

STUDENT-WIDE JUDICIARY RULES OF PROCEDURE

1. SCOPE

- A. All students and all student clubs, organization and governments derived of that student body, of the State University of New York at Buffalo charged with violating any non-academic University regulation not specifically excluded by other statutory regulations or any state law or regulation shall be subject to the jurisdiction of the Student-Wide Judiciary and to the procedures and sanctions herein.
- B. By direct request to the Director of Judicial Affairs, a student may arrange for An administrative hearing in lieu of appearing before the Student-Wide Judiciary.
- C. In cooperation with the Division of Student Affairs Ombudsman, the Student-Wide Judiciary is empowered to mediate/arbitrate disputes between students – or to authorize the same – in order to foster “Alternative Dispute Resolution.”

2. DEFINITIONS

- A. The term “day(s)” means any school day(s) during which all jurisdictionally covered schools are in session, excluding weekends and all University recognized holidays.
- B. The term “NO CONTEST” is a plea that shall be available only to those students who have charge(s) before the Student-Wide Judiciary and have charge(s) pending in any Court of Law outside the University. This plea shall be treated procedurally as a plea of “RESPONSIBLE.”
- C. The term “closed hearing” means a hearing in which only the parties directly involved in the hearing may be present. Justices of the Court who are not presiding may also be present.

3. COMPOSITION

- A. JUSTICES – The Student-Wide Judiciary shall consist of no more than 21 Justices. Of these Justices, 15 may be confirmed by the Undergraduate Student Association, 3 by the Graduate and Professional Schools, and 3 by the Millard Fillmore College. Each Student Association may confirm an equal number of Alternate Justices. The Chief Justices shall temporarily appoint, on a case-by-case basis, current Justices to represent any constituency that is not

represented on the Student-Wide Judiciary. The process for selecting new Justices shall be as follows:

1. Each Justice candidate shall complete an application and submit it to the President of their constituency for consideration.
 2. The Chief Justice shall conduct interviews of candidates recommended by the constituency's president.
- B. CHIEF JUSTICE(S) – The Justices of each constituency shall elect one of its members, who is preferably entering a second term, to serve as one of three Chief Justices. These Chief Justices shall sit on the Supreme Student Court when needed. In the event that there are no Graduate or Professional or Millard Fillmore Chief Justices, the Undergraduate Chief Justice shall appoint two justices to sit on the Supreme Student Court. The Chief Justice of the Undergraduate Student Association shall be the Chief Justice of the Student-Wide Judiciary and of the Supreme Student Court; in this capacity, he/she shall administrate the Court and shall be empowered to make any administrative decisions concerning the day-to-day operations of the Court.
- C. ASSISTANT CHIEF JUSTICE(S) – The Chief Justice of the Undergraduate Student Association may select, using any method he/she sees fit, a justice or justices to serve as an Assistant Chief Justice. If at any point the Chief Justice removes him/herself from a matter, an Assistant Chief Justice shall resume responsibilities for that matter. In the event that the Chief Justice resigns before the completion of his/her term, an Assistant Chief Justice shall act as interim Chief until a new election can be held.
- D. SUCCESSION OF JUSTICES – In the event that the Chief Justice and Assistant Chief Justice(s) must remove themselves from a matter, the Justice with the longest tenure on the Court, who has not removed themselves, shall assume the responsibilities for that matter.

4. TERM OF OFFICE

- A. JUSTICES – At the close of each academic year, each Justice may be considered for reappointment to the Court's next term by the Chief Justice. Justices in their first year of participation with SWJ shall be known as Associate Justices, while Justices with more than year of participation with the SWJ shall be known as Senior Associate Justices.
- B. CHIEF JUSTICE(S) – The election for Chief Justice shall occur once per year

near the close of the academic year, or as necessary. The Chief Justice shall serve for a term of one year.

5. RESPONSIBILITIES

- A. **TRAINING** – All Justices must attend training sessions in order to learn how to conduct an SWJ Review, serve on a trial panel, and perform other Court procedures. It is essential that training be completed before Justices conduct any Court functions. The Chief Justice shall evaluate the knowledge level of each Justice and shall determine the appropriate amount of training necessary. Training is a continuous process and Senior Associate Justices may be required to complete additional training.
- B. All parties appearing before the SWJ, including University Hearing Representatives and Student Advisors, must attend training sessions in order to learn how to perform pre-trial hearings, hearings, and other Court functions. Student Advisors retained from an outside source must meet with the Chief Justice to review these SWJ Rules of Procedure before representing a student Student before the SWJ.
- C. **PROFESSIONALISM** – At all times, participants in SWJ proceedings are required to conduct themselves with the utmost level of maturity and professional responsibility. If a participant is acting in an inappropriate manner, the Procedural Justice or Chief Justice may seek the following courses of action:
 - 1. Warning the party that further inappropriate behavior will not be tolerated.
 - 2. Dismissing the party from all SWJ proceedings pending a meeting with the Chief Justice.
 - 3. Sanctioning the party, including but not limited to assigning community service hours.

6. UNIVERSITY HEARING REPRESENTATIVES

- A. **UNIVERSITY HEARING REPRESENTATIVES** – The University Hearing Representatives must be law students currently enrolled at the University at Buffalo, and shall be responsible for prosecuting all cases before the Student-Wide Judiciary.
- B. **CHIEF UNIVERSITY HEARING REPRESENTATIVE** – The Chief University Hearing Representative shall serve as the direct supervisor of the University Hearing Representatives. The Chief University Hearing

Representative shall have sole responsibility for interviewing and hiring University Hearing Representatives, of which there shall be no more than 10.

