

Cornell University
University Assembly

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Agenda

Codes and Judicial Committee
University Assembly
April 11th, 2018
4:30pm - 5:45pm
163 Day Hall

- I. Call to Order (Chair)**
 - i. Call to Order (3 minutes)
- II. Approval of Minutes (Chair)**
 - i. March 14, 2018 (2 minutes) ^[1]
 - ii. March 21, 2018 (2 minutes) ^[2]
 - iii. March 28, 2018 (2 minutes) ^[3]
- III. Business of the Day**
 - i. Working Group Update (R. Lieberwitz) (10 minutes)
 - ii. For Discussion: Proposed Changes to the Judicial Administrator Re-Appointment Process (15 minutes)
 - iii. For Discussion: Concerning the Previously Passed Housekeeping Amendments to the Campus Code (10 minutes) ^[4]
 - iv. For Discussion: University Hearing and Review Boards Staffing Update (5 minutes)
 - v. For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, Policy 6.4, Selection Questions, and the Complainants Advisor (10 minutes) ^[5] ^[6]
 - vi. For Discussion: Codifying Prior Practices for UHRB and Search Committee Appointees (10 minutes) ^[7]
 - vii. For Discussion: Reorganization of the Code Update (5 minutes)
- IV. Adjournment (Chair)**
 - i. Adjournment (1 minute)

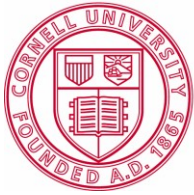
Attachments

1. CJC Meeting Minutes 3.14.2018
2. CJC Meeting Minutes 3.21.2018
3. CJC Meeting Minutes 3.28.2018
4. Language for Housekeeping Changes to the Campus Code of Conduct – Previously Approved Sections

If you are in need of special accommodations, contact Office of the Assemblies at (607) 255-3715 or Student Disability Services at (607) 254-4545 prior to the meeting.

5. Policy 6.4 Hearing Panel Application Draft (Edited 4.10.2018)
6. UHRB Application Questions - 2018 Cycle
7. Draft UA Bylaws Appendix A - UHRB Staffing Procedure

If you are in need of special accommodations, contact Office of the Assemblies at (607) 255-3715 or Student Disability Services at (607) 254-4545 prior to the meeting.



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Minutes

Codes and Judicial Committee

University Assembly

March 14th, 2018

5:05pm - 6:20pm

163 Day Hall

I. Call to Order (Chair)

a. Call to Order

i. M. Battaglia called the meeting to order at 5:05pm.

b. Roll Call

i. *Present:* K. Ashford, D. Barbaria, M. Battaglia, R. Bensel, R. Lieberwitz, V. Price, C. Riley, E. Winarto, K. Zoner, K. Karr

ii. *Absent:* J. Kruser, D. Putnam, M. Horvath, G. Kaufman

iii. *Others Present:* J. Hannan, C. Liang

II. Approval of Minutes (Chair)

a. March 14, 2018

i. K. Ashford made a motion to approve the minutes – **approved**.

III. Business of the Day

a. Update Concerning: UA Resolution #5 Bylaws Change Clarifying the Charge of the Codes & Judicial Committee

i. M. Battaglia said that the resolution has passed and has clarified the charge of the Committee (CJC). He added that if the Code amendment to remove non-matriculated minors from the code passes, it will be under the Committee's jurisdiction.

b. Update Concerning: UA Resolution #7 Charter Change Supporting the Office of the Complainant's Advisor

i. M. Battaglia said that this resolution has also passed and can be modified again at a later time. He added that the University Assembly (UA) is awaiting on the President's response.

ii. V.Price asked whether the resolution would come into effect this year or next.

1. M. Battaglia said that the Committee is not involved in the earliest stages of the JCC (Judicial Codes Counselor) process, but will

take a closer role in the final stages of the application process. He noted that there have been discussions about whether the CJC should take a closer role in earlier rounds.

