

Attorney Guidelines for Student Representation

In order to best serve the student, your client, who is involved in a disciplinary matter at East Carolina University (“ECU”/“University”), the following information is provided:

As found in Section 1, Purpose Statement, and Section 1.2, Office of Student Rights and Responsibilities, of the ECU Student Code of Conduct (“Code”):

As an academic community, East Carolina University is dedicated to providing a safe and vibrant learning and working environment for all of its members....

The Office of Student Rights and Responsibilities (OSRR) foster student growth by promoting students’ awareness and understanding of their rights and responsibilities as community members. It addresses student conduct and creates developmental learning opportunities in an effort to engage students in ethical decision-making.

The student conduct process is not comparable to a court of law, criminal proceeding or civil proceeding and therefore the role of the advocate is dissimilar. The University’s process is not adversarial; its purpose is to educate the student and contribute to his or her ethical growth.

The student conduct process exists to resolve alleged violations of the Student Code of Conduct, the Academic Integrity Policy, as well as violations of the Campus Living Agreement. A student or student organization has the right to be represented by a licensed attorney or nonattorney advocate in an alleged violation of the Code. A student does not have the right to be represented by a licensed attorney or nonattorney advocate for any allegation of the Academic Integrity Policy. (NC General Statute 116-40.11)

If you have been retained to represent an ECU student, this guide will provide you with important information about the Code and your role in the process. The person making the complaint and/or the student respondent or student organization officially recognized by the University may retain a licensed attorney or nonattorney advocate at the complainant’s or student’s or student organization’s expense.

Attorneys or nonattorney advocates assisting students as they navigate the student conduct process are expected to familiarize themselves with the Code, which is available at <http://www.ecu.edu/PRR/11/30/01>. The Office of Student Rights and Responsibilities administers the student conduct process for the University.

The Student Code of Conduct outlines a violation flowchart which can assist in understanding the process.

Both the complainant and respondent are expected to participate in the student code of conduct process. If either party refuses to participate in the student conduct process, the disciplinary hearing will take place in the absence of the non-participating party.

For all disciplinary hearings where a licensed attorney representing a complainant or respondent is present, an attorney from the ECU Office of University Counsel may be present.

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This document was adapted from “Attorney Guidelines for Student Representation” prepared by the Dean of Students Office at University of North Dakota, 2011 as well as the UNCG Guide for Attorney/Nonattorney Advocates

Pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA), and its implementing regulations, the Office of Student Rights and Responsibilities and Campus Living cannot discuss a student's record with an outside agent without written permission granted by the student. Absent receipt of a completed form, staff members are limited to discussing university policies and procedures with anyone but the accused student. To obtain a release form please contact OSRR at 252.328.6824.

To assist you in working with an ECU Conduct Administrator or the ECU Conduct Board please review the following.

- A. The Code which is available at <http://www.ecu.edu/PRR/11/30/01/>
- B. If applicable, Housing handbooks/ policy documents/ contracts are located at ECU Housing website at <http://www.ecu.edu/PRR/11/20/01>
- C. Note that North Carolina General Statute section 116-40.11, permits any student accused of a violation of the student code of conduct, to be represented, at the student's expense, by a licensed attorney or non-attorney advocate ("Advocate") who may fully participate in these proceedings. Regardless of whether your client has chosen to have an Advocate represent him/her, your client will be allowed to remain present for the duration of these proceedings, and may offer statements as a witness, and respond to questions posed. This is in addition to your participation.

Frequently Asked Questions

1. I am advising a student facing disciplinary charges with the University. How do I work with the University disciplinary system?