7. APPEARANCE REFERRALS

- A. Upon issuance and receipt of an Appearance Referral, a student shall appear before the Student-Wide Judiciary in the Office of Judicial Affairs within the dates stated on the referral to be served with a complaint by the University Hearing Representatives.
- B. The Appearance Referral shall state the time, date, and locations at which the student should appear and shall notify the student of his/her right to an Advisor throughout all SWJ proceedings.
- C. Should a student fail to appear, an additional charge of Contempt may be filed. Failure to appear in person before the Court may result in the placement of a Disciplinary Checkstop on the student's University account. Should a student fail to make an appointment within 30 days the case may be adjudicated in their absence.

8. COMPLAINTS

- A. Complaints shall be filed through the University Hearing Representatives' Office with the Student-Wide Judiciary. University Hearing Representatives retain the right to add, subtract, or modify charges until a plea arrangement is reached, or until 5 days before a Student's pre-trial hearing. The Procedural Justice must approve any further change.

9. STUDENT ADVISORS

- A. Every student Student has the right to assistance by an Advisor of his/her choosing. The Student must sign and present to the SWJ a "Statement of Understanding" indicating the student's selection of an Advisor.
- B. The Student must enter a plea before the Court in his/her own voice. The Student Advisor cannot enter a plea on behalf of the student.
- C. **PRIOR TO THE** justice review– the Student Advisor may offer advice directly to the student and/or may contact the University Hearing Representatives' Office on behalf of the student.
- D. **AT THE SWJ REVIEW** – the Student Advisor may offer recommended sanctions and may participate in arranging dates of further Court proceedings.

- E. AT THE SWJ REVIEW – the Student Advisor may assist in the presentation of evidence. This may take the form of presenting opening/closing statements, questioning witnesses, and submitting physical evidence.
- F. AFTER A HEARING – at the Student’s request, the Student Advisor may file an appeal on behalf of the student.

10. RIGHTS OF VICTIMS

- A. The following procedures are to be followed by the Student-Wide Judiciary to ensure the rights of victims appearing or testifying before the Court:
 - 1. A victim has the right to have a person(s) of his/her own choice accompany him/her throughout all disciplinary hearings.
 - 2. A victim has the right to remain present during the entire proceeding.
 - 3. A victim has the right, as established in state criminal codes, not to have his/her irrelevant past sexual history discussed during the hearing.
 - 4. A victim has the right to make a “Victim Impact Statement” and to suggest an appropriate penalty if the accused is found in violation of the code.
 - 5. A victim has the right to be informed immediately of the outcome of the hearing.
 - 6. A victim has the right, after the student has been found RESPONSIBLE for one or more charges to make an impact statement to the Court without the student being present.

11. Justice Review

- A. A notice of Justice Review in a student’s absence shall be sent, in accordance with Part II Article VIII 4 and 13, by mail and email to the student five days before the Justice Review.
- B. At the SWJ Review, the Student must be provided with a copy of the Complaint, given an opportunity to examine it, and must enter a plea of RESPONSIBLE, NOT RESPONSIBLE, NO CONTEST, or ADMINISTRATIVE HEARING before the Court in his/her own voice.
- C. Upon a response of RESPONSIBLE the student may make a statement on his/

her own behalf. An advisor may not make this statement on behalf of the Student. To prevent the statement from being used against the Student in the proceedings of a criminal court, the statement may be made off the record.

i. With a plea agreement the court may accept the plea agreement as stated, or, the justice may reject the plea agreement on one or more of the following grounds:

1. The agreement, in the estimation of the presiding justice, requires less or more community service hours.
2. The presiding justice is given the impression that the Student is not fully aware of his/her rights in the matter.
3. The Student at any point during the SWJ Review process asks for an advisor.
4. Facts that were not considered when the plea arrangement was crafted that the presiding justice will have a dramatic impact on the outcome of the matter, or at least require further investigation; come to light in the SWJ Review process.

ii. Upon Rejection:

1. The presiding justice must inform the University Hearing Representative and Student of their reasoning, as well as provide the Chief Justice with a brief written statement explaining their decision.
2. The Student and University shall attempt to come to terms on a new agreement that takes into account the presiding justice's reasoning.
 - a. If a new agreement is met the parties shall reconvene for a new SWJ Review.
 - b. If a new agreement is not met the parties shall inform the Justice of the situation and, if applicable, the original agreement shall be reconsidered. If the original agreement is not acceptable the parties may seek the neutral assistance of the Justice to reach an acceptable agreement.
 - c. The Justice may agree to facilitate a meeting between University Hearing Representatives and student with the goal of reaching an agreement. That Justice shall not be eligible to sit on a panel hearing of that case.

