

**NORTHWESTERN UNIVERSITY SCHOOL OF LAW
JUDICIAL COUNCIL**

Opinion 02-4

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November 25, 2002

T. Tatum delivered the opinion of the Judicial Council, in which L. Coimbra, B. Dunn, T. Givens, J. Polk, and H. Shapo join. E. Gamonal, S. Lubet, and C. Riekes took no part in the consideration of this case.

I. Background

The matter before us concerned a self-scheduled exam that was turned in to the registrar 3 days and 19 minutes late. On September 4, 2002, the registrar charged the student with violating Article I, Sections 2(d), (g), (h), and (j) of the Honor Code.¹ On September 18, 2002, the Executive Committee of the Student Bar Association returned a finding of probable cause against the student. The pre-trial hearing took place on October 18, 2002, and the trial took place on November 15, 2002. After trial, the Council found the student guilty of violating Article I, § 2(g) of the Honor Code, providing that “a violation occurs when a student knowingly engages in any conduct with the purpose of avoiding or circumventing other law school rules governing academic life.”

¹ All references to the Honor Code are to the 1986 Honor Code of the Students of Northwestern University School of Law. *See* Honor Code, Art. I, § 2(d) (“A violation occurs when a student knowingly . . . cheats, or collaborates in a manner not permitted by the instructor for that course, on an examination or other graded assignment.”) *Id.* § 2(g) (“A violation occurs when a student knowingly . . . engages in any conduct with the purpose of avoiding or circumventing other law school rules governing academic life.”); *Id.* § 2(h) (“A violation occurs when a student knowingly . . . undertakes an activity or course of conduct with the purpose of creating an unfair competitive advantage over other students.”); *Id.* § 2(j) (“A violation occurs when a student knowingly . . . attempts to commit any of the above offenses.”).

II. Facts

The student picked up a self-scheduled examination on Friday, August 30, 2002, at 10:12 A.M, which meant that it was due at 3:42 P.M; the student then returned to the student's apartment to commence working on it. The student was to have five hours and thirty minutes to complete the exam because English is not the student's native language.² At 4:30 P.M, the student realized that time had expired and, apparently in a panic, rushed back the registrar's office in order to request more time to "complete" the exam by which, the student testified that she meant convert the exam into a readable format.³ The student arrived at the registrar's office at approximately 4:40 pm. The registrar's office denied the request for more time and told the student to turn in the exam before the office closed at 5:10 pm. Because the student had left the exam at the student's apartment, the student went home at about 4:50 pm to retrieve it. When the student arrived back with the exam at the registrar's office some time between 5:10 pm and 5:15 pm, the office was closed. At that time, the student decided to return home and return in the morning to turn the exam in to the registrar's office. Because the following day was a Saturday, the registrar's office was not open.

The evidence indicated that sometime between arriving home Friday evening and Saturday at 10:39 A.M, the student converted the document into Word Format and made minor formatting changes and spell-checked the document.⁴ Apparently, after the student discovered

² The exam was a four-hour exam, but the student was given an extra hour and twenty minutes because English was not the student's native language. In addition, the registrar's office adds ten minutes to each exam for travel time, bringing the student's total time for taking the exam to 5 ½ hours.

³ The evidence indicated that the student first typed the exam in a word processor other than Microsoft Word. Before turning the exam in, the student therefore needed to convert it.

⁴ As Exhibit D-3 indicates, the file was converted at 10:19 am, on Saturday, August 31, 2002. Jason Moy, who is on the staff in the registrar's office, testified that although Exhibit D-3 shows that the file was changed on Saturday morning, there is no way to know which changes were actually made at that time. Thus, the Council's only source of information on what changes were made was the testimony of the student, who testified that the only changes were to convert the file into Microsoft Word format, adjust some formatting (which was affected by the conversion), and perform a spell-check of the document.

that the registrar's office was closed on Saturday morning, the student went to the library to make this conversion at 10:39 am. Immediately after, the student emailed the professor the completed exam in order to comply with the professor's instructions to e-mail the professor if there were any issues with 'time-stamping' the exam. In the e-mail, the student acknowledged exceeding the time limits stating: "I am very sorry I failed my time. I would be thankful if you can accept my work and apologize for any inconveniences caused by this. Please let me know if the registrar may consider my work failed." Exhibit P-10 (a copy of the email sent to the professor along with the finished exam attached). The student eventually turned in the exam to the registrar's office on Tuesday morning since the office was closed Monday for the Labor Day holiday.