Students are encouraged to participate in all University disciplinary proceedings. Whether or not a student is facing criminal charges for the same behavior that is being addressed by the University, the role of the Advocate is limited to that of General Statute 116.40.11. Because the university disciplinary process is not a court of law, the attorney is not acting in a legal capacity. It is not the role of the attorney to "win" the case for the student. Rather, the advocate may lend support to the student in preparing his/her case and attend administrative and/or conduct board hearings. An advocate may not at any time disrupt a meeting/hearing. If an advocate disrupts a meeting or hearing, and does not comply with requests to refrain from being disruptive, the hearing advisor will ask the Advocate to leave the meeting/hearing. Disruption of the ECU Conduct process will be grounds to the excuse the party(ies). At all times, the OSRR will correspond and communicate directly with the student involved. It is the responsibility of the student to relay all information to the Advocate.

2. Who can be present with the student at the hearing?

All students are assigned a Student Advisor, a member of the ECU Conduct Board who will help the accused student prepare his/her case and navigate the disciplinary system. In addition, the student may choose to invite either an Advocate, or a non-participating support person to attend the hearing.

3. Will an attorney/nonattorney advocate be given an opportunity to present evidence on the student's behalf?

Information is presented in cooperation with the assigned Student Advisor. The hearing officer will allow information to be presented if it is relevant to the case. The hearing officer has the discretion to make these determinations.

In a disciplinary hearing, an attorney/nonattorney advocate may:

- Consult with a student during a hearing, but cannot use the discussion to delay the hearing
- Suggest questions for the students to ask
- Assist the student in clarifying his/her response to questions
- Question witnesses in accordance with the hearing guidelines as outlined in the Student code of conduct
- Assist the student in preparing a statement to present at the hearing

An attorney or nonattorney advocate may not:

- Direct the flow of the hearing
- Tell the student what to say during the hearing or disrupt the ECU process

4. If I am an attorney, can I serve as the student's advisor?

The accused student will be assigned a Student Advisor, a member of the ECU Conduct Board who will help the accused student prepare his/her case and navigate the disciplinary system. The Student Advisor's responsibility is to guide the student through the conduct process, to answer any conduct process-related questions, and to assist with the securing of information. This individual may continue to assist the student throughout the appeal process. As an attorney, you can certainly continue to advise your client.

5. My client was not on campus when this happened. Why is the University even involved?

The jurisdiction of the Code is applied based on an individuals' relationship with the University rather than geographic location of the offense. The University expects students, whether they are on or off campus, to be productive members of the Community. Section 2 of the Code specifies:

The University reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community and to support the mission of the University. Such action may include taking disciplinary action as outlined in this Code against students for their on-and off-campus conduct.

6. My client is charged with a crime off-campus for the same offense. Can the hearing for the University be delayed until after the criminal trial?

No. The goals of the criminal justice system and the University's student disciplinary processes are substantially different. The disciplinary process at ECU is not to determine if a student violated the law; it is to determine whether student's behavior was in violation of the University regulations and standards. The university will not delay the disciplinary process to accommodate the criminal process.

7. What will happen if my client refuses to participate in this process?

The student disciplinary process will continue to move forward regardless of your client's participation in it. The Conduct Administrator/Board will invite the accused student, the

complainant, and other witnesses to the hearing to gather as much information as possible and make a decision based on the information provided. Your client is encouraged to fully participate in the process. Failure to do so will not be grounds for an appeal.

8. Isn't this student disciplinary process double jeopardy for someone who is also facing criminal charges?

No. "Double Jeopardy" is a legal concept that applies solely to criminal proceedings. The university's process is educational and administrative in nature.

9. Why is my client not given the same due process protections as he or she would receive in the criminal process?

The student disciplinary process is not judging criminal guilt, but rather whether a student has violated a university policy. The courts have long recognized that the interests of the University community differ from those of the criminal justice process. Although there are basic concepts of fairness that apply to student disciplinary process, this process serves administrative and educational functions relating to the mission of East Carolina University. Therefore, many of the intricate rules and processes found in a court system are not applicable to university student conduct procedures.

10. Can my client withdraw from the University to avoid the hearing?

The Office of Student Rights and Responsibilities will not deny a student's ability to withdraw from classes when they have been accused of a violation of the Code. However, the investigations may continue and a university hearing may occur to resolve the matter regardless of enrollment status, or a student's participation.