- D. A plea of NO CONTEST shall be treated like a plea of RESPONSIBLE.
- E. Upon a plea of NOT RESPONSIBLE:
- i. The Student must be reminded of his/her right to an advisor and a date for a hearing may be set. In no event can a hearing take place earlier than 5 days after the SWJ Review. Once a hearing date is set, the Student is on notice from the court to appear on that date and need not be served a new appearance referral.
 - ii. A copy of the SWJ Rules and Regulations must be made available to the Student or his/her chosen advisor.
 - iii. Both the University Hearing Representative(s) and the Student/Student Advisor must exchange their witness list and evidence (documentation/physical evidence) no later than 5 days before the hearing. Both parties are to make a “good faith” effort to exchange all evidence; additional evidence/witnesses should only be allowed when it is demonstrated to the court, by a reasonable explanation, why the evidence/witness was not revealed in accordance with the 5-day rule. It is at this time that the University Hearing Officers’ office must file with the Court and with Student/Student Advisor(s) the final charges the Student will be brought up on. The Procedural Justice must approve any modification of charges after this point, which shall not necessitate a new SWJ Review. It is the responsibility of the Court to notify the parties that this exchange must occur when it issues a hearing date.
 - iv. The Court shall complete proceedings on any individual pleading not responsible by the end of the next full semester after the complaint has been filed. (Summer sessions do not constitute a semester.)
- F. A REFUSAL by the Student to enter a plea shall be treated as a response of NOT RESPONSIBLE.
- G. Multiple Student Justice Panel Hearings are permitted only when the Students' alleged violations are identical and have allegedly taken place in the same location and at the same time (as verified by a representative of the University Police or University Residence Halls and Apartments, in written form) as their co-Students.
- H. If requested in written form, a Student must be granted a hearing separate from that of other students.

- I. Failure of any student to comply with a subpoena may constitute Contempt, for which the Court may sanction the student. This may result in the placement of a Disciplinary Checkstop on the student's University account. Any Student incapable of service because he/she has failed to file a local address with Records and Registration for the current academic year shall be deemed to have failed to comply with the subpoena.

12. NOTICE OF HEARING

- A. The Court has the sole power to set the date of a hearing. If the hearing date set at the SWJ Review must be changed, the Court shall set the new date for the hearing and notify the Student. When a Student Advisor is assisting the Student in the hearing, it is the Advisor's responsibility to verify the date of the hearing and to notify the Student. When the Court sets the date upon agreement with the Student, the Court may choose to also notify the Student Advisor, but it is not the Court's responsibility to do so.

13. CHALLENGE, FOR CAUSE

- A. Any party to a proceeding before the SWJ at a hearing or appeal level may challenge, for cause, any member of the Court that is to hear evidence.
- B. Causes for challenge shall include, but not be limited to:
 - i. Personal bias based on known close friendship to a party in the proceeding.
 - ii. Bias based on participation in functions that bear upon the issues or evidence presented.
 - iii. Bias based on a receipt of information, investigation or other personal contact with a party immediately prior to any such hearing.
 - iv. Bias based on a recent publication of personal opinion or attitude that directly bears upon the issues or evidence presented.
- C. The burden of proving bias to the satisfaction of the Court shall be fully upon the challenging party.
- D. The remaining Justices of the hearing panel, by a unanimous vote, shall decide upon the removal of a hearing panel, appellate, or Supreme Student Court Justice. Any successfully challenged Justice shall be duly replaced.

14. PANEL HEARING

- A. By Choosing a hearing by a panel of peers, students choose to accept the judgment of the Justices rather than reach an agreement with the University Hearing Representatives or the judgment of a University Administrative Hearing.
- B. Mandatory attendees include:
- i. Procedural Justice
 - ii. University Hearing Representative(s)
 - iii. Student (in addition, one or more Student Advisors may be present at the Student's request)
- C. The University Hearing Representative(s) and Student/Student Advisor(s) must exchange witness lists and submit to the Court all other documentation/physical evidence. Each party shall make a brief notation about their witnesses explaining the witness' relevance to the case. All witnesses, whether called by the University or by the defense, are expected to be available for questioning by both parties.
- D. The Procedural Justice shall ask both the University Hearing Representative(s) and the Student/Student Advisor(s) whether settlement effort (plea bargain and sanction agreement) has been attempted.
- E. The Procedural Justice shall determine whether the Student is aware of any proposed settlement offer, but he or she should not be informed of the details of that offer.
- F. If a settlement effort has been attempted, the Procedural Justice shall ask the Student to respond in his/her own voice whether he/she:
- i. is aware of the offer.
 - ii. understands the offer, and
 - iii. has responded to the offer.
- G. If any of the three conditions of part F above have not been met, the Pre-trial hearing must be recessed until the Student has been sufficiently informed of the settlement offer. The Procedural Justice may not have knowledge of the details of the settlement offer.
- H. The Procedural Justice shall ask the University Hearing Representative(s) and the Student/Student Advisor(s) whether any settlement (plea bargain and sanction agreement) has been reached.

- I. The University Hearing Representative(s) and Student/Student Advisor(s) shall make any Pre-trial requests. These requests are NOT motions; they shall be submitted verbally and shall not be based on any factors other than those pertaining to the matter at hand.
- J. The Procedural Justice shall make sure the Student understands the hearing process and its possible outcomes and may entertain any of the Student's questions.
- K. The Procedural Justice shall set the time limits for the opening and closing statements (usually 5-10 minutes).
- L. The Procedural Justice shall select the Justices for the Hearing in accordance with Section 15j.
- M. All parties present are to discuss the main issues to be presented at the hearing and shall agree to keep the hearing focused on these issues rather than other, unrelated, unnecessary issues.
- N. The University Hearing Representative(s) and Student/Student Advisor(s) shall present a list of all direct questions to be asked of each witness.

