

# Judicial Affairs

## Statement of Principles and Procedures

- I. Introduction.
- II. Overall Organization of the Judicial System
- III. The Honor and Ethics Council
  - A. Function
  - B. Composition
  - C. Student Members
  - D. Faculty and Administrative Members
  - E. Assignment of Members to Cases.
- IV. Board of Investigators and Advisors
  - A. Function
  - B. Composition
  - C. Selection.
- V. Judicial Co-Chairs
  - A. Function
  - B. Responsibilities
  - C. Election.
- VI. Standards for Academic Honor and Community Responsibility
- VII. Standards of Conduct for Members of the Judicial System
  - A. Code of Ethics for Members of the Honor and Ethics Council
  - B. Oath for Members of the Honor and Ethics Council
  - C. Code of Ethics for Members of the Board of Investigators and Advisors
  - D. Oath for Members of the Board of Investigators and Advisors
- VIII. Felonies
  - A. Procedures
  - B. Sexual Assault.
- IX. Procedures of the Honor and Ethics Council
  - A. Honor Code Violations
  - B. Reporting Accusations
  - C. Case Assignment and Investigation
  - D. Rights of the Accused Student in Honor and Ethics Council Hearings
  - E. The Hearing
  - F. Mistrials
  - G. Appeals
  - H. Records and Reporting.
- X. The Interim Judicial Process
  - A. Purpose
  - B. Procedure
  - C. Rights of the Accused Student in the Interim Judicial Process
  - D. Credit
  - E. Appeals
  - F. Records and Reporting
- XI. Contempt of the Judicial Process
  - A. Violations
  - B. Appeals
- XII. The Judicial Conference and Judicial Officer
  - A. The Judicial Conference
  - B. The Judicial Officer

### **I. Introduction.**

The Judicial Council was established by the Board of Trustees and assigned the responsibility, as stated in its Constitution [II.A], "to establish and direct the undergraduate judicial system so as to insure justice and due process to all members of the undergraduate academic community". The Constitution also states that "the Judicial Council shall have the power to adopt further procedures consistent with the provisions of this document" [II.D]. The present document is intended to summarize and explain the undergraduate judicial system as now constituted by the action of the Judicial Council. As it presents this system, the Council reaffirms both its strong commitment to guaranteeing justice to all members of the community and also its expectation that all members of the community will hold themselves to the highest standards of honorable and ethical behavior.

### **II. Overall Organization of the Judicial System.**

The judicial system contains three principal bodies: the Honor and Ethics Council, the Board of Investigators and Advisors, and the Judicial Council. The Honor and Ethics Council is the central deliberative body in the system. It is responsible for adjudicating all honor and conduct cases, which are not heard administratively. The Board of Investigators and Advisors has two functions: members of this board both investigate and present cases before the Honor and Ethics Council and also advise and represent accused students in all phases of an investigation and hearing. The Judicial Council (among its other responsibilities) hears appeals from the Honor and Ethics Council, according to procedures set forth in its Constitution.

**Note:** The Dean of Student Services may hear conduct cases administratively without referral to the judicial system when the penalty will not exceed

50 hours of community service. Normally these cases involve allegations of underage drinking, illegal possession of alcohol or public intoxication, unauthorized activity, pyrotechnic use or possession, and campus solicitations. Moreover, by resolution of the University Board of Trustees, the Dean of Student Services is authorized to hear and determine all cases involving student social conduct offenses which the Dean has reason to believe were committed by a student who was under the influence of alcohol or drugs. If upon investigation, the Dean of Student Services determines that the offense was not committed by an offender under the influence of alcohol or drugs, the Dean will refer the offense for other appropriate procedures within the undergraduate judicial system. In hearing these cases the Dean acts in accord with hearing practices set forth in the Student Handbook: see 'Hearing Practices for Students Before University Officers'. The Dean or the Dean's designee may invoke all necessary and appropriate sanctions and conditions ranging from warning and mandated counseling to expulsion. Suspension and expulsion actions must be reviewed and endorsed by the Vice-President for Student Life. Appeals from the determination of the Dean are to the Judicial Council.

### **III. The Honor and Ethics Council.**

#### **A. Function.**

As stated above, the Honor and Ethics Council is the central deliberative body in the judicial system. It is responsible for adjudicating all honor and conduct cases which are not heard administratively. Its task is to find the truth and render fair judgments.

#### **B. Composition.**

For any given hearing, the Honor and Ethics Council is composed of seven persons: four (4) undergraduate students, two (2) faculty members, and one (1) person from the administration. These persons are drawn from larger pools. The student and faculty pools consist of twelve (12) persons each; the administrative pool is defined from year to year.

