene a quorum of its members, then the SBA President shall appoint as many students as necessary to serve as temporary members of the Council. Such temporary members shall serve on the judicial council until the termination of the proceeding for which they were appointed to hear.

Section 7 - The Accused's pre-trial rights and duties

- (a) The Accused shall seek out the faculty advisor appointed pursuant [to]Article III, Section 1, or shall select another faculty member to be the Advisor. The Faculty Advisor shall advise the Accused in matter relating to the rights of the various parties, the extent of the discovery, trial tactics, the extent of investigation and

procedural fairness.

- (b) The Accused may appear pro se, or may select another person to be the Accused's representative during the proceedings. Other than the Prosecutor or a current member of the Judicial Council or Executive Committee, any person may represent the Accused before the Judicial Council. Communication between the Accused and his[/her] representative shall not be subject to the provisions of this Code.
- (c) The Accused has a right to receive on an ongoing basis all information relating to the alleged violation. Such information shall include, but is not limited to, the materials [contained in the] [confidential file in the Registrar's office.]
[Illegible text]
- (d) The Accused has a duty to provide to the Prosecutor [at the pre-trial hearing](i) the names of all witnesses appearing on behalf of the Accused, (ii) the substance of their testimony or their verbatim statements, if known, and (iii) any documents or tangible evidence that will be introduced at trial.

Section 8 - Pre-trial Hearing

- (a) The Judicial Council Chairperson shall preside at the pre-trial hearing and, with the exception of motions made pursuant to Article IV, Section 8(c), will sit alone unless either party requested that the entire Judicial Council be present.
- (b) The Chairperson shall have the authority to hear and rule upon the following motions of either party:
 - (i) motion to change the date and time of any future hearing or the trial;
 - (ii) motion to postpone the trial date until after the expiration of the ~~15-day~~ [fifteen] [school day] period (see Article V, Section 1);
 - (iii) motion to compel the production of relevant evidence;

- (iv) motion to exclude evidence.
 - (v) motion to admit unexchanged and/or excluded evidence.
- (c) The entire Judicial Council shall hear and rule upon the following motions:
- (i) motion to dismiss the complaint for failure to state a violation of the Honor Code;
 - (ii) motion to remove member(s) of the Judicial Council for cause;

The Judicial Council shall hear the rule on these pre-trial motions only if the movant provides opposing party with adequate and timely notice of the subject and substance of the motion. Rulings on such motions shall be made by a majority vote. In the event of a motion made pursuant to Section 8(c)(ii), the judicial council member subject to such removal motion may note vote regarding such motion.

- (d) The pre-trial hearing shall serve as the final opportunity for both parties to exchange information relating to the Accused's innocence or guilt. The Chairperson may admit previously unexchanged evidence upon a showing that:
- (i) there was good cause for the failure to exchange the information earlier, or
 - (ii) timely and proper steps were taken to notify the opposition of the new development, or
 - (iii) excluding the evidence would put one party at a disadvantage.

Upon failure of the Prosecutor to provide material evidence to the Accused, the Accused may move for a continuation of the trial date to avoid prejudicial surprise or for a dismissal where the Prosecutor's failure has substantially prejudiced the Accused.

- (e) The Chairperson shall make a formal record of the evidence to be presented at trial, including, but

not limited to: the names of all witnesses, the substance of their testimony or their substantially verbatim statements, and tangible or documentary evidence.

- (f) A court reporter shall be present to record the pretrial hearing.

ARTICLE V - TRIAL PROCEDURE

Section 1 - Speedy Trial

- (a) The trial before the Judicial Council shall commence within 21 [fifteen school] days of the Executive Committee's decision that probable cause exists, except that, where the trial date would fall within an examination period or the two weeks immediately preceding it, the trial shall commence within 21 days of the last scheduled examination.
- (b) The Chairperson may postpone the trial date beyond the 21-day period [established in Section 4(a)] [above], but only for specific limited amount of time and only if:
 - (i) both parties stipulate in writing that they accept a specific, limited postponement; or
 - (ii) upon motion, the Prosecutor shows a compelling reason for granting a postponement ~~such as~~ [including,] but is not limited to unforeseeable and unavoidable conflict, or the unavailability of the Prosecutor or an essential party; or
 - (iii) upon motion, the Accused shows good cause for granting a postponement and the Prosecutor fails to show a compelling reason for proceeding with the trial within the original time period.

