

## **CLAREMONT McKENNA COLLEGE**

### **JUDICIAL PROCEDURES**

(Revised, December 2001)

(OCR approved December 1995)

#### **I. Statement of Purpose**

The College adopted “The Basic Rule of Conduct” in order to underscore the fundamental relationship between the academic and the co-curricular environment and the requirements of nonacademic conduct in that environment. The educational mission of the College can only be attained when the intellectual growth of students is coupled with personal responsibility and maturity, and a sense of ethical and moral values.

The College regularly promulgates regulations designed to promote the health and safety of individuals, to further the development of responsible and mature social interaction in a residential setting, and to facilitate the educational purposes of the institution. The goal of these procedures is to maintain an environment which promotes the broad educational mission of the College through a duly constituted disciplinary process.

Judicial proceedings at the College are administrative in nature and should be distinguished from public law enforcement both in terms of procedures and sanctions. If alleged acts are violations of both College regulations and public law, the College is not precluded from taking disciplinary action on its own, regardless of action or inaction by public authorities.

The disciplinary authority of Claremont McKenna College originates in its Board of Trustees. This authority, as herein provided, has been delegated to the President, the Dean of Students and the College Judiciary Board. Changes in these procedures may be recommended by the College Judiciary Board, the Dean of Students, or the President of the College to the CMC Board of Trustees. The ultimate authority for and determination of the College disciplinary process, and any College disciplinary proceeding thereunder is the CMC Board of Trustees.

#### **II. Jurisdiction**

The conduct of students which violates the “Statement of Academic Policy and Statement of Academic Integrity” is subject to the jurisdiction of the Academic Standards Committee. The judicial offices and organizations outlined in these procedures have jurisdiction over all Other Conduct of students and includes:

- A. The conduct of students which violates provisions of “The Basic Rule of Conduct;”
- B. The conduct of students which violates provisions of College regulations and policies, including the Policy on Demonstrations at the Claremont Colleges. **See APPENDIX A.;**
- C. The conduct of students which violates residence hall regulations;
- D. The conduct of students which violates rules which govern conduct on the campuses and off-campus programs/functions of any of the other Claremont Colleges and the Claremont University Center which are substantially equivalent to “The Basic Rule of Conduct;”
- E. The conduct of students which is campus related;
- F. The conduct of students which is off-campus related.
- G. The conduct of students which is in violation of the Contempt Rule.

**III. Conflicts with other Claremont Colleges Intercampus Policies**

In the event of a conflict with any Claremont Colleges Intercampus Policy, irrespective if published or not, the within Judicial Procedures Provisions shall prevail and be controlling.

**IV. Terms, Definitions, and Composition of the Disciplinary System**

See **APPENDIX B.**

**V. Reporting Complaints**

- A. Any Member of the College Community, the Claremont College Community and any other person who has a complaint against a Claremont McKenna College student which might lead to disciplinary action should report the complaint to the Dean of Students Office. Complaints involving allegations of sexual offenses, harassment or assault should be filed as promptly as possible, but no later than one hundred eighty (180) days following the incident. All other Complaints must be filed no later than ninety (90) days following the incident. The Dean of Students, for good cause shown, may extend such deadlines, and shall have the sole and exclusive discretion to grant or deny the request. Requests for an extension to file a Complaint must be made in writing and delivered to the Dean of Students no later than ten (10) days before the otherwise last day to file such Complaint. Such decision shall be rendered within forty-eight (48) hours of receipt of the request and written notice of the decision shall be given the applicant within twenty-four (24) hours thereafter. The Dean of Students shall have the sole and exclusive discretion to extend, waive or excuse any failure to timely comply with the aforeprovided filing dates if the Complainant is physically or mentally incapacitated, incompetent, and/or absent from the State of California. The applicant shall have the right to appeal any adverse decision to the President within five (5) days before the otherwise last day to file the Complaint, or within ninety (90) days after the Complainant ceases to be physically or mentally incapacitated, incompetent, and/or absent from the State of California, whichever be last in time. The President shall render and deliver a written determination to the applicant within thirty-six (36) hours.
- B. If after twenty (20) days no action has been taken on a Complaint to the Dean of Students Office, a Complainant or any interested party may consult the Ombudsperson. The Ombudsperson has charging authority comparable to that of the Dean of Students and can file a Complaint.