#### **C. Student Members.**

1. The twelve students who serve on the Honor and Ethics Council will be elected yearly by the student body from a slate of candidates drawn up by a Judiciary Election Committee (defined below). Among the twelve student members there will be three seniors, four (4) juniors, three (3) sophomores, and two (2) freshmen.
2. The Judiciary Election Committee will be made up of seven members: the President of Student Government (who will serve as Chair), the Speaker of the House of the Student Government Legislature, two members of the Student Government Legislature to be elected by the Legislature, the two Judicial Co-Chairs, and one student member of the Judicial Council to be chosen by the Judicial Council.
3. The Judiciary Election Committee will be responsible, under the supervision of the Judicial Council, for devising an appropriate procedure for drawing up the slate. But in general, it will be a process of application by interested students and screening by the Committee.
4. Campaigning will follow guidelines established by the Judiciary Election Committee in consultation with the Judicial Council. Campaigning will be for the purpose of the dissemination of information and will be restricted to public forums in which candidates speak about their qualifications and positions and/or to written statements of these qualifications and positions to be published in appropriate media.
5. Election of new student members will take place in the latter part of the spring term for the following academic year. The Judiciary Election Committee will present to the student body a slate consisting of six rising seniors, eight rising juniors, and six rising sophomores. In the election, voting will be by class: rising senior students will vote for three candidates, rising juniors for four, and rising sophomores for three. The three rising senior candidates with the most votes will be elected, and likewise the four rising juniors and three rising sophomores.
6. Freshmen members will be elected in the fall term as soon as possible after the election for Student Government Legislature. The Judiciary Election Committee will be responsible for presenting to the freshman class a slate consisting of four freshmen. In the election, students will vote for two candidates. The two candidates with the most votes will be elected.
7. All applicants for membership on the Council (except for the freshmen elected in the fall) must have, at the time of application, a Wake Forest GPA of no less than 2.0, and no honor code violations. Applicants must also disclose to the Judiciary Election Committee any judicial offenses on their records. Such offenses may be grounds for disqualification, at the discretion of the Judiciary Election Committee.
8. At any given time, a student may serve on only one of the following: the Honor and Ethics Council, the Board of Investigators and Advisors, and the Judicial Council. However, students may apply at the same time for membership on the Honor and Ethics Council and the Board of Investigators and Advisors (cf. Section IV.C).
9. Students are elected to the Honor and Ethics Council for one academic year, but may serve any number of terms. Current members who wish to continue for another year must reapply, secure reappointment to the slate, and be reelected.

#### **D. Faculty and Administrative Members.**

1. Faculty appointments to the Honor and Ethics Council are the responsibility of the Dean of the College. Faculty are appointed to three-year terms, staggered so that only one-third are new to the Council each year. There will therefore be a total pool of twelve members at any one time. Faculty will not ordinarily serve on both the Honor and Ethics Council and the Judicial Council. No person shall hear a case before the Honor and Ethics Council and also its appeal before the Judicial Council.
2. The Vice-President for Student Life and Instructional Resources will be responsible each year for designating the administrative members to serve on the Honor and Ethics Council. In contrast to faculty and student members of the Council, the administrative members may serve concurrently on the Honor and Ethics Council and the Judicial Council, subject to the restriction indicated above, that no person shall hear a case before the Honor and Ethics Council and also its appeal before the Judicial Council. The Vice-President may also appoint faculty members (including emeriti faculty) with significant experience in the Wake Forest judicial system to fill administrative positions on the Council.

#### **E. Assignment of Members to Cases.**

All members of the Honor and Ethics Council have equal standing and will in principle be competent to hear any case. Assignment of individuals to a particular hearing panel by a Co-Chair will generally be based on availability and equal distribution of the caseload. However, the need to avoid conflicts of interest will be proper grounds for the Co-Chair to choose or to eliminate a member in a

particular case.

#### **IV. Board of Investigators and Advisors.**

##### **A. Function.**

The Board of Investigators and Advisors has two principal functions: 1. Members of the Board investigate and present cases before the Honor and Ethics Council; 2. Members of the Board also advise and represent accused students in all phases of an investigation, hearing, and appeal. For each case, one member of the Board is assigned to one of these tasks and another to the other. Members of the Board may also advise and represent accused students in administrative hearings. (In hearings of both types, the accused may decline the assistance of an advisor and may speak for himself or herself during the hearing.)

##### **B. Composition.**

The Board of Investigators and Advisors is composed of twelve undergraduate students.

##### **C. Selection.**

1. The twelve members of the Board are appointed yearly by the Judiciary Election Committee. Freshmen are not eligible for membership. There are no restrictions on how the twelve members are distributed among the other three classes.
2. The Judiciary Election Committee that appoints the Board of Investigators and Advisors is the same body that draws up the slate of candidates for the Honor and Ethics Council.
3. The procedure for appointment shall be as follows: the Judiciary Election Committee will receive all applications for membership on the Honor and Ethics Council and the Board of Investigators and Advisors at the same time. Following procedures that it has devised in consultation with the Judicial Council, it will then screen the applicants for membership on the two bodies. The Committee will then appoint the twelve members of the Board of Investigators and Advisors. After that Board is established, the Committee will draw up the slate of candidates for the Honor and Ethics Council as set forth above.
4. Students may apply for membership on the Honor and Ethics Council, or the Board of Investigators and Advisors, or both. If the application is to both, appointment to the Board of Investigators and Advisors or to the slate of candidates for the Honor and Ethics Council will be at the discretion of the Judiciary Election Committee.
5. All applicants for membership on the Board of Investigators and Advisors must have, at the time of application, a Wake Forest GPA of no less than 2.0, and no honor code violations. Applicants must also disclose to the Judiciary Election Committee any judicial offenses on their records. Such offenses may be grounds for disqualification, at the discretion of the Judiciary Election Committee.
6. Students are appointed to the Board of Investigators and Advisors for one academic year, but may serve any number of terms. Current members who wish to continue for another year must reapply and secure reappointment.