III. Conclusions of Law: the Knowingly Mens Rea

In reaching the verdict, the Council first had to decide the context of the word "knowingly" in Article I, § 2(g) of the Honor Code. The Council decided that it applied only to the student's conduct, specifically the act of exceeding the given time limit for completion of the exam, and not necessarily to the purpose. In this context, purpose applies to the given result. If you know that you are going over the given time limit, we impute that your "purpose" was to exceed the time.⁵

⁵ It should be noted that there may be circumstances under which a student knowingly acts in violation of the self-scheduled exam time requirements, but nevertheless does not violate Art. I, § 2(g) of the Honor Code. For instance, if a student driving to school to turn in an exam when the student's automobile breaks down, and the student therefore turns the test in late, the student has acted knowingly because the student knew that the time restriction was violated. However, in that case, the student has not engaged in any conduct (e.g. working on the exam after it was due) to avoid or circumvent the rule. Thus, in cases involving unforeseen circumstances over which the student has no control, it is possible for a student to act knowingly but still not violate Art. I, § 2(g) since the student has not engaged in conduct that violates a law school rule, but has instead violated a law school rule as the result of circumstances outside of the student's control. In a case where the evidence indicates a student has knowingly worked on an exam past the time it was due, however, the Council will impute that the student's purpose was to violate the time restriction (unless, of course, contrary evidence is offered).

IV. Judicial Council Decision

The Judicial Council decided unanimously that the student was not guilty of cheating (Art. I, § 2(d)) because we heard no evidence that there was any collaboration during the exam. It was also decided unanimously that the student did not violate Art. I, § 2(h) by "creating an unfair competitive advantage." Under the self-scheduled exam regime, there is no way to gain an unfair advantage where the exam is time-stamped and the professor is made aware of the time it is completed; moreover, there is a curve, which will push the student turning in an exam late toward the bottom of the class. Simply put, turning in a self-scheduled exam late cannot be reasonably anticipated to create an unfair competitive advantage over the other students taking the exam. *See* Judicial Council Opinion 99-2 (finding that the student did not violate Art. I, § 2(h) because the student's conduct could not have been reasonably anticipated to create an unfair competitive advantage). There was also insufficient evidence for the Council to find the student guilty of violating Article I, § 2(j), by attempting to commit these offenses.

However, the Judicial Council unanimously found the student guilty of "engaging in any conduct with the purpose of avoiding or circumventing other law school rules governing academic life." Honor Code, Art. I, § 2(g). The key in determining guilt was that the student knew that the time had expired, even admitting to the offense, but nevertheless attempted to gain more time to work on the exam. The student admitted that, at 4:30 pm, 48 minutes after the test was due, the student realized that the time restrictions of the test had been violated. Instead of immediately returning the test to the registrar, the student returned to the registrar's office without the test and requested more time to work. Thus, the student knew that a law school rule had been violated (the self-scheduled exam time requirements) and engaged in conduct to avoid

that rule (requested the registrar's office to give more time⁶). The student engaged in this conduct knowingly as evidenced by the student's own testimony that the student knew the exam was late. Moreover, the fact that the student went to the registrar's office specifically to request more time to work on the exam evidences that the student knew that the time requirement had been violated.