**VI. The Office of the Dean of Students**

- A. The Office of the Dean of Students shall decide whether a Complaint warrants further investigation and shall conduct such investigations with the assistance and support of Members of the Claremont McKenna College Community and Members of the College Community.
- B. If it is determined that the alleged facts obtained during an investigation warrant further action, the case may be referred to: an Administrative Hearing; or a Judicial Hearing before the Student Judiciary Board, the Faculty-Student Judiciary Board or the Full Judiciary Board. See **APPENDIX B.** for an expanded explanation of the role of the Dean of Students.

**VII. General Operating Procedures**

See **APPENDIX C.**

### **VIII. Rights of the Accused and the Complainant**

See APPENDIX D.

### **IX. The Judicial Board Hearing Sequence**

#### ***Introduction - The Hearing Process***

The procedures used in a Judiciary Board or Administrative Hearing shall conform to basic standards of fairness, but they are not those used in court cases and formal rules of jurisprudence do not apply. The ability of either the Accused to present a defense or the Complainant to support the Complaint if reasonable evidence is excluded shall be a consideration under such basic standards of fairness. Admissible evidence shall be that on which reasonable people rely in the conduct of their normal activities. The Hearing process is not an adversarial process, and as such does not require or rely on prosecutors and defense advocates in order to distinguish true statements from false statements, relevant information and facts from irrelevant information and facts, and hearsay from evidence. Rather, parties to a Hearing have a duty to bring all pertinent information concerning a case to the attention of the Board so that it may make an informed and fair judgment.

#### ***Pre-Hearing Procedures***

- A. No later than five (5) days after a Charge Sheet has been filed Judicial Procedures Officers (JPOs) shall contact the Complainant and the Accused and shall provide them with: copies of the Charge Sheet; copies of these procedures; the time and place of the Hearing; and the potential membership of the Judiciary Board or the name of the Administrative Hearing Officer. JPOs shall make themselves reasonably available for questions concerning Hearings, procedures, and penalties for all parties concerned. JPOs shall also act as Advisors for the Complainant(s) and the Accused during Hearings, if any Complainant and the Accused so request. See **APPENDIX B., XXI.** for the process of the selection of JPOs and the Head Judicial Procedures Officer.
- B. For each Hearing the Head Judicial Procedures Officer normally will serve as the Hearing Coordinator. A Hearing Coordinator selected from the pool of more senior JPOs will be designated by the Dean of Students if the Head JPO cannot be present for the Hearing. The Hearing Coordinator's function is to gather information concerning the case and present it to the Board at the Hearing, and otherwise assist the Board as it requests.
- C.
  1. Under normal circumstances the Hearing shall be scheduled for a date not less than ten (10), nor more than thirty (30) class days from the date the Accused is formally notified by a JPO that a charge has been filed. At that time, the JPO shall provide the Accused with a copy of the Charge Sheet and these procedures. The Accused may waive this provision in writing to the Hearing Coordinator.
  2. The Presiding Officer, for good cause, may continue any Hearing prior to or after its commencement. Requests for continuation of a Hearing must be: (a) in writing and delivered to the Presiding Officer within two (2) days after the filing of the Complaint if made prior to the commencement of a Hearing; and (b) orally or in writing at any time after the commencement of the Hearing. The Presiding Officer shall have the sole and exclusive discretion to grant or deny any such request. The Presiding Officer shall render his/her decision within forty-eight (48) hours of receipt of the request and written notice of the decision shall be given the applicant within twenty-four (24) hours thereafter. The applicant shall have the right to appeal any adverse decision to the President within: (a) twenty-four (24) hours regarding a continuance of the commencement of the Hearing; or (b) two (2) hours regarding a continuance of a commenced Hearing. The President, or his/her designee, shall render and deliver a written determination to the applicant within: (a) twenty-four (24) hours regarding a Hearing not yet commenced; or (b) four (4) hours regarding a

Hearing which has commenced. Pending the determination of the President regarding a Hearing which has commenced, the Presiding Officer shall have the sole and exclusive discretion to continue or suspend the Hearing, and any decision of the Board rendered therein as to the allegations against the Accused shall not become effective.

Subject to the provisions of these Judicial Procedures, including the above regarding motions for continuance, the Hearing shall commence no later than three (3) months after the filing of the Complaint.