#### **V. Judicial Co-Chairs.**

##### **A. Function.**

The Judicial Co-Chairs are two undergraduate students. They, in conjunction with the Judicial Officer, have broad responsibility for the proper functioning of the judicial system, and in particular of the Honor and Ethics Council and the Board of Investigators and Advisors. [For the Judicial Officer, cf. Section XII.]

##### **B. Responsibilities.**

1. The Co-Chairs meet at least once a week with the Judicial Officer in a Judicial Conference. The Judicial Conference determines how relevant cases are to be handled. It is also the Judicial Conference that makes any formal charge. If it is determined that a case is to proceed to a hearing before the Honor and Ethics Council, the Conference assigns the case to one member of the Board of Investigators and Advisors for investigation, appoints one member of the Board of Investigators and Advisors to be the advisor to the accused, and determines which Co-Chair will have primary responsibility for the case. The Co-Chair may consult with the accused in appointing an advisor.
2. During the time of the investigation, the Co-Chair is the coordinator for all involved, including, particularly, the investigator, the advisor, and the accused. At the appropriate time, the Co-Chair makes arrangements for the hearing. This includes designating the seven members of the Honor and Ethics Council who will hear the case. In selecting these members, the Co-Chair may appropriately consult with the other Co-Chair and with the Judicial Officer.
3. During the hearing, the Co-Chair presides and may participate freely in the questioning. But he or she will not be present at deliberations, and will not have a vote.
4. The Co-Chair should always bear in mind that the purpose of the hearing is to establish the truth of the case. The presiding Co-Chair has the primary responsibility for keeping the proceedings directed toward that end.
5. In the event of an appeal, the Co-Chair may be asked to present an account of the case to the Judicial Council.
6. At the end of the academic year, the Co-Chairs will present a formal report to the Judicial Council on the year's work.

##### **C. Election.**

1. Toward the end of the spring term, one new Co-Chair will be elected from among and by the current student members of the Honor and Ethics Council. The current Co-Chair who was himself or herself elected from the Honor and Ethics Council originally will be responsible for holding the election, and will have a vote. There will therefore be thirteen voting members. Any current student member of the Honor and Ethics Council may be a candidate, as may the current Co-Chair, if he or she will be returning for the next year.
2. At the same time and in the same way, the second new Co-Chair will be elected from among and by the current members of the Board of Investigators and Advisors. The current Co-Chair who was himself or herself elected from the Board of Investigators and Advisors originally will be responsible for holding this election, and will have a vote. There will

therefore be thirteen voting members. Any current member of the Board of Investigators and Advisors may be a candidate, as may the current Co-Chair, if he or she will be returning for the next year.

3. These elections must precede the appointment of the next year's members of the Board of Investigators and Advisors by the Judiciary Election Committee and the election of the next year's members of the Honor and Ethics Council.

## **VI. Standards for Academic Honor and Community Responsibility.**

1. Wake Forest considers adherence to the honor code and maintenance of a sense of social and community responsibility to be integral to the mission of the University. The honor code concerns itself primarily with the academic integrity of the institution and its students, and covers cheating, deception, stealing, plagiarism, dishonesty, and contempt, in the academic context. Conduct cases involve violations of the University's standards of community responsibility.

2. Wake Forest's standards for academic honor are applicable to the student in every academic pursuit, whether on campus or off. Any act committed while engaged in an academic endeavor, which violates these standards, becomes a proper subject for review by the judicial system.

3. Wake Forest does not actively monitor the social actions of students beyond the University campus. However, in community responsibility cases the scope of the University's authority reaches beyond the campus when a student's conduct adversely affects the integrity of the Wake Forest student body or threatens the health, safety, or welfare of other members of the Wake Forest community. The University's standards of community responsibility extend to circumstances in which students attend Wake Forest events, participate in University sponsored off-campus educational and social programs, use University property, represent the University, or participate in any activity in which a student's identity is clearly associated with the name of the University or any of its affiliated groups.

## **VII. Standards of Conduct for Members of the Judicial System.**

### **A. Code of Ethics for Members of the Honor and Ethics Council.**

1. A member's public and official behavior should be beyond reproach and free from impropriety or the appearance of impropriety.

2. No member should mention, comment upon, or discuss a case in any manner except when the Council itself is sitting to consider the case. This applies to both open and closed proceedings. When the accused has elected an open hearing, the Judicial Co-Chair in charge of the case or the Judicial Officer may discuss issues publicly raised by the accused.

3. A member should refrain from learning about the case prior to the hearing.

4. A member should not be swayed by partisan demands, public clamor, or consideration of personal popularity or notoriety, nor be apprehensive of unjust criticism.

5. A member should disqualify himself/herself from a case if it can be reasonably inferred that he/she is incapable of rendering an impartial judgment.

6. When considering a case, a member should always bear in mind that he/she is deciding whether a particular University policy, regulation, or statute has been violated. A member, however, should consider the welfare of the individual and the integrity of the College community in setting sanctions for violations.