15. SWJ Hearing Panel

- I. Background and Invocation
- II. Goals and Standards
- III. Membership
- IV. Jurisdiction
- V. Pre-Hearing Process
- VI. Hearing Process
 - A. Procedures
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- VII. Post-Hearing Process
- VIII. Appeal

I. Background

A Student-Wide Judiciary Hearing Panel (SWJ-HP) is the second phase of due process that may be invoked by a student who feels as though they are not responsible for a violation of the Campus Rules & Regulations that the University Hearing Representatives do.

The SWJ-HP is designed to give students a chance to have their voice heard by a panel of students regarding any campus rule violation. The premise of the SWJ-HP is to create a conversation by which the SWJ Justices have all the information to decide whether or not a student violated a campus rule.

The SWJ-HP is not a legal hearing, nor is it designed to operate with a legal court's rules of procedure. As such, the student is responsible for speaking (or not speaking, if they wish) for themselves. A student may have an advisor with them, but that person may not represent them.

II. Goals and Standards

The SWJ-HP Justices have to review an appeal from a student.

If the student contests that they did not violate a campus rule, the goal of the SWJ-HP is to decide, based on a preponderance of the available information, if the student broke a campus rule. If they feel as though it is more likely than not that a campus rule was violated, the SWJ-HP Justices will determine an appropriate educational sanction.

If the student is in agreement that they did violate a campus rule, but does not agree with the proposed sanction by the University Hearing Representatives, their sanction will be decided by the SWJ Justices, as that is not grounds for an SWJ-HP.

The goal of the hearing will be for both the accused student and the University Hearing Representatives to provide pertinent information regarding the case, and for the SWJ Justices to be able to make a decision based on that information. The design of the hearing is to be informational rather than adversarial, thus there is neither a prosecution nor a defense.

III. Membership

An SWJ-HP is comprised of an odd number of, at minimum 3, and at maximum 7, current SWJ Justices that have served on SWJ for at least one semester.

A decision must result from an SWJ-HP, and it must be by a simple majority.

A student may challenge an SWJ Justice's inclusion based on a reasonable demonstration of potential bias to the SWJ Chief Justice.

Any SWJ Justice with a perceived conflict of interest will be excused immediately.

IV. Jurisdiction

The SWJ-HP process is used as a source of appeal for SWJ cases, student government disputes (including elections), and any other student appeal where the Division of Student Affairs determines that SWJ maintains jurisdiction.

V. Pre-Panel Information Meeting

Prior to the hearing, the student and the University Hearing Representatives are required to meet to share the information they plan on presenting to the SWJ Justices. This is a closed meeting. The student, even if they have a person advising them, must be present. Also present will be the SWJ Chief Justice or Designee (SWJ-CJ/D) to serve as the meeting leader, mediator, and information recorder. The SWJ-CJ/D will be responsible for labeling all materials and providing both the student and the University Hearing Representatives with an identical list of materials prior to the hearing. A staff person from the Office of Judicial Affairs (OJA) may also be present, at the request of the student, UHR, or SWJ-CJ/D.

At the pre-panel information meeting, any potential witness must provide a statement in writing (signed & dated) of the information they will be sharing at the hearing. The witness's statement must be present those that are not present at the meeting will not be used. Additionally, any physical items or correspondence should be provided to the SWJ-CJ/D to record.

The SWJ-CJ/D will begin the pre-panel information meeting by explaining the expectations of that meeting as well as the procedures for the actual hearing panel. The SWJ-CJ/D will provide copies of all labeled material to the SWJ Justices prior to the SWJ-HP. The student may review all materials the University Hearing Representatives has submitted, and vice versa.

If the student does not show up, the case is treated as adjudication in absence, and is subject to a Justice Review of the University Hearing Representative's recommendation(s).

VI. Hearing Process

The SWJ-HP is a closed meeting that will be audio-recorded and stored in SWJ files. Only persons that have a direct link to the current case, including the accused student, victims, SWJ Justices, University Hearing Representatives, SBI advisors, OJA staff, and witnesses (when called) are permitted in the room during a SWJ-HP with approval of the student.

The SWJ-CJ/D (or designee) is responsible for running the SWJ-HP, including logistical needs (such as reserving a room, obtaining audio / visual equipment if asked, etc.). The SWJ-CJ/D will begin the SWJ-HP by starting the audio recorder, and explaining the procedures for the SWJ-HP.

The student may have an advisor present, but they must speak for themselves. The student is not required to speak, however this does not mean that a decision cannot be made. A decision will be made for responsibility and/or sanction whether a student chooses to speak or not.

The University may have one person provide their information as the University Hearing Representative, with another person as their advisor.

The SWJ-CJ/D may not have a vote on the decision regarding an SWJ-HP.

The victim may supply a written "victim impact statement" in a sealed envelope to the SWJ-CJ/D prior to the SWJ-HP.

A. Procedures*

1. The SWJ-CJ/D will read the charges the student is facing that are being challenged.
2. The University Hearing Representative will then be allotted time to present the charges and explain why they believe the behavior meets or exceeds a preponderance of the information necessary to find the student responsible.
3. The student will then be allotted time to explain why they believe the charges are inappropriate or without merit.
4. The SWJ-CJ/D will then ask the student if they have any specific questions for the University Hearing Representative, including any witnesses they have utilized.