- D. JPOs shall inform all Accused that: 1) forty-eight (48) hours prior to a Hearing he, she or they must submit in writing a statement to the Hearing Coordinator indicating whether or not he, she or they intend to admit or deny allegations made in Complaints against him, her or them; and 2) a written statement giving his, her or their version of the facts of the alleged violations, insofar as they differ from the facts alleged in the Charge Sheet, must be submitted to the Hearing Coordinator at least twenty-four (24) hours prior to the Hearing. A group of Accused may file joint or individually written statements.

### ***Hearing Procedures***

- A. The Presiding Officer shall explain to all participants the procedures under which the Hearing is to be conducted and that the Hearing is not based on a courtroom adversarial approach. The Presiding Officer shall read to all participants the Statement of Purpose contained in Section I. of these “Judicial Procedures” and the “Introduction - The Hearing Process” paragraph of Section VIII. of these “Judicial Procedures” and shall advise the Accused and the Complainant(s) of their rights provided in **APPENDIX D**. The Presiding Officer shall exercise continuing discretion over the degree of formality required as the Hearing progresses.
- B. The Presiding Officer shall read the Accused the rights of the Accused provided in **APPENDIX D**. if any Accused indicates a lack of understanding of same. A formal reading of such rights of the Accused may be waived by the Accused upon indication from the Accused that he, she or they understand(s) the nature of the charges.
- C. The Presiding Officer shall read the Contempt Rule. The rule states:  
Any act or conduct which violates the instructions or procedural rules of or shows disrespect for the dignity or authority of the College Judiciary Board or Administrative Hearing Officer while in session, or which obstructs, interrupts, prevents, or embarrasses or tends to obstruct, interrupt, prevent or embarrass, the investigation, the Hearing, or the administration of justice shall constitute contempt of the Board.  
Any member of the College Judiciary Board or the Administrative Hearing Officer may instigate a contempt charge, and it shall be decided by a majority vote of the Board or the Administrative Hearing Officer. Contempt charges brought during a Hearing shall be decided at that Hearing. CMC students found in contempt may be subject to any of the Penalties outlined in **APPENDIX B., XXVI**. Non-CMC students found in contempt may be subject to such sanctions or other relief as is provided by the rules and regulations governing the Claremont Colleges, or under applicable law.
- D. The Presiding Officer shall read the Complaint, and ask the Accused to admit or deny the allegations, if neither an admission nor denial has been previously entered by the Accused. Prior to requesting an admission or denial, the Presiding Officer shall advise the Accused of the potential consequences of rendering an admission under these Claremont McKenna College Judicial Procedures as regards, and exclusively limited to, the Accused’s relationship with Claremont McKenna College. If the Accused admits the truth of the allegation(s), the Hearing shall be held solely to determine the appropriate disciplinary action.
- E. The Presiding Officer shall admit into evidence any previously filed written statements of the Accused and Complainant(s), for the Board’s review and consideration.