It shall be within the Chairperson's discretion to determine whether a compelling reason or good cause exists; either party, however, may seek to reverse the Chairperson's determination by appealing to the entire Judicial Council. The Judicial Council shall determine such appeals by a majority vote, with the Chairperson voting only to

break a tie.

Section 2 - The Trial

- (a) The Judicial Council Chairperson shall preside at the trial and state:
 - (i) the scope of the trial, the charge, and the identity of the accuser;
 - (ii) the procedure to be followed;
 - (iii) the possible penalties to be imposed if a violation of the Honor Code is proven; and
 - (iv) the post-trial rights of the Accused.
- (b) The Prosecutor shall present the facts and evidence against the Accused in a fair and just manner.
- (c) Unless the Accused otherwise requests in writing, all matters relating to the trial shall be kept secret\ [in accordance with Article VI, Section 6.] [The Accused may divulge matters relating to the] [trial, except the identity of the Accuser and] [Witnesses shall remain confidential, and] [consistent with the proceedings at his/her] [discretion.]
- (d) The Accused shall ~~be~~ be given the right to plead either "guilty" or "not guilty" to the formal charge\ [following the Chairperson's] [introduction pursuant to Article V, Section 2(a).] [The Accused shall have the right to change his/her] ["not guilty" pleading to a plea of "guilty" at any] [time prior to the entry of judgment.]
- (e) The Prosecutor shall make the opening statement followed by the Accused, or his/her representative, who shall have the right to reserve his/her opening statement until the close of the Prosecutor's case\ [or waive the right to] [present an opening statement.]
- (f) Only evidence in the (amended) formal record compiled at the pre-trial hearing ~~shall~~ \ [may] be admitted into evidence. Should the Prosecutor fail to reveal at trial material information in

the Prosecutor's possession which tends to bear on the Accused's innocence, the Accused may move for dismissal of the charge or reversal of a guilty verdict. A dismissal of charges or reversal of a guilty verdict shall be by majority vote of the Judicial Council.

- (g) Evidentiary rulings shall be made in accordance with the Federal Rules of Evidence. The Chairperson shall make all procedural and evidentiary rulings at trial. Either party may appeal such ruling immediately to the entire Judicial Council. Rulings on appeal shall be determined by a majority vote, with the Chairperson voting only to break a tie.
- (h) Both the Prosecutor and the Accused or his/her representative may make closing statements.
- (i) The Chairperson shall appoint a member of the Judicial Council to keep a complete file of all material admitted into evidence during the trial. A court reporter shall be present to record the trial proceedings.
- [(j)] [The Accused shall specify at trial an address and] [telephone number where she/he can be notified upon] [the finding of a verdict pursuant to Article V,] [Section 2(k).]
- [(k)] The Judicial Council shall convict the Accused if two-thirds of the members present find the Accused guilty beyond a reasonable doubt. After the Judicial Council has reached a verdict, the Chairperson shall immediately [make a reasonable] [effort to verbally]inform the Accused of the verdict [in person or at the telephone number] [provided in Article V, Section 2(j)] [The Chairperson shall post a letter within two] [days of the Judicial Council's verdict, to the] [address specified in Article V, Section 2(j),] [which informs the Accused of the verdict.]

Section 3 - Interpretation of the Honor Code

- (a) The Honor Code shall be interpreted by the Judicial Council which shall have the authority to promulgate regulations and issue rulings to that end.

library following exhaustion of all review procedures, and shall be made available to all interested persons.

- (c) Subject to Article VI, Section 6, the Judicial Council may, at its discretion, publicly notify the student body of an Honor Code proceeding and the penalty recommended.

Section 5 - Faculty review

After a conviction, the Chairperson shall[, in a timely] [manner,] forward the complaint, the record and the opinion to the Faculty for their review, in accordance with the Faculty's published review procedures. [Upon forwarding of] [the complaint, jurisdiction over the matter passes to the] [Faculty, unless or until returned to the Judicial Council.]

Section 6 - Confidentiality

All matters relating to actions under the Honor Code shall be confidential until all review procedures have been exhausted.[Following the exhaustion of all review] [procedures, confidentiality shall be maintained to the] [extent that the names of the Accused, the Accuser, witnesses] [and others involved in the proceedings (with the exception] [of the Council members and the Prosecutor) shall not be] [divulged.]