For the foregoing reasons, the Judicial Council unanimously found, beyond a reasonable doubt, the defendant guilty of knowingly engaging in conduct with the purpose of avoiding or circumventing a law school rule governing academic life.⁷

V. Penalty

The Honor Code specifically states that the Judicial Council must review past cases when determining a penalty for an Honor Code violation. In doing so, we realized that there was a lack of on-point precedent. No one has ever been convicted of violating Art. I, § 2(g) of the Honor Code. There have been cases brought before the Council concerning potential violations of time restrictions; however, none of the accused was found guilty. *See* Judicial Council Opinion 99-2; Judicial Council Opinion 99-3; Review Council Opinion 91. With that being said, there is no precedent binding us to a particular penalty in this case. Thus, no precedent bound us to a particular penalty.

In past Judicial Council decisions, a variety of penalties were assessed; however, the harshness of the penalty was determined by the violation. In general, both suspension and permanent notations have been punishments only in cases of plagiarism or other "serious academic honor violations," usually where premeditation existed as a factor. *See* Review

⁶ The registrar's office does not have authority to give a student more time to work on an exam.

Council Opinion 2002-1 (involving plagiarism of 29-35% of research paper on research paper in class); Judicial Council Opinion 01-005 (involving 31 instances of plagiarism on 2-draft paper in class); Judicial Council Opinion 01-002 (involving plagiarism on large portions of senior research project); Judicial Council Opinion 01-001 (involving plagiarism on paper for class); Review Council Opinion 94-01 (providing permanent notation on transcript for student, who used materials not permitted on exam); Review Council Opinion 84-2 (involving plagiarism on final paper for class where student plagiarized 60-70% of paper from another student and contemplated same for two weeks); Review Council Opinion 84-1 (providing permanent and specific notation on transcript for unknown violation since Judicial Council Opinion 84-1 is not in library archive); Judicial Council Opinion 82/83-1 (involving plagiarism on joint writing competition casenote where student plagiarized approximately 40% of submission); Review Council Opinion 73-1 (involving plagiarism on paper turned in for academic credit where paper was substantially verbatim copy of article).

As these precedents illustrate, the Judicial Council and Review Council have found that where a certain degree of calculation exists, the punishment should be harsh. In the case at bar, the evidence indicated no premeditation, and it is therefore easily distinguishable from the cases cited above. It is apparent that the student did not plan to take more time on the exam than was allowed, but instead panicked after realizing the exam was late.

Moreover, there are several mitigating circumstances in this case. First, the student showed a great deal of remorse by: (1) never denying that the exam was turned in late; (2) apologizing to the professor and asking whether the student would be failed; (3) being willing to accept any punishment that the student might face from the professor as a result of the

⁷ The fact that the exam was turned in on Tuesday and emailed to the professor on Saturday is irrelevant since it was due Friday at 3:42 pm; any time over would result in a violation of the time restrictions, which we

violation; and (4) presenting the problem faced and seeking to find a remedy to it by seeking both the advice of the professor and the registrar. Second, there is considerable evidence in this case that the student's behavior was affected by confusion regarding what the rules required. Specifically, (1) the student's grasp of English is far from perfect; (2) the professor told the class to e-mail their exams to the professor if they encountered problems with getting a time stamp (which is what the student apparently attempted to do); (3) it is unclear if there was an L.L.M. orientation that explains how the self-scheduled exam system works,⁸ and (4) the student's conduct on the day of the exam and thereafter (e.g. requesting the registrar for more time even though the registrar did not have authority to give more time; e-mailing the exam to the professor; attempting to turn in the exam the following morning) indicate that the student failed to understand what was required of the student. Aside from the action taken by the student, the Council also considered an ambiguous document (Exhibit D-4) that had been presented to all LLM/K students that seemingly stated that violations of exam time limits would be referred to the professor for the professor's evaluation and decision. Finally, the Council heard testimony from the professor that the student was conscientious, involved in the class, and had overall good character.