7. Violations of this Code of Ethics should be reported to the Judicial Council.

### **B. Oath for Members of the Honor and Ethics Council.**

Each newly elected student member of the Honor and Ethics Council, on an individual basis, will take the following oath to be administered by the Dean of the College or his/her designate:

*"I do solemnly affirm that I will work to the best of my ability as a member of the Honor and Ethics Council to render fair judgments, that I will observe the Code of Ethics, that I will adhere to the University's judicial policies and to the rules and regulations of the University, and that I will always be mindful of the interests of the student, as well as the interests of the University and the public."*

### **C. Code of Ethics for Members of the Board of Investigators and Advisors.**

1. A member's public and official behavior should be beyond reproach and free from impropriety or the appearance of impropriety.

2. A member should always bear in mind, both when investigating a case and presenting it before the Honor and Ethics Council and when advising an accused student, that his/her primary responsibility is to discover the truth and to present the facts of the case to the Honor and Ethics Council in a clear and cogent manner.

3. A member should represent accused students to the best of his/her ability within the bounds of Wake Forest University policies and procedures.

4. A member should not knowingly advance a claim or defense if it cannot be supported by a good faith argument based upon University policies and procedures.

5. A member should maintain and protect confidential information concerning the accused student unless the disclosure is permitted by the student, the disclosure is necessary to carry out good faith representation, or the information concerns criminal activity unrelated to conduct giving rise to the charges under review.

6. A member should not knowingly conceal or obstruct access to facts or evidence necessary for consideration of a case, make a false statement, use perjured testimony, or counsel a student in conduct which he/she knows is unlawful or a violation of University policy.

7. A member should not discuss the case or cause another to discuss the case with any member of the hearing panel. It is expected that the two members appointed to a particular case, one to investigate and one to advise, will be in regular communication about investigation, both with each other and with the Co-Chair.

8. Violations of this Code of Ethics should be reported to the Judicial Council.

## **VIII. Felonies**

### **A. Procedures.**

Cases concerning charges which give rise to criminal felony charges in local, state, and federal courts are referred to the Vice-President for Student Life and Instructional Resources who determines whether the case should be referred to the appropriate hearing panel, delayed pending the outcome of criminal proceedings, or heard administratively. Cases heard in an administrative hearing by the Vice-President for Student Life and Instructional Resources can be appealed to the Judicial Council.

### **B. Sexual Assault.**

In cases of sexual assault, whether heard in an administrative hearing or by the Honor and Ethics Council, the alleged victim may be accompanied by a Wake Forest student, faculty member, or staff member designated by the Policy Group on Rape Education, Prevention, and Response Board (PREPAR) and chosen by the alleged victim.

## **IX. Procedures of the Honor and Ethics Council.**

### **A. Honor Code Violations.**

Cheating, plagiarism, stealing, deception, academic misconduct, and contempt are considered violations of the honor code. These terms should be construed to have their ordinary, non-legal meaning.

1. The term "cheating" includes:

- a. providing or receiving unauthorized assistance in academic endeavors (e.g., quizzes, tests, examinations, reports, term papers),
- b. use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments, or
- c. the use, without permission, of tests or other academic material belonging to a member of the University faculty or staff.

2. "Plagiarism" is a type of cheating. It includes:

- a. the use, by paraphrase or direct quotation, of the published or unpublished work of another person without complete acknowledgment of the source,
- b. the unacknowledged use of materials prepared by another agency or person providing term papers or other academic materials,
- c. the non-attributed use of any portion of a computer algorithm or data file, or
- d. the use, by paraphrase or direct quotation, of on-line material without complete acknowledgment of the source.

When faced with conflicting definitions of plagiarism during a case, the Honor and Ethics Council will adopt the definition established for use in the department/course by the department or professor involved in the case.

3. The term "stealing" includes

- a. the unauthorized taking, misappropriation, or possession of any property belonging to, owned by, or maintained by the University, an organization, or another individual, or
- b. the possession, retention, or disposal of stolen property.

4. The term "deception" includes any false or deceiving representation. In the academic context, such representations include:

- a. any attempt to avoid meeting the stated course requirements, such as making false statements to avoid taking examinations at the scheduled times or to avoid turning in assignments at the scheduled times,
- b. listing sources in a bibliography not directly used in the academic exercise, or
- c. submitting falsified, invented, or fictitious data or evidence, or concealing or distorting the true nature, origin, or function of data or evidence.

In the social context, deceptive representations include:

- a. making a false statement to a University official, including Residence Advisors, or
- b. presenting a false identification.

5. The term "academic misconduct" includes

- a. the violation of University policies by tampering with grades,
- b. taking part in obtaining or distributing any part of an unadministered academic exercise,
- c. any attempt to gain access or to aid another in gaining access to any computer account other than one's own without proper authorization, or
- d. any attempt to gain access or to aid another in gaining access, without proper authorization, to department offices, faculty offices, laboratories, or any other place where unadministered assignments are kept.

6. The term "contempt" includes

- a. instances of perjury (giving false testimony), or
- b. acts which otherwise obstruct the judicial process.

**Note:** Cheating, stealing, making false or deceiving statements, plagiarism, vandalism, and harassment are just as wrong when done in the context of computing as they are in all other aspects of University conduct.