5. The SWJ-CJ/D will then ask the University Hearing Representative if they have any specific questions for the student, including any witnesses they have utilized.
6. Justices will have the opportunity to ask questions of any persons involved at any time during the SWJ-HP.
7. SBI may be allowed to give their opinion of the case if the justices find it necessary. They will be allotted 5 minutes upon justice approval.
8. The SWJ-CJ/D will conclude the hearing verbally, and turn off the audio recorder. They will then provide the sealed envelope with the victim impact statement to the SWJ Justices.
9. The SWJ Justices will then deliberate confidentially to come to a conclusion, without any recording devices. If there is a finding of responsibility, the SWJ Justices will open the victim impact statement for sanctioning consideration. Once the SWJ Justices have made a decision on the allegations, they will summon the SWJ-CJ/D to reconvene the hearing.
10. When the SWJ-CJ/D reconvenes the hearing, they will turn on the audio recorder and ask one of the SWJ Justices to provide their decision, including any appropriate sanctions and due dates.
11. The SWJ Justices are responsible for making a hard-copy and/or e-mail of the decision available to the student, the University Hearing Representatives, and the OJA Director within five school days of the SWJ-HP.

At any point in time prior to the decision of an SWJ-HP, the student may accept the most recent sanction offered from the University Hearing Representatives.

The SWJ-CJ/D has the right to have any person removed from a hearing that, in their view, is disturbing the hearing or is not listening and following direction from the SWJ-CJ/D.

During deliberation, the SWJ Justices may request the SWJ-CJ/D and/or an OJA staff person's assistance for policy guidance.

If there is not a finding of responsibility, the SWJ-CJ/D will shred the victim impact statement.

B. Sanctions

All sanctions listed in the Student Conduct Rules, University Standards, and Administrative Regulations (Article 2) may be utilized by the SWJ Justices, including creative sanctioning.

* If the SWJ-HP involves a sexual assault, or a situation where the victim desires to play a role but does not feel comfortable doing so in the physical presence of the accused student, the following steps will be taken.

Procedures 1 through 10 still apply; however the victim will be given the option of participating in another room. The victim will be connected by speaker phone or video conferencing depending on the technological options available. The victim may have an

advisor present. Both the victim and the accused student must direct their comments and questions regarding each other to the SWJ-CJ/D. The SWJ-CJ/D will determine the appropriateness, and relay any permissible information accordingly.

VII. Post-Panel Hearing

If a student has not picked up the decision at 252 Capen Hall or verified by e-mail that they received the decision within three (3) days of notification, it will be the default understanding that they have received the decision and are bound to comply with the information enclosed.

If the decision of the SWJ Justices is a finding of responsibility, a sanction must be included. The opportunity to appeal for due process violations, as well as the SWJ CJ/D's contact information to address any such appeal, must be included. An appeal must be received by the SWJ CJ/D no more than five (5) calendar days after receipt of the decision.

VII. Appeal

The student or the University Hearing Representative may appeal the decision of the SWJ-HP only on the basis of inappropriate due process. The finding itself cannot be challenged. The SWJ CJ/D is the person responsible for making all decisions on appeals. The SWJ CJ/D must issue a written decision within ten (10) days of receiving an appeal, and the response is limited to the following:

1. The appeal is without merit concerning due process and the case is considered complete and closed; or
2. The appeal has merit based on inadequate due process

If an appeal is determined to have merit, AND that it had a potentially adverse affect on the decision, the SWJ CJ/D may decide to order another SWJ-HP. The process will be identical to SWJ-HP with two exceptions: first, that the SWJ-CJ/D appoints a different group of Justices to serve on the SWJ-HP; second, the decision of a second SWJ-HP is final with no appeal.

16. EVIDENCE

- A. A proceeding before the Student-Wide Judiciary is a civil proceeding. The "rules of evidence" are not to be construed as strict requirements, but merely guidelines of "fair play." It is important to remember that all evidence directly related to the matter before the Court is admissible, and the Court has the power to weigh the evidence accordingly based upon its relevance and reliability. Evidentiary objections or limitations should be considered only in order to best achieve the Student-Wide Judiciary's goal of providing the parties with a fair opportunity to be heard.
- B. BURDENS – A University hearing is a civil, rather than a criminal, proceeding.
 - i. The burden of proof is on the University to submit evidence that

shows, by a preponderance of the evidence, that the Student did commit the alleged violations of the Student Code of Conduct.

- ii. The University must show that the likelihood that the Student committed the alleged violations is greater than 50 percent. If the Court believes that there is greater than 50 percent likelihood, the Court should find the Student RESPONSIBLE, regardless of the existence or absence of the Student's motive. If the University cannot meet this ultimate burden, then the Court shall find in favor of the Student.

C. JUDICIAL NOTICE – The Court may “take notice” of certain facts to dispense with the need for formal presentation of evidence. Once the Court takes notice of these certain facts, no further presentation of said evidence shall be allowed. Such a fact must:

- i. Not be reasonable in dispute, and
- ii. Be capable of accurate determination.

D. WITNESSES

- i. All testimony shall be considered sworn testimony and the Court shall advise witnesses of this fact.
- ii. A witness may not testify to a matter unless he/she has personal knowledge of the matter before the Court.
- iii. A witness may not offer his/her opinion on the subject, unless it is helpful to describe testimony.
- iv. Initially, each witness shall give testimony of their knowledge of all facts, as they know them, in the form of a narration.
- v. Every witness may be subject to questioning.
- vi. The credibility of any witness may be questioned.