In short, this case is qualitatively different from those cases in which the Judicial Council has previously imposed a suspension, a permanent notation, or a temporary notation.⁹ Instead, the Council believes that the student would best be served by an academic penalty, specifically a

decided was the "conduct" required within the meaning of the Honor Code.

⁸ Of course, it should be noted that over 20 other foreign students in the class were able to comply with the requirements of the self-scheduled exam system.

⁹ A temporary notation has been provided in two cases. See Judicial Council Opinion 99-1 (involving collaboration of legal writing memorandum where student copied facts section of memorandum from previous student); Judicial Council Opinion 82/83-1 (involving plagiarism on submission in joint writing competition). Thus, in each case, a temporary notation was given because the student copied portions of their work without attribution to the source. Unlike the students in Judicial Council Opinions 99-1 and 82/83-1, the student in this case did not engage in premeditated conduct that involved copying another person's work without attribution.

lowering of the student's grade, within the professor's discretion, based upon the Council's findings of fact in this case. In Judicial Council Opinion 01-006, the Council imposed a similar penalty (leaving ultimate punishment up to the professor) where the student plagiarized 29-35% of a research paper for a class. The Review Council amended the penalty and provided for a one-semester suspension and a permanent notation on the student's transcript. See Review Council Opinion 2002-1. Leaving the penalty up to the professor was inappropriate in that case because precedent clearly mandates that plagiarism requires a minimum penalty of a permanent notation on the student's transcript, which is a "brief but specific description of the penalized conduct." *Id.*

This case is nothing like Judicial Council Opinion 01-006. The student in this case did not plagiarize or otherwise copy anyone else's work. The student did not collaborate with anyone else on the exam. The student did not use materials not permitted on the exam. Instead, the student turned in a self-scheduled exam late and took responsibility for that fact from the beginning. The student did not attempt to hide the fact that the exam was late. The student even contacted the professor directly, conceding that the test may be failed, and essentially begged the professor to at least accept the exam instead of failing it. Thus, leaving the punishment up to the professor is not precluded in this case by Review Council Opinion 2002-1.

In sum, based on Judicial Council and Review Council precedent, and the several mitigating circumstances of this case, the Judicial Council recommends the following penalty: the student's grade on the self-scheduled exam shall be lowered, within the professor's discretion, based upon the Council's findings of fact in this case.¹⁰

¹⁰ Importantly, the Judicial Council is not saying that in all cases of exam time limit violations the punishment should always be levied by the professor. However, based on the facts and circumstances discussed previously, in this particular case it is justifiable. The Judicial Council reserves the right to impose a harsher penalty in future

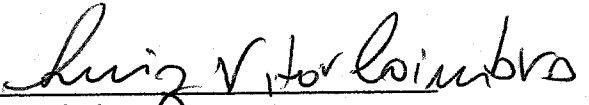
VI. Conclusion

The Judicial Council finds the defendant guilty beyond a reasonable doubt of violating Art. I., § 2(g) of the Honor Code by knowingly engaging in conduct with the purpose of avoiding or circumventing the self-scheduled exam time restrictions. The Judicial Council's recommended penalty is that the student's grade be lowered by the professor, within the professor's discretion, based upon the Judicial Council's findings of fact in this case.

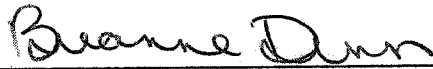
cases where the facts and circumstances warrant the same. For instance, if the evidence in a future case indicated premeditation, there would be a compelling case for a harsher penalty, such as a notation on the student's transcript.



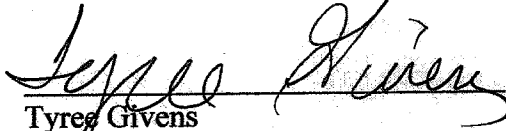
Jeremy Polk, Chairperson



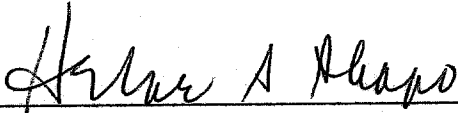
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