- iii. M. Battaglia said he was informed that Policy 6.4 will be reviewed for revamp again and will be speaking with the head of the UA about this matter. He said that the 6.4 panel is similar to the University Hearing and Review Boards (UHRB) except that there are no students on the panel, although that may change, as well as that it is essentially a mini-selection panel. He added that concerns have come to light that there is no way to formally dissent and that questions are answered in a yes/no fashion. He has drafted a new version of questions to address this issue.
- c. For Discussion: University Hearing and Review Boards Staffing Update and Discussion
- i. M. Battaglia said that the UHRB applications went live today via email and that there appears to be a need to institutionalize the application process. He added that the Committee has asked to close the applications at midnight, but the Office of the Assemblies (Office) has responded that they go through a back-end process requiring them to be closed beforehand.
 - ii. D. Barbaria asked if the Office reflected that they possibly needed more time and stated that he did not realize there were logistical needs after the applications were submitted. He said he would prefer to move the deadline to Friday if possible.
 1. M. Battaglia said there were no concerns about moving it to Friday.
 - iii. D. Barbaria made a motion to allow the Office to move the closing time to 12pm.
 1. The motion **passed** by a vote of 6-0-1.
 - iv. C. Liang, Associate Judicial Administrator, arrived on behalf of M. Horvath who could not make it to the meeting.
 - v. M. Battaglia said that the Office plans to advertise the applications and encouraged Committee members to help advertise them.
- d. Working Group Update (R. Lieberwitz)
- i. R. Lieberwitz said that the Group held its second session for the first forum today and is hoping to hold another meeting next week. She said that she has begun formulating some ideas and that the next public forum will be held to workshop those ideas and receive other opinions. She added that the third forum will hopefully be more specific about public comment on more concrete proposals and hopes to provide the proposals to the CJC by late April to early May.
 - ii. R. Lieberwitz said that the President's Task Force is acting independently from the Working Group, but a representative was present at today's

- meeting. She added that the Group will also receive input and feedback from the Task Force and that the Task Force incorporated questions suggested by the Working Group.
- iii. K. Ashford asked for more clarification on how the two groups work together.
 - 1. R. Lieberwitz said she does not anticipate the Working Group and Task Force to hold joint meetings or come together, but are “stay[ing] in touch” and are not acting completely separately. She said that the two groups are intersecting in ways that are helpful.
 - iv. K. Ashford asked how the process works if both groups have jurisdiction over the Code.
 - 1. R. Lieberwitz said that the Task Force is a presidential council, whereas the Group receives input based on their reports.
 - v. R. Lieberwitz said that it would be helpful to receive questions from the University Assembly regarding timelines and goals.
 - vi. M. Battaglia said that the Working Group is specifically focused on the Code, while the Task Force is looking at it from a wider scope and anything in regard to the Code must come through the Committee.
 - vii. D. Barbaria asked if the UA provided any new instructions or marching orders.
 - 1. M. Battaglia said that there were mixed perceptions about whether the Group was moving too fast or slow, but it is well-received overall.
 - viii. D. Barbaria asked whether it is appropriate for anyone on this Committee to reach out to personal constituents who sit on the Task Force and meet with them and discuss the works of the Group.
 - 1. M. Battaglia replied that it is fully appropriate since the goal is to be transparent and that anything that comes up from the Working Group will end up in the Task Force anyway.
 - 2. R. Lieberwitz said they could invite Task Force members to attend forums and meetings, since everything is open.
 - e. For Discussion: Concerning the Previously Passed Housekeeping Amendments to the Campus Code
 - i. M. Battaglia reviewed the first amendment on non-matriculated minors, stating that he took the language verbatim from Risk Management. He said a question arose about who inserted the saving statute, but he personally does not see an issue with leaving as is. He suggested mirroring the President’s language and leaving the saving statute with an explanation as to why it is appropriate to maintain.
 - ii. R. Bensel made a motion to vote on M. Battaglia’s suggestion.
 - 1. E. Winarto – point of clarification on what the Committee is