- F. The Presiding Officer shall ask the Hearing Coordinator to present new witnesses or evidence, if any, relating to the Complaint, that may have come to his or her attention subsequent to the filing of the Complaint or after receipt of the Accused's written response. The Presiding Officer shall ask the Accused to present any new witnesses or evidence on his or her behalf.
- G. The Presiding Officer shall ask for testimony by the Complainant(s) and/or shall read the Charge Sheet and Complainant(s) written statement(s). The Board may question the Complainant(s). The Accused may question the Complainant(s).
- H. The Presiding Officer shall ask the Complainant(s) to call witnesses. The Board may question the witnesses. The Accused may question the witnesses. The Complainant(s) may question the witnesses.
- I. The Presiding Officer shall ask for testimony by the Accused and/or shall read the Accused's written statement of the facts. The Board may question the Accused. The Complainant(s) may question the Accused.
- J. The Presiding Officer shall ask the Accused to call witnesses. The Board may question the witnesses. The Complainant(s) may question the witnesses. The Accused may question the witnesses.
- K. The Presiding Officer shall ask the Accused and the Complainant(s) for any final statements.
- L. The Presiding Officer shall ask that the Hearing room be cleared for deliberation by the Board. Everyone except the members of the Judiciary Board or the Administrative Hearing Officer and the Hearing Coordinator shall withdraw. The Hearing may be continued or adjourned for the convenience of the Board.
- M. The Presiding Officer may recall any participant for clarification, and the Accused, the Accused's Non-participating Advisor(s), the Complainant(s), and the Non-participating Advisor(s) of the Complainant(s) shall have the right to be present.
- N. In closed session, the members of the Board by a majority vote shall render a decision as to the truth of the allegations. If the allegations are found to be true, the members of the Board or the Administrative Hearing Officer shall then consider appropriate Penalties. As part of such consideration, the Board at its discretion may call upon the Dean of Students, or a member of his/her staff, to disclose and establish to the satisfaction of the Board, the existence or nonexistence of prior disciplinary actions taken against the accused ("prior disciplinary action(s) consideration"). The Accused, the Accused's nonparticipating Advisor(s), the Complainant(s) and the Non-participating Advisor(s) of the Complainant(s) shall have the right to be present during such prior disciplinary action(s) consideration phase of the Board's consideration.
- O. The Presiding Officer shall ask the Accused, the Accused's Non-participating Advisor(s), the Complainant(s) Non-participating Advisor(s) and the Complainant(s) to re-enter the Hearing room. The decision shall be read by the Presiding Officer. The Presiding Officer shall counsel the Accused and Complainant(s) concerning future conduct and shall respond to any questions. The Presiding Officer shall declare the Hearing adjourned. If any Accused or Complainant cannot be present when the decision is read by the Presiding Officer a written copy of the decision shall be delivered to such party within seventy-two (72) hours; within seventy-two (72) hours after the decision is read such written copies shall be delivered to each Accused and Complainant who was so present.
- P. Persons permitted to be present at the Hearing shall be as provided in **APPENDIX C., XXII.** and **XXIII.**
- Q. At the sole and exclusive discretion of the Presiding Officer, a Hearing may, in whole or in part, be through use of conference telephone, electronic video screen communication, or by other communications equipment or process, as long as all persons participating in the Hearing can concurrently communicate with each other and fully participate therein as herein provided.

***Post Hearing Procedures***

- A. The Presiding Officer shall timely prepare, as the written decision of the Board, a findings form which shall be transmitted to the Office of the Dean of Students for placement in the Judiciary Board files where it will become a part of the Accused's disciplinary record, and sufficient copies for delivery to the Accused and Complainant(s) as provided in O. above.

**X. The Judicial Administrative Hearing Sequence**

All provisions of IX. above shall equally be applicable to an Administrative Hearing unless same are therein specifically identified as being limited to Board Hearings; all references in such equally applicable provisions to the Presiding Officer shall be deemed to be references to the Administrative Hearing Officer.

**XI. The Interim Board Sequence**

All provisions of IX. above shall equally be applicable to an Interim Board Hearing unless otherwise provided herein. The Interim Board shall have jurisdiction as provided in **APPENDIX C., XXVI.**

**XII. Appeals Procedures - Judiciary Board/Interim Board**

- A. Decisions reached by the Judiciary Board or Interim Board may be appealed to the President of the College. Any Accused found in violation of Other Conduct, Complainant, or both may file an appeal. Appeals may be filed on the following grounds:
1. Substantial Evidence: An appellant may claim that the findings were not supported by substantial evidence. If the President accepts this claim he or she may disapprove the original Board's findings and dismiss the case and determination, or when appropriate send the case back to the original Board, or a new Board, for a new Hearing;
  2. New Evidence: An appellant may claim that new evidence is available. The President must determine whether the new evidence is germane to the case, whether it was reasonably available to appellant at the time of the Hearing, and whether the evidence would have lead to a different decision. If the President accepts this claim, he or she may send the case back to the original Board for a new Hearing;
  3. Bias: An appellant may claim that the Board was biased, suffered from conflicts of interest, or showed malice. If the President accepts this claim, he or she may send the case to another Board for a new Hearing;
  4. Improper Procedures: An appellant may claim that irregular procedures were used in the Hearing and that such irregular procedures adversely affected the fundamental fairness of the Hearing. The term "irregular procedures" is restricted to the interpretation of these "Judicial Procedures." If the President accepts this claim, he or she may send the case back to the original or new Hearing Board, as may be appropriate, for a new Hearing;
  5. Penalty: The appellant Accused may claim that the penalty imposed is too severe to fit the circumstances of the case, and is, therefore, arbitrary. The appellant Complainant may claim that the findings or the adequacy of the remedy is insufficient given the circumstances of the case. If the President accepts either claim he or she may send the case back to the original Hearing Board or alter the penalty.