E. STATEMENTS – Statements made outside the hearing by those who witnessed relevant events shall only be admissible if:

- i. It is shown that the witness cannot reasonably be expected to attend the hearing. Those individuals falling outside the Court's subpoena power shall be inherently deemed to not reasonably be expected to attend the hearing, and
- ii. The statement to be admitted shall be made in writing. This document shall be considered sworn testimony and must be personally signed by the

witness. Any details about the statement, such as the manner in which it is written, any oath or other “sworn” character of the document, or lack thereof, are factors to be weighed accordingly by the hearing panel when determining the weight to give the statement, as with any evidence presented.

- F. Statements made by a Student which, at the time they are made, are against his/her interests are admissible. The person relating such a statement must have personal knowledge of it.
- G. Records kept in the course of any type of business and/or managerial function or official records are admissible as evidence.
- H. EXPERTS – After the Procedural Justice has determined that a witness offered as an expert has sufficient knowledge of the subject at issue that witness may be allowed to testify as an expert. As an expert, he/she may give relevant opinions based on his/her expertise.

17. SUMMONSES AND ATTENDANCE

- A. The Court and the University Hearing Representatives may serve a Summons for any student to testify. The Court and/or University Hearing Representatives shall issue summonses upon showing that the witness’ testimony would be helpful in deciding the case.
- B. Failure to comply with a Summons may constitute Contempt, for which a student may be sanctioned. In the event that the student fails to appear before the Court a second time regarding the same incident, the Court may proceed with the hearing in the absence of the student. This rule applies to Students and/or witnesses.
- C. The Student-Wide Judiciary may request the presence of, but not serve a Summons to/for the following:
 - i. The attendance of any University official, faculty member, or other University employee.
 - ii. The attendance of any non-University individual.
 - iii. The provision of administrative records.
- D. If the requested individual declines to appear or if the requested records are not provided, the Court shall decide whether the matter should be brought to the attention of the University President to request his/her/its presence before the SWJ.

18. CONTEMPT

- A. The Court shall have the power to initiate Contempt proceedings against any party or individual participating in a Student-Wide Judiciary proceeding for failure to obey:
 - i. Any notice or Appearance Referral compelling that party's attendance.
 - ii. Any provisional remedy.
 - iii. Any sanction resulting from any SWJ proceeding.

- B. Any party or individual participating in a Student-Wide Judiciary proceeding may be held in contempt by the presiding Justice, or the Chief Justice, if the behavior of the said party/individual is deemed inappropriate or breaches any provision in these Rules of Procedure. The party served with a notice of Contempt shall have the burden of demonstrating why the party should not be held in Contempt.

19. PERJURY

- A. All witnesses' testimony before the Court shall be considered sworn testimony. Procedures for adjudication of perjured testimony shall be the same as those for Contempt.

20. DECISIONS

- A. When a Student faces more than one charge at a hearing, each charge shall be considered separately by the hearing panel using the burden of proof defined earlier in these Rules of Procedure.

- B. All decisions by hearing panels shall be determined by a simply majority vote.

- C. Written decisions must be made available to the victim(s), Student(s), and the University Hearing Representative(s) within 2 days of the conclusion of any hearing.

- D. The Student must pick up the written decision on the third day after the conclusion of a hearing. Failure to do so may result in the immediate placement of a Disciplinary Checkstop on the Student's University account.

- E. VICTIM/STUDENT IMPACT STATEMENTS
 - i. Victim/Student Impact Statements are not being seen, heard or read

by the Justices of the hearing panel before such time as the Student is found RESPONSIBLE for one or more of the pending charges.

ii. Since the purpose of an impact statement is to provide a student with an opportunity to express his/her own opinion directly to the Court, no appeals of any kind shall be allowed with respect to the Victim/Student Impact Statements.

iii. Impact Statements may be presented via one of the following media and shall not exceed the following time limits:

- a. Given in Person – 10 –15 minutes, or as deemed as necessary by the hearing panel.
- b. Tape Recorded – 15 minutes.
- c. Written – no limit.

F. After hearing or reading the impact statements, the hearing panel shall make a written sanction available within 1 day. If the Student fails to pick up the sanction, he/she may have a Disciplinary Checkstop placed on his/her University account.

21. SANCTIONS

A. The Court shall have the power to impose the following sanctions:

i. Admonition – a written statement to the Student that he/she has violated the Student Code of Conduct.

ii. Warning – a written notice to the Student that repetition of the wrongful conduct may be cause for more severe sanctions.

iii. Restitution

iv. Loss of Privileges – loss of such privileges as may be consistent with the offense committed and the rehabilitation of the Student. This may include removal from University Housing facilities as well as loss of other University privileges.

v. Disciplinary Probation – with or without loss of designated privileges for a definite period of time. Violation of terms of disciplinary probation may be grounds for a recommendation to the University President for suspension or expulsion from the University.

vi. Community Service – a definite number of hours to be completed.

- vii. Recommended to the University President, suspension from the University for a definite or an indefinite period of time.
 - viii. Recommended to the University President, expulsion from the University.
 - ix. Disciplinary Checkstop – placed on the student’s University account.
 - x. Permanent or temporary notation on student’s academic record (transcript).
 - xi. Counseling – where appropriate.
 - xii. Other Sanctions – may be approved by the Student-Wide Judiciary if they are consistent with the offense committed and the rehabilitation of the Student.
- B. Upon completion of a hearing, the University Hearing Representative(s) and Student/Student Advisor(s) shall submit to the Court in sealed envelopes recommended sanctions. The envelopes shall remain sealed until the Student is found RESPONSIBLE for one or more of the charges before the Court.