- voting on.
2. M. Battaglia said that they would be mirroring the amended language for section a and b, while leaving the saving statute and providing an explanation that it meets all of the goals set out to do.
 3. The motion to adopt that language was **approved** by a vote of 7-0-1.
- iii. M. Battaglia reviewed the UHRB language proposal requesting renewal. He said that the President was concerned about involving faculty and to ameliorate that concern, seniors would be allowed to be appointed.
 - iv. R. Bensel moved to accept the language.
 1. The language was marked as **resolved** by a vote of 7-0-1.
 - v. M. Battaglia reviewed the language on adding discretion to no contact directives. He said that the provision makes no contact directives not mutually binding, allows the Judicial Administrator's discretion if a no contact directive is violated, and addresses concerns about an appeals process. He added that he created a flowchart to help visualize the process.
 - vi. K. Ashford said that she is in favor of a shorter time period as it fits with the President's intent for expiration and approves of reviewing as a group rather than just through one Chair.
 - vii. M. Battaglia said that Judicial Administrator (JA), M. Horvath, does not have an issue with a shorter time period as long as the process is streamlined enough.
 - viii. R. Bensel voiced his approval of the flowchart created by M. Battaglia. He said that he believed M. Horvath noted that 35 to 40 days would be optimal. He added that he was concerned about who would approve of renewals of no contact directives. He said that the first review should be partly substantive and noted further concern about delays in process.
 - ix. M. Battaglia agreed that the goal is to avoid delays.
 - x. D. Barbaria said the Committee should not take action until M. Horvath or the Hearing Board speaks to them. He said that since no contact directives are meant to protect students, he does not believe it should be made more difficult for students to be kept from being active.
 - xi. R. Lieberwitz – point of clarification on the Committee's main topic of discussion.
 1. M. Battaglia said that R. Bensel proposed to add a third step if necessary to essentially streamline the process instead of going back to the reviewing party.
 2. R. Bensel said that his suggestion was that a renewal of the order was needed instead of an appeals process.
 - xii. R. Lieberwitz approved of the suggestion as it is simpler. She said she

believes having a review group and a paper hearing makes sense. She noted that however, if they were to eliminate an appeals process, there is no person to meet with in regard to the amount of time to continue the no contact order.

- xiii. C. Liang reiterated M. Horvath's concerns that the 21-day timeline is too short to ensure all the needs are met. She said that the Office of the Judicial Administrator wants this to be an efficient process and that the interim process is interim in order to protect all parties involved.
- xiv. K. Ashford said that R. Bensel and D. Barbaria brought up valid points about the need to preserve a safe environment, but wants to balance that with rights to due process. She said that the process is meant to be interim and while the 35 to 40 days solution would be more convenient for the Committee logistically, that must be balanced with concerns of fairness and due process. She added that 21 days is not a short amount of time either.
- xv. V. Price asked what interim means in this case, and whether it covers the period between complaints filed and investigation until the hearing begins.
 - 1. M. Battaglia said that in essence, interim measures do not imply guilt or responsibility, but there is an issue that is concerning enough to separate parties until the situation is fully addressed.
- xvi. V. Price questioned whether the Committee should allow for renewal at all if it is supposed to be an interim measure for a short period of time.
- xvii. K. Zoner said that there are circumstances beyond anyone's control and believes it is nice to have such a renewal process whether or not they would be utilized. She noted that the interim measure only requires individuals to stay away from one another and are usually worked out more easily for shorter terms. She said that it would be beneficial to have the process continue on since one or both individuals strongly do not want to see each other in these circumstances. She said she is less concerned about the time frame and approved of a 40-day period.
- xviii. K. Karr agreed that having a time frame longer than 21 days is important, but noted that no contact orders do in fact restrict students' movement.
- xix. K. Zoner said those only pertain to one-sided cases and both parties would have responsibility as the case is mutually binding.
- xx. K. Karr said that it does create anxiety within students and could create problems as it restricts movement.
- xxi. C. Liang – point of clarification on whether the days mentioned are business days or calendar days. She added that utilizing the renewal model limits students' privacy.
- xxii. R. Bensel said that the renewal process is not merely procedural but also involves information and justification. He said that if they don't renew, it