11. Is the hearing outcome confidential? Can information provided during the hearing regarding my client be made available to the prosecutor's office if he/she chooses to participate in the student disciplinary process?

The Family Educational Rights and Privacy Act ("FERPA") prevents the University from disclosing this information without the consent of the student. Thus, the University will not on its own forward the information received in a hearing to the prosecutor's office. However, there can be no guarantee of privacy as all students' records are subject to lawful subpoenas. Typical records that are part of the OSRR hearing process include tape recordings and oral and written statements made to OSRR. Additionally, in certain circumstances a complainant is entitled to know the outcome of a hearing, for instance when there are allegations of sexual harassment or discrimination, which includes acts such as sexual violence.

12. What is the standard of proof in the student disciplinary process?

All decisions of the University disciplinary process will be made based on a preponderance of the evidence presented.

13. When will I receive discovery?

There is no formal discovery under the University Student Code of Conduct. Both complainant(s) and respondent(s) are afforded reasonable access to the case file. If the attorney or nonattorney

advocate would like to review the case file, the student should call the Office of Student Rights and Responsibilities (OSRR) 252.328.6824 to make an appointment. Also, a written release signed by the student client must be on file.

Both the complainant and respondent will have the opportunity to add information and/or a witness list to the case file. This information must be submitted within 2 business days of the Hearing. Both the complainant and respondent may be notified if the other party submits information or a witness list. If, at the time of the hearing, either the complainant or respondent calls a witness or presents written information that was not previously identified, either party may challenge the admissibility of the witness testimony or written information. Such challenges will be reviewed by the conduct officer and affirmed or denied in his/her sole discretion.

14. Why would the university act on allegations of sexual assault prior to the criminal proceeding?

The U.S. Department of Education Office of Civil Rights guidelines require a “prompt” response to allegations of sexual harassment – including sexual assault.

15. What is the Difference between an Administrative Conduct Hearing (e.g. Conduct Conference) and a Conduct Board Hearing?

An Administrative Conduct Hearing is a meeting with a Conduct Administrator. This person(s) is a representative from Campus Living and/or the Office of Student Rights and Responsibilities. Students have the opportunity to review allegations and obtain information about their case. During the meeting, the student will review their rights and responsibilities and ask questions regarding the reported incident. Should formal charges be pursued the student may accept or deny responsibility to the formal charges and make decisions about how to proceed with the case. A University Conduct Board Hearing is a more formal process, in which the complainant and respondent present their cases to the University Hearing Panel of students, staff, and faculty. The Hearing Panel then determines whether the respondent is responsible or not responsible for a violation of the Student Code of Conduct.

16. Who serves on the ECU Conduct Board?

The hearing panel is composed of 3 students, 1 faculty, and 1 staff member of the Conduct Board. One of the student members will be the Chair, who will direct the hearing process and make determinations about what information is relevant to the proceedings. The Chair is responsible for ensuring an orderly hearing, and therefore, may remove any person who, in her/his discretion, interferes with the work of the panel. The Chair will facilitate the panel’s discussion regarding the case and will vote only in the event of a tie. It is the Chair’s responsibility to write a summary of the panel’s decision. An OSRR staff member will serve as the Hearing Advisor during the Conduct Board Hearing.

17. Who makes the decision regarding my client’s responsibility?

A student can be found responsible by either a university hearing panel or Conduct Administrator or designee.

18. What are potential outcomes that could result regarding my client's case?

Violations of the code will result in educational and/or disciplinary consequences called sanctions. Sanctions are designed with the intent of educating respondents and protecting the ECU community. Educational sanctions include, among other things papers/interviews/counseling/community service. Disciplinary sanctions can range from warning and probation to suspension or expulsion which precludes matriculation at any constituent UNC institution. The University reserves the right to apply sanctions for conduct within this range, taking into account the nature and seriousness of the violation, the impact of the violation on the community, and mitigating or aggravating factors such as a student's disciplinary record, the nature of misconduct, as well as other relevant information regarding the degree of any damage, injury, or harm resulting from it. Multiple sanctions may be imposed for one violation.