22. PROVISIONAL REMEDIES

- A. Upon initiation of a proceeding, a Justice or hearing panel may find by unanimous vote that the safety of student(s) of the University is clearly threatened by the possibility of irreparable harm. In the event of a threat of irreparable harm where the delay of a hearing would be harmful to the nature of the relief sought, the Court may grant a provisional remedy in the nature of a temporary restraining order or injunctive warning.
- B. Failure to comply with any such order or injunction shall constitute Contempt.
- C. Nobody but the University President (or designee) has the power to temporarily suspend a student.
- D. The Court may grant a temporary restraining order upon request, which shall be in effect until the outcome of the hearing. The Court may issue an injunction to permanently enjoin the conduct causing complaint.

23. RECORD

- A. The Court shall make and preserve a record of each case brought before it. This shall consist of the complaint, all documentation received, taped or

written minutes of the proceeding, and a copy of all decision and any resulting sanctions (audio tape acceptable).

- B. Such records are confidential and breach of this confidentiality may result in Contempt charges.
- C. Records shall be preserved until the time for appeal has passed, until the sanction/probationary period has passed, or until the end of the following semester, whichever is longer. A Student may examine and/or duplicate the record in his/her case at his/her expense.

24. CONFIDENTIALITY

- A. All deliberations by the Justices, all Student-Wide Judiciary records, and all University and student records shall be considered confidential and treated accordingly. In addition, all testimony and information presented in closed hearings shall be considered confidential and be binding as such on all parties.
- B. Any violation of confidentiality shall be considered Contempt and shall be adjudicated in accordance with provisions provided herein or with other appropriate sanctions.
- C. This section applies to Justices, University Hearing Representatives, Student Advisors, and students.

25. RIGHT OF APPEAL

- A. Both the University and the Student shall have the right to appeal the decision of the Student-Wide Judiciary.
- B. **SWJ Review** - A Student may not appeal a decision until a sanction is delivered. A written notice of appeal must be delivered to the Chief Justice within 10 days of the date that the decision is delivered. This request for an appeal shall be based on a procedural error occurring during the SWJ Review and must explain the grounds on which the appellant believes an appeal is warranted.
- C. **Trial** – A written notice of appeal must be delivered to the Chief Justice within 10 days of the date that the decision is delivered. The written notice of appeal must explain the issue that the appellant wants the Court to consider and the reason(s) the appellant believes the Court should find in his/her favor.
- D. Upon the Chief Justice's decision to consider the appeal, the appeal shall

continue as follows:

- i. The Court shall notify any other party to the appeal within 3 days of receiving the brief.
- ii. Both parties then have 6 days in which to file a final or amended brief with the Court. This time period may be extended for good cause shown.
- iii. The Student shall submit documentation and/or a written statement to the Court, upon which the Court shall make a decision.
- iv. Or, ONLY at the request of the Court:
 - a. A hearing shall be held during which the Student/Student Advisor(s) may submit further testimony or evidence on his/her behalf before the Supreme Student Court.
 - b. The Student may present evidence not presented in the original hearing to the Supreme Student Court if the evidence/testimony has just come to his/her attention.
 - c. The party prevailing in the original hearing may submit to a written statement to the Supreme Student Court in response to an appeal.
 - d. The Supreme Student Court shall keep a record of each proceeding that comes before it. On a simply majority the Supreme Student Court is empowered to:
 1. Affirm
 2. Reverse
 3. Reduce, or
 4. Remand, with instructions
 - e. The Court shall announce a decision within 10 days after the opposing party's brief has been filed. The decision may be delivered orally or in writing, but written decisions are preferred.

26. SUPREME STUDENT COURT

- A. The Supreme Student Court shall consist of the three Chief Justices. If the Chief Justice position for the Graduate/Professional School and Millard

Fillmore College is not filled, the Undergraduate Chief Justice shall appoint two Justices who he/she feels are adequately trained for such position.

- B. The Supreme Student Court shall have the following functions:
 - i. To act as the Court of Appeals in the SWJ disciplinary process, in response to an appeal filed properly under these Rules of Procedure.
 - ii. To act as the Supreme Student Court SWJ Arbitration Panel in response to Student Government-related disputes under these Rules of Procedure.

27. SUPREME STUDENT COURT SWJ ARBITRATION PANEL

- A. The Supreme Student Court SWJ Arbitration Panel shall have:
 - i. Original and final jurisdiction over disputes within Student Governments.
 - ii. Original and final jurisdiction over challenges that may arise against Student Governments.
 - iii. Appellate and final jurisdiction over election disputes within Student Governments.
 - 1. In the event of an election dispute, where parties have exhausted any remedies under the Elections & Credentials Committee, the SWJ shall sit as an arbitration panel.
 - iv. Original and final jurisdiction over recall proceedings.
 - a. All recall proceedings shall follow procedures outlined in these Rules of Procedures.
- B. The complaining party must deliver to the Chief Justice a typed brief explaining what he/she wants the Supreme Student Court to consider and the reasons that he/she believes the Court should find in his/her favor.
- C. In the case of an appeal of an election dispute decision, the written brief must be filed within 30 days of the contested act. The Court shall instigate the hearing as soon as possible to not impede the ongoing constitutional duties of the parties involved. The Court shall notify any other party to the student government dispute within 3 days of receiving the notice and request any additional evidence from the parties. Both parties shall immediately file a final or amended brief with the Chief Justice upon acceptance of the dispute. If new evidence is sought, this time period may be extended until the necessary evidence may be obtained.