- appears as if there are doubts about the case.
- xxiii. K. Zoner said that sometimes it has nothing to do with the case but how the individuals deal with one another. She added that parties can come to a “cooling down” phase without the need for a no contact directive.
 - xxiv. M. Battaglia asked what the Committee would like to decide on for number of days, noting that there seems to be an agreement of somewhere around 21 to 40 days.
 - xxv. R. Lieberwitz – point of information on how long it usually takes to get to a hearing.
 - 1. D. Barbaria said that it is likely to be 21 calendar days.
 - 2. M. Battaglia said that the total gap was reduced and cases were being cleared quicker.
 - 3. D. Barbaria said that 21 days would require the Judicial Administrator to make immediate decisions for review.
 - 4. M. Battaglia said that mean number of days was 41 days for 2015-2016, and 33 days for 2016-2017. He added that days reported excludes between 3 to 10 days of the hearing.
 - a. C. Liang added that hearing includes anything that involves the hearing such as temporary suspension.
 - xxvi. K. Zoner proposed a compromise of 30 days.
 - 1. R. Bensel said that he was about to propose 35 days, but 30 calendar days would effectively be the same as 35 days.
 - 2. K. Zoner said that it would be 30 business days, not calendar days.
 - xxvii. C. Liang said that she believes the date coincides with the rest of the proposal.
 - xxviii. C. Riley suggested 28 days.
 - xxix. K. Ashford yielded.
 - xxx. M. Battaglia said that the Committee could agree upon around a month and see how they would review this.
 - 1. K. Zoner said that the Committee should name the number of days.
 - xxxi. R. Bensel made a motion for 31 days.
 - xxxii. K. Ashford proposed 28 days.
 - xxxiii. K. Zoner proposed 30 days.
 - xxxiv. D. Barbaria said that the group would need more time to arrive upon a consensus, so they should leave it at about a month for now.
 - xxxv. R. Bensel spoke to his motion. He said that the Committee does not have all the information needed when the time period is too short.
 - xxxvi. M. Battaglia said that the mean number of days in 2016-2017 was 33 days.

- xxxvii. R. Lieberwitz reversed her original opinion and made a motion to have the reviewing party in this process be a rotating Hearing Board Chair.
 - 1. K. Ashford dissented. She said that a single person comprises the Board Chair and is against favoring a single reviewing party instead of a full Review Board. She said that a group of at least three people would be a good compromise, but putting the decision into a single individual's hands is too much power for one person.
- xxxviii. M. Battaglia requested the Committee to vote on whether to vote on R. Lieberwitz's motion.
 - 1. The Committee moved back into discussion by a vote of 4-4-1.
- xxxix. V. Price said she would be comfortable with having a smaller reviewing group if there were a finite number of renewals.
 - xl. C. Riley – point of information on the size of the Hearing Boards.
 - 1. M. Battaglia said there are four Hearing Board Chairs and one Review Chair for a total of five.
 - xli. C. Riley said that he believes it does not require five people to decide on this issue.
 - xlii. K. Karr asked if it each renewal would require a different Board. She noted her preference to have responsive and attentive members on the Hearing Board but also her concerns about the full board. She said that the rotating option is a great compromise and a statute of limitations in the form of a year would be beneficial.
 - xliii. D. Barbaria said that he is in favor of the idea of a rotating Chair if the initial period is short enough. He said that it should be mentioned in the Code as to what information the reviewing party would have access to.
 - xliv. R. Lieberwitz said that a rotation process would be beneficial, like in the case of judge and jury in court.
 - xlv. K. Ashford agreed with D. Barbaria and stated that it is important to consider the increased duration. She said that it would not be beneficial to have a single person making a decision for 60 or more days.
 - xlvi. K. Zoner asked if the end report states what the longest duration was, as the Committee has only discussed a mean so far.
 - 1. M. Battaglia said that he does not have information from the report, but has heard that the process can extend for a long period of time.
 - 2. K. Zoner said that the necessitation of a review of a no-contact order after a short period of time adds to the length of time to get to the hearing. She said she is still in favor of bringing the time frame closer to the mean.
 - xlvii. M. Battaglia said that the Committee seems to be coming upon some form