ARTICLE VII - PROVISIONS REGARDING UNAVAILABLE PERSONS

- (a) If for any reason, some members of the Judicial Council and/or the Executive Committee are unavailable to fulfill their respective duties at the end of the school year, the SBA President shall have the sole power to appoint students to serve in their absence.
- (b) If for any reason, witnesses have left the Chicago Metropolitan area and are unable to testify at a trial, either party may obtain affidavits from those witnesses regarding their knowledge of the alleged violation and may also direct written interrogatories to the witnesses. These affidavits and interrogatories shall be admissible at trial notwithstanding the Federal Rules of Evidence.

ARTICLE VIII - AMENDMENTS

Section 1 - Effectiveness

Amendments to the Honor Code shall be ratified by:

- (a) the concurrence by vote of two-thirds of the entire Judicial Council and an absolute majority vote of the ~~entire~~ [voting] student body, or
- (b) a two-thirds vote of the ~~entire~~ [voting] student body.

Section 2 - Election procedure

- (a) The SBA Elections Committee shall conduct the election to amend the Honor Code in accordance with normal Law School election procedures.
- (b) All registered students shall have an affirmative duty to vote with regard to a proposed Honor Code amendment, although any student may abstain by so marking the ballot.

ARTICLE IX - EFFECTIVE DATE

Once ratified this amended Honor Code shall take effect immediately for the remainder of the 1989-90 academic year.

COMMENTS from the Honor Code Revision Committee

Article I:

The amendments to Article I, Section 2 and the addition of Section 3 reflect a desire to narrow the scope of certain Honor Code violations which have proven to be overbroad, and to bring under the Code certain unethical actions which were overlooked by the drafters of the Code as it now reads.

Article I, Section 2(a) was amended to include the intentional defacement of university or student property as a violation. This amendment was aimed particularly at those students who deface posters or other property of ethnic, political, or sexual minority groups.

The amended Section 2(c) clarifies the fact that use of prohibited exam materials is banned for take-home exams, as well as for in-class exams. The Revision Committee also wished to prevent students from hiding prohibited class notes and/or outlines outside of the exam room, for reference during the exam (i.e. in the restroom, in the hallway).

The Revision Committee determined that the reference to "cheating" in Section 2(d) was too vague and substituted more substantive language. In particular, the amendment gives the act of writing past the allotted exam time as an example of "cheating". Note that the section was amended to cover ungraded assignments, such as the Legal Writing library assignment during first year, as well as graded ones.

Section 2(e) amended the over-inclusive definition of plagiarism in the present Honor Code. The committee also found the "five consecutive word" definition of plagiarism to be arbitrary and unrealistic.

As it stands, Section 2(f) allows for the prosecution of a third party who recants his/her story before a case reaches the Judicial Council. The Revision Committee felt that a person should not be subject to a serious Honor Code violation proceeding just for changing his/her story before the actual hearing. However, the committee ultimately decided to leave the language as is, having weighed the factors and deciding that the need to encourage honest disclosure of information relating to Honor Code violations was an overriding concern.

Several members of the Revision Committee expressed concern that the "antitrust" language of Section 2(h) was overbroad and could be construed to bar legitimate conduct. An example was given of a study group composed solely of Law Review editors; it can be argued that such a group was formed with the purpose of

creating a unfair competitive advantage. However, the committee also noted the need for a catch-all violation, since it is not possible for one committee to list every conceivable honor code violation. In light of the procedural safeguards in Article IV, and amended Sections 2(c), 3(c), and 3(e); the committee elected to retain the language of Section 2(h).

Section 2(j) was added to specifically include lying during the job and/or clerkship application processes as an Honor Code violation. A student may now be prosecuted under the Honor Code for altering his/her transcript or a copy of a transcript, including false information on his/her resume, or lying about grades or class rank during an interview. Since Northwestern does not have a class ranking system, it is unfair for a student to claim to be a certain rank when there is no verification procedure.

Section 2(k) was added to prohibit people from revealing any information they may have as to contemplated or pending proceedings, except for investigation or trial purposes. This prohibition addressed the concern about the school "rumor mill" and wished to protect the Accused, Accuser and any witnesses from unnecessary gossip and harassment.

Article I, Section 3(a) was added to clarify the plagiarism violation stated in Section 2(e). The Revision Committee adopted a derivation of the definitions of plagiarism found in Black's Law Dictionary and Webster's Dictionary. This approach to plagiarism should eliminate the grave problems associated with the "five consecutive word" rule found in the present version of the Honor Code. For example, common phrases of more than five words will no longer constitute plagiarism under the revised Honor Code. Along with the procedural safeguard mentioned in the Comments to Section 2(f), this new definition of plagiarism will serve to protect students from unnecessary prosecutions.