### **B. Reporting Accusations.**

1. Violations are reported to the Judicial Officer or to the Dean of the College in writing within ten (10) school days of the date on which a breach of the honor system comes to the attention of the student, faculty member, or University official reporting the incident. All reports must be signed and must answer four questions:

- a. What is the nature of the alleged violation?
- b. Who did it?
- c. When and where did it occur? and
- d. How did it come to the attention of the person reporting it?

2. The accused must be informed in writing of the accusations at least twenty-four hours before the investigator begins the

investigation. The accused may waive this right and allow the investigation to begin immediately.

**Note:** Not every complaint of student misconduct is worthy of invoking the full processes of the judicial system. Complaints filed by faculty or staff in honor cases to the Dean of the College should require the Dean's authorization for passage to the Honor and Ethics Council. The Judicial Council affirms the Dean's authority in these circumstances to decide whether such charges are worthy of full hearing by the judicial system, or whether other appropriate means of resolving the controversy should be utilized. Upon notification to the parties of an impending investigation, time and filing limitations may be extended for a reasonable period not to exceed 20 days for the purposes of the Dean's investigation and consideration. During this period mediation, fact-finding, and discussions with the parties may take place. In cases where suspension or expulsion is not at issue, the Dean possesses the authority to refuse to submit charges to the Honor and Ethics Council by informing it of the nature of possible charges and the decision not to forward charges.

### **C. Case Assignment and Investigation.**

1. The Judicial Conference determines how relevant cases are to be handled. It is also the Judicial Conference that makes any formal charge. If it is determined that a case is to proceed to a hearing before the Honor and Ethics Council, the Conference assigns the case to one member of the Board of Investigators and Advisors for investigation, appoints one member of the Board of Investigators and Advisors to be the advisor to the accused, and determines which Co-Chair will have primary responsibility for the case. The Co-Chair may consult with the accused in appointing an advisor. [Cf. Section V.B.1.]
2. During the course of the investigation, the Co-Chair assigned to the case coordinates the pre-hearing process in a way that assures complete and thorough investigation, makes arrangements for the hearing, and designates the seven members of the Honor and Ethics Council who will hear the case.
3. The accused is informed of the results of the investigation and of the charges. Within five (5) school days after charges are brought, the Co-Chair sets a date for the hearing.
4. If a hearing is held, the investigator presents his/her findings to the Honor and Ethics Council.

**Note:** The results of an investigation may lead to charges being dropped or modified. In order to assure that only those cases, which have merit, proceed to hearing, the accused should endeavor to cooperate with the investigator in answering all questions pertaining to his/her investigation of the case. In hearing appeals the Judicial Council will consider an accused student's unwillingness to cooperate with an investigator as representing a lack of good faith in supporting the truth-finding process, and will impose upon him/her the burden of proving to the Judicial Council's satisfaction that the initial hearing was unfair.

### **D. Rights of the Accused Student in Honor and Ethics Council Hearings.**

1. The student has the right to counsel. The person chosen to act as counsel must be a currently enrolled undergraduate Wake Forest student. A student may always choose to represent himself/herself.
2. The student shall not be compelled to testify, and the failure to testify shall not be held against him/her. The investigator shall not comment on the student's failure to testify.
3. The student shall be informed of the investigation after the appointment of the investigator.
4. The student shall be informed of the results of an investigation of which he/she is the subject.
5. No hearing shall take place sooner than five (5) school days after the student is notified of the charges. The student may waive this right for purposes of expediency. If a student wishes to waive this right, he/she must submit a written request to either the investigator or the chairperson and sign a waiver statement.
6. The student has the right to choose between an open and a closed hearing.

**Note:** "Open hearing" is defined as a hearing at which the following are present: all necessary parties for a decision, one or two undergraduate student staff members of the Old Gold and Black, the chair of the Student Government Judiciary Committee, any member of the Judicial Council, and up to twelve Wake Forest undergraduate students, six of whom may be designated by the accused and six of whom by the complaining party(ies). The request for an open hearing must be presented in writing to the appropriate chairperson no less than three (3) school days before the scheduled meeting.

7. The student has the right to be present at all times and at all phases of the hearing except deliberation.
8. The student has the right to request that the hearing be reopened upon the written presentation of germane new evidence. The Judicial Co-Chairs shall determine whether the hearing will be reopened.
9. The student has the right to appeal any decision to the Judicial Council.

### **E. The Hearing.**

1. The hearing panel for each case consists of seven (7) members of the Honor and Ethics Council. Each panel is composed of four (4) undergraduate students, two (2) faculty members, and one (1) person from the administration. These persons are appointed by the Co-Chair from the larger pools of members. [Cf. Section III.B.]
2. The assigned Co-Chair presides at the hearing and may participate freely in the questioning, but he or she will not be present at deliberations, and will not have a vote. The hearing is held within a reasonable period of time, but not before five (5) days after the notification of charges. If a closed hearing is held, only the presiding Co-Chair, the investigator, members of the Honor and Ethics Council, the accused, and his/her advisor may be present. As appropriate, the advisor acts as spokesperson for the accused. A witness may be present only during his/her testimony. In cases where more than one individual is charged with a violation arising out of a single incident, each student may request an individual hearing. The request should be presented to the presiding Co-Chair in the form of a written statement at least five (5) days in advance of the hearing date. The Co-Chair presents the petition to the Judicial Conference. The Judicial Conference decides whether the petition is granted. In cases where there are several charges arising from a single incident and no requests for

individual hearings are made, the Judicial Conference determines whether the individuals are heard together or separately.