- D. The outcome of the arbitration session shall be final.
- E. The Court shall render a final decision as soon as possible or within 3 days. When practicable, the arbitrator shall issue a decision in the presence of all parties to the dispute. A written decision shall be issued within 10 days of the final decision. The arbitrator shall be available to answer questions after the written decision is issued.

28. RECALL PROCEEDINGS

The following procedures shall apply only to recall proceedings brought against elected officials of the Undergraduate Student Association. Recall proceedings for elected officials of other Student Governments shall take place in accordance with their respective institutions.

- A. Recall proceedings shall take place before the Supreme Student Court of the Student-Wide Judiciary.
- B. The Supreme Student Court shall facilitate recall proceedings against any elected officials of the Undergraduate Student Association upon receipt of adequate petitions from an aggrieved party alleging illegal or unconstitutional acts of the part of said elected official.
- C. A recall petition shall be deemed adequate if it:
 - i. Contains signatures of 10% of the current constituency or contains a number of signatures equal to the number of voting constituents in the previous general election if larger than 10% of the current constituency.
 - ii. Can be determined valid by the Supreme Student Court.
- E. Upon receiving a recall petition, the Supreme Student Court shall determine the validity of the same within 5 days. Proceedings shall begin only after the petition is judged to be valid.
- F. Upon the initiation of SWJ Supreme Student Court recall proceedings:
 - i. The burden rests on the petitioning party to set forth sufficient evidence to state a valid claim. The petitioning party shall immediately provide the Chief Justice with sufficient evidence to demonstrate:
 - 1. A genuine impeachable offense on the part of the elected official(s) that is/are the subject of these proceedings, and
 - 2. A strong likelihood of ultimate success in the action.

ii. Upon satisfaction of the above requirements, the University Hearing Representatives

Office shall immediately cause an investigation of the allegations to be conducted.

iii. The Student-Wide Judiciary Supreme Student Court shall:

1. Immediately provide written notice to the elected official(s) that is/are the subject of the proceedings and shall include a list of all allegations/charges brought against the official(s) and a statement of the official's/officials' right to be represented by an Advisor.
2. Provide the subject(s) of the recall proceedings with a copy of the SWJ Rules of Procedure.
3. Have the power to:
 - a. Adjudicate all charges of violation of the constitution of the Student Association
 - b. Adjudicate all charges of violation of the University Rules and Regulations.
 - c. Institute sanctions pursuant to these SWJ Rules of Procedure.
 - d. Remove elected official(s) from office.
4. Issue a written decision within 10 days of the submission of the final briefs. If new or additional evidence is sought, this time period may be extended as necessary. Such written decisions shall contain a detailed statement of the Court's findings.

iv. The University Hearing Representatives Office shall submit a written brief outlining the charges against the elected official(s) and the findings of the investigation as to each charge to the Supreme Student Court within 10 days of the initiation of the proceedings. The elected official(s) shall then be provided with a copy of the brief and shall have 2 days in which to submit a full reply brief. Thus, the elected official(s) have 12 days to prepare a defense.

v. The Supreme Student Court may choose to hear oral testimony from either or both sides if further evidence or clarification is necessary. If the opportunity to present oral testimony is desired by either party, such an

opportunity must be requested in the written brief along with a detailed description of the necessity of oral testimony.

29. TEMPORARY SUSPENSION FROM OFFICE

- A. Upon determination of probable cause, the Supreme Student Court may suspend all powers and privileges of the elected official who is the subject of the proceedings, pending adjudication of the charges. A temporary suspension of power is considered a drastic remedy and may only be granted where the petitioning party demonstrates a strong likelihood of ultimate success in the action and where it appears that immediate injury, loss, or harm will result unless all powers and privileges are suspended.

30. RULE MODIFICATION/VOTING

- A. At any time, the Student-Wide Judiciary may approve, by majority vote, the Rules of Procedure to be in effect for the current team. At any time during that term, any judicial body or panel herein may, upon good cause shown and unanimous vote of that body or panel, alter the Rules of Procedure for the benefit of any particular case it hears. The Supreme Student Court may at any time, upon good cause shown and unanimous vote, change the Rules of Procedure for the remainder of its term and so order lower courts to comply. Any presiding Justice, in accordance with the spirit of the Court, has complete discretion in deciding the appropriate method for ascertaining facts.
- B. Associate Justices may not vote to adopt or modify these Rules of Procedure during their first semester as Justices. Each Senior Associate Justice, each Chief Justice and each Associate Justice in his/her second semester as a Justice shall have one vote when voting on adopting or modifying these Rules of Procedure.
- C. Rules of Procedure changes/modifications are effective the day they are approved by a majority vote. All Students with pending charges appearing before the Court are subject to said changes/modifications from the time they are implemented, regardless of when the incident occurred or when the charges were filed. Rules of Procedure changes/modifications are not considered retroactive and therefore will not be binding on any prior Court decisions or proceedings. All decision made prior to any rule changes/modifications may not be appealed on the basis of said rule changes/modifications.

Amended:

September 19, 2008

September 17, 2006

November 29, 2004
September 12, 2002
January 27, 2001
February 7, 2000
October 26, 1999
November 30, 1999
April 3, 1998
October 26, 1995