- of consensus.
- xlvi. E. Winarto noted that M. Horvath demonstrated that she is willing to go down to as low as seven days if she only needs to bring the issue to one Chair.
 - xlix. K. Zoner said that in her experience these no contact orders go very well most of the time, but has seen parties use it to create angst against one another. She noted a concern that a no contact order would be in place for a reason because an investigation conclusion has not been reached after seven days.
 - 1. M. Battaglia said that the consensus seems to be around 20 to 35 days. He said that he could take this and rework the language for next week if the Committee has a motion.
 - li. R. Bensel asked whether affected parties would have the right to attend at renewals.
 - 1. M. Battaglia said that after 21 days, the parties could send in a paper document.
 - 2. R. Bensel said that the parties should have the right to speak and make their case if they want, since there would be no appeal if they do not have a way to participate.
 - lii. K. Ashford motioned to extend for 5 minutes and for M. Battaglia to rework the language for next week.
 - 1. The motion **passed** with unanimous consent.
 - 2. M. Battaglia said that he would be sending an administration packet that contains more information. He noted the special meeting time next week.
 - liii. M. Battaglia said that the language with renewal process was brought to the Committee's attention by the JA's Office and that there are now multiple Chairs and they are looking at having the process updated. He said that he has reworked the language so that any Chair of the UHRB can start the process of removing a Board member for whatever reason and then come to the CJC with necessary information, after which the Committee would vote by two-thirds on whether to remove or keep the member. He added that a concern arose in that there are members who are in effect missing in action and there is currently no process to pull them.
 - liv. R. Bensel made a motion to adopt the language.
 - 1. D. Barbaria asked what adopt would mean in this context.
 - 2. M. Battaglia said that the language would get resolved, and when the overall document is marked resolved, it would be voted and sent.
 - 3. The language was marked **resolved** by a vote of 8-0-1.
 - lv. M. Battaglia moved on to the language concerning Hearing Board

oversight, which allows the Committee to have more input on how rules are done.

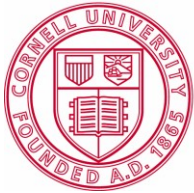
- lvi. V. Price asked when in the process the issue would come up. She said that the Committee may be in favor of changing how this language is written.
 - 1. M. Battaglia said that his understanding of the process is that it has not been updated in a number of years.
- lvii. R. Bensel moved to remove “seated” from sections b and c and to go by majority vote.
 - 1. K. Ashford dissented.
 - 2. The motion **failed** as it was not seconded.
- lviii. R. Lieberwitz made a motion to adopt the language proposed.
 - 1. The language was **adopted** by a vote of 8-0-1.
- lix. M. Battaglia said that it was logistically difficult to arrange for a public hearing two days prior, as is currently stipulated by the Code. He said that the new language would require arrangements for a public hearing to be made within three days after scheduling.
- lx. R. Lieberwitz asked what the timeline is between scheduling and hearing.
 - 1. K. Karr said that the maximum is 21 days, but an appeal can be made to lengthen this time frame if necessary.
 - 2. C. Liang said that it must happen within 21 days, and that they would try to find an agreeable date within two to three business days.
 - 3. R. Lieberwitz asked what dates would generally be chosen.
 - 4. C. Liang said that it would vary based on availability.
 - 5. R. Lieberwitz expressed her concern that three days may not be enough time.
 - 6. C. Liang said that she believes a hearing would be on an individual’s mind as soon as they know about it.
 - 7. D. Barbaria – point of clarification on whether this would mean that it could never be less than three days.
 - a. C. Liang said that an exchange needs to be made at least three days prior to the hearing.
- lxi. R. Bensel asked if the Committee would be interested in moving to adopt.
- lxii. R. Lieberwitz moved to amend to four business days as it seems more reasonable.
 - 1. K. Karr expressed her belief that the Code reflects a sufficient amount of time to make decisions.
 - 2. R. Lieberwitz **withdrew** her motion.
- lxiii. K. Ashford made a motion to vote as written.
 - 1. The language was marked **resolved** by a vote of 7-0-2.

- lxiv. M. Battaglia said that the Committee would be able to vote on the housekeeping amendments as a whole once the discussion is complete.
- f. For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, Policy 6.4, Selection Questions, and the Complainants Advisor
 - i. **Tabled** to the next meeting.

IV. Adjournment (Chair)

- a. The meeting was adjourned at 6:39pm.