3. The Honor and Ethics Council has the power to require the presence of the accused and witnesses and to obtain articles and documents of evidence within the Wake Forest community. If a student who is requested to appear through direct oral or written communication from the Co-Chair or the investigator does not appear, he/she may be found in contempt of the judicial process.

4. Signed statements may be introduced as evidence, but only if the witness whose statement is submitted is unavailable for the hearing. The Co-Chair must approve the absence of a necessary witness in order for a statement from that person to be admissible. The party who intends to offer such a statement must present a copy of the statement to the other party and to the Co-Chair at least twenty-four (24) hours before the hearing.

**Note:** The absence of a witness does not necessarily compromise a fair hearing or automatically present grounds for a mistrial. Written statements can and should be utilized at hearings where a witness for good cause cannot attend the hearing. Only where the witness's testimony is critically essential to an understanding of the case and a written statement cannot be obtained, should a mistrial be considered or an appeal granted. Both the accused and the investigator must explain to the hearing chair the need for calling a witness to testify and the expected testimony of each witness. The hearing chair should refuse to compel the attendance of any witness whose presence appears unnecessary, repetitive, or irrelevant to decide the case.

5. Each party may request witnesses to testify during the presentation of evidence in the case. The accused and the investigator should submit a list of witnesses at least five (5) school days before the hearing. During the hearing, witnesses may be questioned by the investigator, the accused, the Co-Chair, and the members of the Honor and Ethics Council.

6. In an opening and a closing statement, the investigator and the accused are entitled to summarize the facts as viewed from their perspective, to suggest lines of inquiry which should be pursued by the hearing panel, to make observations consistent with the testimony or anticipated testimony of witnesses, and to advance a plausible theory of the case.

7. The Co-Chair keeps order during the hearing, rules on the relevancy of evidence, and asks questions of the witnesses. In his/her rulings, he/she should be guided by principles of reasonableness and fairness, and not by the technical rules of the civil or criminal law.

8. The Co-Chair has the authority to declare a recess at an announced time. Objection to a recess by the accused or the investigator can be overruled only by a five-sevenths vote of the panel. During a recess, the panel shall not comment about or discuss the case.

9. The hearing procedure is as follows:

Prior to the hearing, the panel reviews reports and documents concerning the case.

- a. The Co-Chair begins the hearing by informing the accused of his/her rights in the hearing and asking him/her to acknowledge his/her understanding of the rights. The Co-Chair then reads the charge(s) against the accused and asks him/her to enter a plea of guilty or not guilty.
- b. If the plea is not guilty, first the investigator and then the accused may each make an opening statement to the panel.
- c. After the opening statements, the Co-Chair calls witnesses requested by the investigator and the accused.
- d. Each witness is sworn in by an affirmative response to the following: "Do you solemnly (swear or affirm) that, to the best of your knowledge, the information you are about to give is the whole truth?"
- e. After a witness has been sworn in, under the direction of the Co-Chair, the witness may be questioned by the investigator, by the accused, and by members of the panel. The purpose of the questioning is to discover the truth. The Co-Chair will encourage questions that tend toward that goal; he/she will disallow questions that are irrelevant, unnecessary, or repetitious.
- f. When questioning of a witness is complete, the Co-Chair instructs the witness to remain available until the hearing is complete. A witness may be dismissed if all present agree that the witness will not need to be recalled.
- g. After all witnesses have been questioned, the Co-Chair recalls any witness requested by the panel. The Co-Chair also recalls witnesses requested by the investigator or the accused if he/she rules that the questions to be asked are relevant and necessary.
- h. When all witnesses have been questioned, first the investigator and then the accused may each make a closing statement.
- i. After the closing statements, the Co-Chair reminds the panel of the charges, and states that only evidence relevant to the subject of the hearing may be considered in establishing guilt, and that in order to find the accused guilty, five-sevenths of the panel must believe beyond a reasonable doubt that the charges are true. The Co-Chair may not comment on any of the evidence.
- j. After the Co-Chair has made his/her statement, the panel withdraws to deliberate and to make its decision by secret ballot. The Co-Chair is not present for this deliberation. Instead, he/she designates one of the four student members on the hearing panel to preside over the deliberations. This person participates freely in the discussion, but has the added responsibility of insuring that the deliberations proceed in an orderly and appropriate manner. In voting, this person has the same status as the other six members of the panel. If the panel subsequently considers a sanction, this person continues to preside in the same capacity. In the event of an appeal, he/she may be asked to appear before the Judicial Council.
- k. In cases involving the charge of deception, the hearing panel may rule that the charge is not worthy of an honor offense.

10. A five-sevenths majority is required for a decision regarding guilt or innocence. Upon reaching a decision, the panel reports it to the Co-Chair. The Co-Chair calls back together the investigator, the accused and his/her advisor, and the panel and reports the decision to the accused.