- B. In all cases involving appeals, the President shall have the authority to approve the original Board's findings and its determination of the penalty. In special circumstances, at his or her own discretion, the President may decide to disapprove the original Board's findings and dismiss or reinstate the case. The President shall have the exclusive right to refer any appeal to the Appellate Board for its determination.
- C. In order to request a review of a case by the President, an appellant (either an Accused or Complainant) must submit a written petition within five (5) days after delivery of the written copy to appellant of the Hearing decision (per IX., O. above), specifying the reasons for the appeal which shall be limited to paragraphs A.1. through A.5. above; provided, the President shall have the right to grant an appeal based on equity grounds or violations of the applicant's due process and other Constitutional rights. The President shall, within five (5) days after receiving a petition for an appeal, notify the appellant and the appellee in writing of his or her decision to grant or deny the petition. If the appeal be granted by the President such written notification shall include the written notice provided in D. 1. below.
- D. 1. If the President grants an appeal from either an Accused or Complainant and: i) refers it to the Appellate Board, the President shall give a written notice informing both the appellant(s) and the appellee(s) of the time and place for the Hearing before the Appellate Board, such time to be not more than five (5) days after the notice; or ii) does not so refer it to the Appellate Board, the President shall give a written notice informing both the appellant(s) and appellee(s) of the time and place for the Hearing, if any, before the President, which shall not be more than five (5) days after the notice. The appellant(s) and appellee(s) shall have the right to have Non-participating Advisors present at such Hearing.
2. A copy of the notice shall be sent to the Dean of Students. The Dean shall timely deliver to the President or the Appellate Board as may be applicable all documents used in the Hearing including the Charge Sheet, findings, and determination of penalty, as well as the taped transcript if one is available.
3. The Hearing before the President or Appellate Board shall not be public and shall be restricted to the appellant(s), the appellee(s), and any other Members of the College Community or such other persons who the President or the Appellate Board, as may be applicable, deems appropriate. Any appellant and appellee shall have the right to have Non-participating Advisors present at such Hearing. The appellant shall have the right to present an oral argument in support of his or her appeal, and the appellee(s) shall have the same rights to oppose the appeal. The original Hearing Board shall have the right to designate one of its members to present an oral argument in support of the original finding and penalty. The President's or Appellate Board's decision shall be based upon the record and other matters of which he, she, or it may, under applicable law, properly take notice.
4. If the Hearing is before it the Appellate Board shall have the right to:
- a. approve the findings of the original Hearing Board and its determination of the penalty;
  - b. approve such findings and direct the original Hearing Board to reconsider and re-determine the penalty;
  - c. approve such findings and alter the penalty;
  - d. disapprove such findings and return the case to the original Hearing Board or a new Board, as may be appropriate, for a rehearing;
  - e. in appropriate circumstances, disapprove the findings and dismiss or reinstate the case.

5. The President or the Appellate Board shall render its decision, in writing, within five (5) days of the Hearing. The Dean of Students shall also be notified, and all documents and the transcript of the Hearing shall be returned to the Dean of Students.
6. Decisions of the Appellate Board shall be subject to the right of appeal by either party to the President in the same manner as above provided relating to decisions of the Judiciary Board.

**XIII. Appeals Procedures - Administrative Hearing Officer**

All the provisions of XII. above shall equally apply to and be the procedures of any appeal from a decision of the Administrative Hearing Officer; all references therein to the Judicial Board, Hearing Board or Board shall be deemed to be references to the Administrative Hearing Officer.

**XIV. Records**

- A. All records pertaining to student disciplinary cases shall be kept in the Office of the Dean of Students. Non-judicial Members of the College Community (persons other than those holding offices and functions provided in these Judicial Procedures) who request information concerning Hearings may be given information concerning the types of cases and penalties assessed, but names shall be withheld and such persons shall not have access to the files of the Judiciary Board regarding any specific case or cases without the prior written approval of the Accused and in cases involving sexual offenses, assault or harassment with the prior written approval of the Complainant(s), except as shall be required: 1) to be produced under applicable legal process; or 2) by other college personnel for lawful college purposes (including submissions to the Academic Standards Committee).
- B. Each case heard, and each case appealed, shall be published in the form of a generalized statement. The statement shall contain at least: the charges; the decision of the Board; and the penalty assessed. All names involved in the case will be omitted from the statement.

**XV. Changes In Procedure**

The adoption of changes in the existing procedures or the adoption of new procedures shall require the approval of the CMC Board of Trustees.