Respectfully submitted,
Dongyeon (Margaret) Lee
Clerk of the Assembly



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Minutes

Codes and Judicial Committee

University Assembly

March 21st, 2018

5:05pm - 6:05pm

316 Day Hall

I. Call to Order (Chair)

- a. Call to Order
 - i. M. Battaglia called the meeting to order at 5:17pm.
 - ii. University Hearing and Review Board Chairs were introduced to the Committee.
- b. Roll Call
 - i. *Present*: M. Battaglia, R. Bensel, R. Lieberwitz, C. Riley, E. Winarto
 - ii. *Absent*: K. Ashford, D. Barbaria, M. Horvath, K. Karr, G. Kaufman, J. Kruser, V. Price, D. Putnam, K. Zoner
 - iii. *Others Present*: J. Cisne, T. DeVoogd, M. Lee, C. Liang, A. Mooney, T. Overton, R. Parker

II. Approval of Minutes (Chair)

- a. March 14, 2018
 - i. **Tabled** to the next meeting.

III. Business of the Day

- a. Discussion with the University Hearing and Review Board Chairs (T. DeVoogd, T. Overton, R. Scanza, A. Mooney, & J. Cisne)
 - i. J. Cisne said that he is working on a “small list of possibilities” for everyone and that his goal is to work with both the Chairs and the entire pool. He said this includes revision of Hearing Board procedures, a possibility of training members to allow procedures to move faster, benchmarking what other universities do and providing opportunities for greater involvement.
 - ii. M. Battaglia asked the Chairs what the Committee could do make their jobs more manageable such as clarifying the Code or processes.
 - iii. A. Mooney said that she finds it helpful to have an attorney that interprets the Code. She said she personally finds the Code to be pretty straightforward, but the procedures require a lot of work to be done. She added that it would help to have an expanded pool of panel members, since the Judicial Administrator’s (JA) Office finds trouble having people

participate. She noted that when people come onto the panel, they don't necessarily want to follow the Code and that the Board needs to work with panel members to ensure that they do.

- iv. R. Bensel asked whether there is a reason why procedures in the Code have drifted out.
 1. A. Mooney said that the procedures were not written very clearly and have not been revised in a while.
 2. M. Battaglia said that the Committee has examined expanding the pool in the past and was told that it was not something that was necessarily needed to be done but something that could be done.
- v. T. Overton agreed that access to Counsel for the Chairs and Board is very helpful. He said he hasn't found the procedures as confusing and found M. Horvath's email attachments to be helpful. He added that lack of information in the last hearing made the process a little difficult and said that there needs to be an emphasis on clarity.
- vi. M. Horvath said that a written reprimand is the baseline for the JA's Office, but agrees that some of the sanction needs to have an appeal. She said that the most difficult constituency to reach out to are faculty members and would be interested in providing additional training.
- vii. M. Battaglia said that the Committee is reviewing different options to expedite the process such as having unresponsive members unseated from the Board.
- viii. R. Lieberwitz said that she is concerned about having the university General Counsel's Office answering questions about the Code. She said that it seems odd that someone who has a stake be involved, since the Board would be provided with a certain point of view about what the Code means. She asked if the Chairs had any concerns about this.
 1. A. Mooney said that in practice, she is not concerned. She added that the panel would ask the Counsel what an aspect of the Code means if they are struggling and she does not believe it is her role to interpret the Code.
 - a. R. Lieberwitz asked whose role it would be.
 2. T. Overton said that the General Counsel's role is specifically to support the Hearing Board Chairs, not the university. He said that he found the individual to be extremely helpful with the interpretation of the Code as well as adhering to process.
 3. R. Lieberwitz noted she was surprised to hear that the Hearing Board was asking the university Counsel's office for advice. She said that one person's view in applying the Code may not necessarily be the same for another.
 4. A. Mooney said that in her experience, the Counsel would not be determining whether the individual in question had violated the Code, but would consider what to do if both the Counsel and the Chair agree that they did in fact violate the Code.
 5. T. Overton said that there are different perceptions within the Board.
 - a. R. Lieberwitz said that she understands, but she finds it to be an issue of whether the sanctions are sensitive enough to have a range of views.
 6. M. Battaglia said that baseline standards can change.
- ix. M. Horvath said that the attorney that advises the Board is different from who advises Office of the JA (OJA). She said that the Code is a Trustee's document, so one of the responsible offices is the Office of the General Counsel.