### **Sanctioning**

a. If the accused has been found or pled guilty, the investigator and the accused, in that order, suggest to the panel a sanction appropriate to the violation and give reasons for their recommendations. The investigator and the accused may present evidence to support their recommendations. If evidence or testimony is to be presented, the presentation proceeds as outlined above.

b. After hearing evidence, testimony, and final recommendations regarding sanction, the panel withdraws for deliberations. The panel considers an appropriate sanction, and will adhere to any presumptive sanction authorized by University policy unless the panel finds the presence of unusual circumstances that warrant deviation from the presumptive sanction. Panels not imposing presumptive sanctions should be prepared to defend their decision.

c. The presumptive sanction for violation of the honor code shall consist of a suspension from the University for a full academic semester (summer

sessions excluded). When mitigating factors outweigh aggravating factors, the presumptive sanction may be reduced. When aggravating factors outweigh mitigating factors, the presumptive sanction may be increased.

Mitigating factors which may be considered by the hearing panel include:

- i. Evidence that the offender acted in a negligent rather than purposeful manner in committing the offense;
- ii. Evidence that the presumptive sanction will cause hardship well beyond what the average student would endure;
- iii. Evidence that the offender made a genuine attempt to rectify a wrong committed and to make restitution before the offense was brought to the attention of judicial authorities;
- iv. Evidence that the offender confessed wrongdoing before the hearing began.

Aggravating factors which may be considered by the hearing panel include:

- i. Evidence of prior offenses of University policy;
- ii. Evidence that the offender attempted to conceal the offense from recognition by the community;
- iii. Evidence that the offender attempted to wrongfully influence the investigation or the judicial process;
- iv. Evidence that the offender refused to cooperate with the investigation and hearing of the case;
- v. Evidence that the offender does not appreciate the nature or gravity of the offense;
- vi. The seriousness of the offense.

- d. The minimum penalty for any violation of the honor code is probation. A sanction of probation means that the student shall not represent the University in any official or established capacity.
- e. The sanction for cheating also includes a recommendation to the Committee on Academic Affairs that a grade of F be assigned in the course involved. A grade of F assigned by the Committee on Academic Affairs as a result of an honor violation and at the request of the hearing panel remains on the record of the student even if the course involved is repeated for credit. The hearing panel may, however, when making its recommendation to the Committee on Academic Affairs, request that an assigned F be replaced upon successful repetition of the course involved.
- f. The penalty for a second violation of the honor system shall be expulsion unless the Honor and Ethics Council panel, by a five-sevenths vote, reduces the expulsion to suspension.
- g. A five-sevenths majority is required for a decision regarding a sanction. Upon reaching a decision, the panel reports it to the Co-Chair. The Co-Chair calls back together the investigator, the accused and his/her advisor, and the panel and reports the decision to the accused. The sanction is final unless the student appeals to the Judicial Council.

#### **F. Mistrials.**

1. Any violation of the rights of the accused under Article IV, Section 3 of the Constitution of the Student Government results in a mistrial, and a new hearing is scheduled.
  2. When an accused student believes that a violation of rights has occurred prior to the hearing, he/she should present the complaint before the hearing commences. When the accused believes that a violation of rights has occurred during the hearing, he/she may present the complaint before the conclusion of the hearing. Any complaint should be presented to the hearing panel Co-Chair, who will decide after consultation with the hearing panel whether there is sufficient reason for granting a mistrial.
  3. To present a complaint, the accused should specify the right under Article IV, Section 3 that has been violated, and the action that violated the right.
  4. If two mistrials are declared in the same case, the charge is dismissed.
- Note: Only substantial procedural error which prevents the continuation of a fair hearing constitutes appropriate grounds for granting a mistrial. Doubts about the appropriateness of granting a mistrial should be resolved in favor of allowing the hearing to proceed to judgment while reserving procedural issues for review by the Judicial Council.

#### **G. Appeals.**

1. All appeals are made to the Judicial Council by the accused student or his/her assigned advisor.
2. The accused student must present to the Judicial Council, at the Office of the Dean of the College, his/her appeal within ten (10) days following the decision by the Honor and Ethics Council.
3. Grounds for appeal from a decision of the Honor and Ethics Council are
  - (a) the fairness of the hearing,
  - (b) the sufficiency of the evidence to support the decision of the Council,
  - (c) the appropriateness of the sanction.
4. Where an appeal is allowed by the Judicial Council, the designated hearing Co-Chair and the student designated to preside over deliberations may be asked to appear as spokespersons for the Honor and Ethics Council.

#### **H. Records and Reporting.**

1. Taped records and written summaries of all investigations and hearings are kept in the Office of the Judicial Officer (or the Dean of the College). Records of closed hearings are available only to the members of the Honor and Ethics Council, the accused, the Judicial Officer, and Judicial Council members. Taped records must be kept for at least one year after the hearing or appeal, and written records are kept indefinitely. Records associated with Judicial Council hearings are kept by the Secretary of the Judicial Council.
2. After every closed hearing, the Judicial Officer reports to the Old Gold and Black the nature of the violation, the decision, and any sanction imposed. No names are divulged. In cases where the student elects an open hearing, the presiding Co-Chair may comment on issues publicly raised by the accused. No member of the Honor and Ethics Council or the Board of Investigators and Advisors may make any statements, public or private, pertaining to a case. The Old Gold and Black is allowed to report fully on any open hearing.
3. If the accused is found not guilty, all evidence and records pertaining to his/her case which mention his/her name are sealed and stored, and then destroyed at the end of the academic year.