Section 3(b) clarifies what constitutes a failure to state a violation under Article IV, Section 2(c). No violation has been stated if the LETTER of the Code has not been violated, assuming all alleged facts to be true.

Section 3(c) clarifies what constitutes a de minimus charge under Article IV, Section 3(e). An instructor may find a charge to be de minimus if it is such a minor violation of the letter of the Code as not to justify further proceedings. Note that a de minimus determination may issue from the course instructor or faculty advisor, not from the Executive Committee.

Section 3(d) clarifies what constitutes probable cause under Article IV, Section 3(c). The Executive Committee may find probable cause that a violation has occurred if it finds that there is a reasonable probability that the Judicial Council would convict, taking into consideration the LETTER and SPIRIT of the

Code. The Revision Committee strongly supported the idea of giving the Executive Committee the ability to consider the SPIRIT of the Honor Code, in making probable cause determinations.

Article IV

The amendments to Article IV, Section (1)(a) stemmed from a desire to more clearly define who is subject to the provisions of the SBA Honor Code. The amendments now make it clear that any student registered for a Northwestern School of Law class is bound by the provisions of the Honor Code at least during the semester that that student is registered. Thus, visiting students from other law schools, and Northwestern students from other university colleges are intended to be included. The provision that former Northwestern Law Students are also subject to Honor Code jurisdiction is still maintained. The beginning of the period in which a student is subject to the Honor Code is intended to start at the earliest time that the student has reasonable opportunity for notice of the Code. Thus, Honor Code jurisdiction begins at the earlier of the Prosecutor's presentation to the first year class during orientation as required by Article II, Section 1(b) or the first day of classes of the semester in which the student is registered.

Section (1)(d) was also added amid concern that often, when a suspected violation occurred, students would more likely talk about the suspected violation among each other rather than report it to the Prosecutor. Such conduct would often result in allegations, rumors and innuendo pervading the law school atmosphere. Such allegations, rumors and innuendo were thought to be extremely harmful in that the student who was the subject of such things ran a great risk of having his or her reputation in the law school community irretrievably marred, without any recourse to clear his or her name. Moreover, it was thought that such allegations, rumors and innuendo contributed to a decrease in general morale among the law school community, and gave rise to false perceptions of student dishonesty among the faculty and others outside the law school community.

The intent of the Code is now unequivocal that a person suspecting that a violation has occurred shall either "put up" by reporting the alleged violation to the Prosecutor (after possibly attempting to persuade the alleged violator to report the violation him or herself), or "shut up" by not talking about his or her suspicions to anyone in the law school community. The one exception that was added is that the person may discuss the matter with, and receive the counsel of, the Dean of Students. This provision was thought to add an "outlet" for the person suspecting a violation by allowing that person to confidentially seek the advice of someone highly dedicated and sensitive to the needs of students.

The major revision to Article IV, Section 2 arose out of a concern on the part of both students and faculty that some Honor

Code proceedings tend to take on a life of their own after a charge is filed. That is, regardless of the merits of the charge, the Honor Code allowed no flexibility to terminate the proceedings at an early point before a potentially burdensome and disruptive investigation. The changes to this section, namely the addition of new Section 2(c), are intended to provide this flexibility. It should be kept in mind that the intent behind these revisions is to prevent any significant action from being taken under the Honor Code on the basis of a frivolous or otherwise unmeritorious charge.

Under the new section, if the Executive Committee determines that a charge, even if all facts alleged therein are true, is not meritorious as a matter of law, then the charge shall be dropped with no further action by the Prosecutor. In doing so, the Executive Committee shall act as interpreter of the Honor Code with the duty to say what the law is. In cases where the Executive Committee decides to drop the charge, a full, written opinion will be filed in order to aid future determinations under this section.

During the Honor Code Revision Committee deliberations, an alternate proposal was presented. That proposal would have given the Prosecutor, in consultation with his or her Faculty Advisor, the discretion to drop the charge if the Prosecutor felt that the charge was without merit. The proposal would have required the Prosecutor to proceed with the charge if either the Prosecutor or his or her Faculty Advisor thought that the charge should go forward. Some concerns were expressed about this proposal. One concern was that the discretion to proceed would be vested in a student, the Prosecutor, who had not been elected by the student body. Another concern raised was the desire to keep the Honor Code an entirely student-run procedure, although the opposite concern, lack of adequate faculty participation in past Honor Code proceedings, was also expressed.