- x. C. Riley asked what action happens afterward in cases where the Board is hesitant to apply the penalty seen in the Code.
 - 1. A. Mooney said that they would drop down the penalty. She said that the issues brought up to the Chairs are serious. She noted that there is an ambiguity on what “the record” means and that there is hesitance in applying it.
 - 2. T. Overton said that it may partly be due to lack of clarity in terms of where “the record” would show up.
 - 3. J. Cisne said that they could have yearly trainings on what “the record” means.
- xi. C. Riley questioned whether the safety of the campus or of the individual is being evaluated. He said that in consideration of the safety of the campus, it is important to maintain a distinction and make people aware of what would happen when they violate the Code.
 - 1. A. Mooney said that is exactly the question, and that she does not have an answer.
 - 2. T. DeVoogd said that in most cases, the JA suggests a penalty and that it is possible to go more or less severe than what the JA recommends, which gives the Hearing Board the possibility of deciding how egregious the circumstances were.
 - 3. M. Battaglia stated that Hearing Board decisions are all public record and that the system exists to allow for the Board’s discretion.
- xii. R. Bensel said that discussions in Committee meetings have come up about the length of time it takes to adjudicate a case and what the sources of delay would be, as well as how to address those issues. He asked what the major source of delay in the hearings are.
 - 1. T. DeVoogd said that if it is a serious case, the individual would accompany a lawyer, who is often busy.
 - 2. A. Mooney said that the respondent is the one who would supposedly be harmed by the delay.
 - 3. T. Overton said that it can take varying amounts of time to ensure they come up with something that works even if it does extend for a greater period of time.
 - 4. M. Horvath said that the issue tends to lie in the academic schedule, such as the first two weeks of school, mid-October and February. She noted that in the past two years, timelines have been expedited and added that on average the timelines are within 39 days of adjudication, which is decent and only 18 days longer than what the Code has initially.
 - 5. T. Mooney asked if 39 days is unacceptable.
 - a. R. Bensel replied no.
- xiii. R. Bensel said that Committee discussions supplied the possibility of having different ways of processing renewal for interim measures. He directed the Committee and Board to the meeting packet. He asked which option the Chairs think would work best.
 - 1. A. Mooney said that she does not recommend the Hearing Board Chairs come together collectively, as it would merely be difficult to match everyone’s schedules.
 - 2. M. Battaglia said that the Committee discussed having a set duration of interim contact procedures. He said that the hope is to ensure interim measures do not last too long and are also not too onerous.
 - a. T. Devoogd said that is parallel to the current system.

- xiv. M. Battaglia thanked the Chairs for attending the meeting and asked if there was anything else the Committee could do to help to ensure transparency and that the Code is working.
 - xv. T. Devoogd said it would be helpful to have someone in the Committee look into little details in procedures of the Code.
 - xvi. T. Overton said that he thinks it is a great change to move public hearing time forward, but a longer timeline and plan would be needed to ensure it takes place.
 - xvii. A. Mooney said that the Code says that the audience should be in a separate location.
 - 1. M. Battaglia said that his understanding is that the Code seems to in tone say that if possible, they should be in the same location.
 - 2. A. Mooney recommended that the Committee look at the issue of placing individuals in a different location, because she personally finds it silly.
 - 3. T. Overton said that the motion and charge in the student body was that individuals were unsure of whether they could be in the same room.
 - 4. T. DeVoogd said that it would have worked in a large room.
 - 5. M. Horvath said that cutting out that part of the procedures would not necessarily be the solution.
 - 6. J. Cisne said that it would have been more convenient to have a big room.
 - xviii. T. Overton commented on the Board removal process. He said that the current language seems to give the Chair a fair amount of latitude, whereas the proposed language is much more procedural. He said he was unsure in what situation the proposed language would apply.
 - 1. M. Battaglia said that the original language was written when there was only one Chair and that there is ambiguity now with multiple Chairs.
 - xix. J. Cisne asked whether it would be appropriate to have the JA make the request since her office is responsible for staffing Board members, or be required to ultimately be run through with the Chair.
 - 1. M. Horvath said that the matter would involve the Chair.
 - xx. M. Battaglia said that the key is to ensure there is full communication between the Committee and Board.
- b. Working Group Update (R. Lieberwitz)
- i. R. Lieberwitz said that the Group will be meeting tomorrow in 163 Day Hall at 2pm and that the meeting next Wednesday will be publicly broadcast.
- c. For Discussion: Concerning the Previously Passed Housekeeping Amendments to the Campus Code
- i. M. Battaglia said that he drafted a proposal based on a rough consensus reached last meeting. He noted that the Committee is always free to change or modify the proposal.
 - ii. M. Horvath advised the Committee to use the word “hearing” with caution, as the Code is very specific about what it means to have a hearing, invoking procedural rights. She also requested the Committee to be careful with the language, “the Chair shall have access to all investigative materials” because much of the information is not intended to be presented to the Chair.
 - 1. R. Bensele asked what the alternative would be.
 - 2. M. Horvath said that the Chairs do not usually typically have access to materials, but have fact patterns or a summation of facts. She said that 21 days may also be a