#### **X. The Interim Judicial Process.**

##### **A. Purpose.**

During the time period beginning with the last day of classes in the spring semester and ending with the beginning of registration in the fall semester, and at any other time during which the Honor and Ethics Council is unavailable, the interim judicial process shall be presented as an option to any accused student to provide hearing and judgment.

##### **B. Procedure.**



1. The interim judicial process will provide a hearing before the Dean of the College or his/her designate in honor cases and the Dean of Student Services or his/her designate in community responsibility cases. In cases where the Dean chooses not to act alone due to the complexity or the severity of the case, he/she may choose to convene a panel composed of himself/herself, a student, and a faculty member. Students should be chosen from a list of qualified students identified by the Honor and Ethics Council as being available during the interim. Should none of these students be available, the Dean may choose any available student that he/she feels is qualified. Cases involving students electing the interim process will be investigated by a member of the Board of Investigators and Advisors if available, or another student appointed by the Dean.
2. When a student is charged, the appropriate Dean will assist the student in securing an advisor, if possible from the Board of Investigators and Advisors.
3. The Judicial Officer presents the charge against the student. Witnesses may be brought, but written statements are acceptable from witnesses unable to appear at the hearing.

#### **C. Rights of the Accused Student in the Interim Judicial Process.**

1. The student has the right to counsel, as in the normal hearing procedure. The person chosen to act as counsel must be a currently enrolled undergraduate Wake Forest student. A student may always choose to represent himself/herself.
2. The student shall not be compelled to testify, and the failure to testify shall not be held against him/her.
3. No hearing shall take place sooner than five (5) school days after the student is informed of the specific charges. The student may waive this right for purposes of expediency by signing a waiver statement.
4. The student has the right to be present at all times and at all phases of the hearing except deliberation.
5. The student has the right to request that the hearing be reopened upon the written presentation of germane new evidence. The Dean presiding over the interim judicial process shall determine whether the hearing will be reopened.
6. The student has the right to appeal any decision to the Judicial Council under the normal procedures of that body.

#### **D. Credit.**

If a student is enrolled in a course(s) while a judicial action is pending, credit for the course(s) may be withheld until the case is resolved.

#### **E. Appeals.**

Appeals can be based only on issues of the fairness of the hearing, the sufficiency of the evidence to support the decision, the appropriateness of the sanction, or the failure of the panel to follow the rules set forth in the establishment of the interim judicial process. Deviation of the interim judicial process from the normal procedures is not grounds for appeal.

#### **F. Records and Reporting.**

Taped and written outline records of all hearings are made by the Dean involved in the case and maintained by the Judicial Officer.

### **XI. Contempt of the Judicial Process.**

This regulation applies equally to all persons involved in the proceedings or hearing of the Honor and Ethics Council, the interim judicial process, administrative hearings, and the Judicial Council.

#### **A. Violations.**

The following constitute acts of contempt of the judicial process:

1. Failure to comply with the instructions or orders of a duly authorized judicial body or agent;
2. Failure to fully perform disciplinary measures imposed;
3. Perjury;
4. Failure to appear before the hearing panel or Judicial Officer;
5. Any act which obstructs or hinders the judicial process. Any judicial body or agent may issue a charge of contempt. Charges of contempt are to be referred to the Judicial Conference for further action.

#### **B. Appeals.**

Appeals from cases of contempt are to be heard in the same manner as other appeals.

### **XII. The Judicial Conference and Judicial Officer.**

#### **A. The Judicial Conference.**

1. The duties of the Judicial Conference include
  - (a) coordinating the work of the judicial system,
  - (b) determining the path that a case will take through the judicial system,
  - (c) planning and implementing orientation sessions for the Honor and Ethics Council and the Board of Investigators and Advisors under the supervision of the Judicial Council.
2. The Judicial Conference meets no less than once a week during the school year. The meeting time is established at the beginning of each year. [Cf. Section V.B.]

#### **B. The Judicial Officer.**

The Judicial Officer advises those involved in the judicial system and coordinates and facilitates the work of all judicial bodies. The Judicial Officer works with the Judicial Co-Chairs, Deans, and the Judicial Council to assure efficient and just operation of the judicial process. The duties of the Judicial Officer include

1. receiving reports from the Dean of Student Services regarding student community responsibility violations;
2. convening, hearing, and setting sanctions in all cases recommended to receive an administrative hearing;
3. assisting student investigators in their investigation of cases, which may include securing statements, documents, or reports; assuring that student advisors and the accused are provided with the same information;
4. maintaining all judicial records and case files;
5. assuring the satisfactory completion of sanctions;
6. assisting in the design and implementation of orientation and education programs for the Honor and Ethics Council and the Board of Investigators and Advisors;
7. acting as secretary of the Judicial Conference (ex officio member);

8. preparing reports to all relevant bodies/individuals which summarize judicial action;
9. teaching workshops about academic dishonesty and civic responsibility;
10. mediating disputes between parties which the Judicial Conference decides do not warrant a formal investigation.