It was pointed out that the Honor Code already did allow for discretion exercised by elected students at the Executive Committee level. The Executive Committee had the power, and still does under these revisions, to determine whether probable cause existed to prosecute the charge. However, such discretion came into play only after a two week investigation by the Prosecutor. It was the consensus of the Revision Committee that this student discretion did not come at an early enough point to prevent a possible "run away" investigation. Thus, it was decided that the Honor Code should be revised to require the Prosecutor to ask the SBA President to convene the Executive Committee immediately after receiving the charge in order to determine whether the charge had any merit. The Executive Committee's Probable Cause Procedure remains unchanged, except that the Probable Cause Hearing is only convened after a previous determination that the charge, if proven, is meritorious.

The amendment to Article IV, Section (3)(c) allows the Executive Committee to seek a faculty member's opinion of whether a charge presents a de minimus violation if the charge relates to any extracurricular activity which has a Faculty Advisor. Previously, the Honor Code allowed a faculty member's opinion only with respect to an examination or other graded assignment.

The addition of Section (3)(e) more fully defines the procedure under which the Executive Committee may solicit the instructor or Faculty Advisor's opinion as to whether the charge is de minimus.

The Revision Committee felt a need to specify who is responsible for placing the complaint into the confidential file in the Registrar's office. Thus, Article IV, Section 4(b) was amended to clarify this issue.

The second part of Article IV, Section 4(c) was removed and put into Article IV, Section 1(f) in order to clarify that the Prosecutor may inform the SBA President at any time that he/she is not able to prepare the case. As the Code presently reads, this option is placed after the Prosecutor has drafted the complaint.

The addition of the last sentence to Article IV, Section 4(d) recognizes that there may be some evidence which the Prosecutor can not attach to the complaint served on the Accused, but which the Accused is entitled to examine.

Section 7(c) was amended to allow the Accused an opportunity to review all materials contained in the confidential file.

Section 7(d) was amended to clarify when the Accused is obligated to provide the Prosecutor with the information listed in Section 7(d).

Article V

The Revision Committee recognized that disclosing the existence of an Honor Code proceeding would not necessarily be harmful to the law school community once all review procedures had been exhausted. However, the identity of the parties involved should still be protected. Section 2(c) recognizes that disclosure of any information relating to a pending or contemplated Honor Code proceeding could be harmful to the law school community or to an individual. For instance, a student's reputation might be maligned with no recourse to clearing his/her name.

Article IV

While the committee desires to maintain the Judicial Council's current flexibility to fashion a penalty appropriate

under all the facts of a particular action, some concern existed regarding the discretionary power to recommend no Honor Code violation notation on the accused's transcript. This concern stems, in part, from the obligation owed when reporting to a Bar's character and fitness board. The Revision Committee decided not to alter this discretion for a number of reasons, especially concern over the inconsistencies of other law school's honor codes and lack of honor codes in others. Without some uniformity in standards among law schools, it may put Northwestern students at a competitive disadvantage.

The Revision Committee recognized in Section 1(b), in the interest of fairness, that certain time delays are necessary. Therefore, the committee allows for a procedure to extend the penalty hearing beyond the two weeks specified under the prior code.

Section 2 was amended to clearly delineate the Chairperson's obligations regarding notification, thus decreasing the time which the uncertainty surrounding the penalty stage "hangs over the head" of the Accused.

As the faculty review can not commence until the Judicial Council's opinion is prepared and in concert with the over riding concern within the Code to provide a quick determination of each case, the Revision Committee felt the need to limit the time required to generate the opinion through the addition of Section 3(d).

While the Revision Committee strongly believes that the prior code both explicitly and implicitly protected the confidentiality of the Accused and witnesses, Section 6 was nonetheless modified to foreclose any possible misinterpretation which could allow a breach of this confidentiality without triggering a separate Honor Code violation. This addition does not foreclose the dissemination of information in accord with other sections of the Code, specifically, rights and duties delineated in Article VI, Section 4.

Article VIII

Section 1 was amended to recognize that is very difficult if not impossible to get a majority of the entire student body to vote.

The amended Honor Code will be effective upon acceptance by the student body in accordance with Article VIII, Section 1.