19. What are my client's options if he/she does not agree with the decision and sanctions of the Conduct Administrator?

A student may submit a petition for appeal if he/she does not agree with the determination of the administrator to the OSRR. The Director of OSRR or designee will review the petition and make a final determination. The student must specify in writing which grounds form the basis for her/his petition. The petition must be submitted to OSRR within five calendar days from the date that the written decision on sanctions is provided to the student. Please review section 5 of the Student Code of Conduct for more information.

If consequences include relocation, cancellation, restitution, or a ban from any portion of the Campus Living Agreement, your client will have five calendar days to appeal from the date that the written decision is provided to the student.

20. Can my client appeal the decision and sanctions of the Conduct Board?

A student may appeal a decision of the Conduct Board to the Vice Chancellor for Student Affairs, who will make the final determination in the case unless one of the sanctions includes expulsion. The petition must be submitted within five calendar days from the date that the written decision on sanctions is provided to the student. The final decision will be made within 45 calendar days after the Conduct Board hearing and will be shared with the respondent in writing. The letter will include a brief summary of the information upon which the decision was based and outline any sanctions that are assigned. In expulsion cases, students have the right to appeal to the ECU Board of Trustees and eventually the UNC Board of Governors. Please review section 5 of the Student Code of Conduct for more information.

21. Is the hearing recorded? Can I get a transcript?

University panel hearings are digitally recorded. The student can request to review the recording but the Office of Student Rights and Responsibilities does not provide transcripts. Under FERPA, if the recording contains other student's information, the university may be limited in what it can disclose as not to violate another student's privacy. If the student, attorney or nonattorney advocate would like to review the digital recording, the student should call the Office of Student Rights and Responsibilities (OSRR) 252.328.6824 to make an appointment.

22. I have a very busy schedule and cannot attend the hearing time the University has established. How can the hearing be rescheduled?

The University will attempt to schedule a hearing that is convenient for the accused student, the complainant, the advisors, witnesses, and the panel members who will hear the information and make a decision. With so many people involved, it is not always possible for all schedules to coincide. In order to resolve complainants in a timely way Advocates will not be directly consulted about scheduling matters. However, the University will try to make reasonable adjustments to the schedule while communicating directly with the student.

23. Who do I talk to if I have questions about the case?

The attorney or nonattorney advocate may contact staff the Office of Student Rights and Responsibilities and/or Campus Living to assist in helping attorney or nonattorney advocate understand disciplinary proceedings. If questions relate to specifics of the incident involving the student, the staff will require that the involved student sign a release, prior to discussing the case with an attorney or nonattorney advocate. Otherwise, the staff will only be able to accommodate general questions about the disciplinary process. The Office of University Counsel can be reached at 252.328.6940.

24. What is the contact information for the various offices?

Office of Student Rights and Responsibilities

364 Wright Building
Greenville, NC 27858
252.328.6824 (Phone)
252.328.4828 (Fax)
OSRR@ecu.edu

Campus Living

Suite 100 Jones Building
Greenville, NC 27858
252.328.4663 (Phone)

Campus Living Conduct Office

121 Aycok Residence Hall
Greenville, NC 27858
252.328.4917 (Phone)
clco@ecu.edu

25. Are there resources available for me to learn more about the law as it relates to campus disciplinary proceedings?

The following resources for attorneys are recommended:

- The Law of Higher Education (4th ed.) Volumes 1 & 2, William A. Kaplin and Barbara A. Lee, published by Jossey-Bass Publications, (2006).

- The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life? Robert D. Bickel and Peter F. Lake, published by Carolina Academic Press, (1999).
- Navigating Past the “Spirit of Insubordination”: A Twenty-First Century Student Conduct Code with a Model Hearing Script, Edward N. Stoner II and John W. Lowery, published by the Journal of College and University Law, Volume 31, Number 1, (2004).