- financial burden on the respondent as they would equate to billable hours.
- iii. M. Battaglia said there was concern that the Hearing Board Chairs should have access to enough information to make a reasonable determination, and it would be essential to find language that satisfies that concern.
 - iv. R. BenseL asked whether the 21-day renewal process is automatic.
 1. M. Battaglia said that the OJA could decline to ask for renewal, in which case it would lapse.
 2. R. BenseL asked whether either party needs to request renewal.
 - a. M. Battaglia replied no.
 3. R. BenseL asked whether the OJA could eliminate the need to go back to the respondent.
 - v. M. Horvath suggested eliminating “If the Chair determines [...] may submit written statements” and keeping just the first two and last two sentences from the proposed language.
 - vi. M. Battaglia said that a concern was brought forward in making sure that the Hearing Board chairs know they have the ability to modify. He said that he will re-tweak the language to make it more workable.
 - vii. R. Parker suggested keeping the part about parties being able to submit written statements out of what M. Horvath suggested to be stricken.
 1. R. Lieberwitz asked what R. Parker is agreeing with.
 2. R. Parker said that he agrees with the concern about having to give everything to the Hearing Board Chair, but would want the Chair to be able to modify and for parties to be able to submit anything they find relevant.
 - viii. R. Lieberwitz said that she believes the proposed language is good as written, but understands the issue of access to investigative materials. She asked whether the Chair and parties receive a summary from the OJA’s office.
 1. M. Horvath said that there is currently nothing in place. She said that the best practice is to usually keep no contact directives in place until circumstances change.
 - ix. M. Battaglia said that his understanding of the discussions so far is to remove the vast majority of the proposed language and retain the part that Chairs may choose to modify the directive as well as that the parties may submit written statements. He said that the goal is to be responsive and make sure that the suggestions are posted for comment in the Office of the Assemblies once finalized.
 - x. R. BenseL said that he believes all of the bolded language in the last page of the meeting package is fine.
 - xi. M. Battaglia said that the Committee could briefly address the proposed language before moving into it next week.
 - xii. M. Horvath **withdrew** her motion.
 - xiii. R. Lieberwitz said that she believes it is unclear what the Chair may consider.
 1. M. Battaglia said that it comprises of what they receive in order to make an informed decision.
 2. M. Horvath said she could send out a triage matrix of interim measures via email.
 - xiv. M. Horvath suggested crossing off “the Chair shall have access [...] may submit written

statements” from the proposed language.

- xv. M. Battaglia said that he will rework the proposed language based on discussions from the meeting and will be contacting the Office of the Assemblies regarding Hearing Board applications.
- xvi. M. Horvath expressed her belief that one of the Hearing Board application questions were a little prejudicial to the Judicial Administrator’s Office.

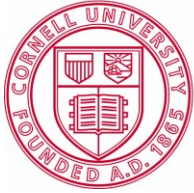
IV. Adjournment (Chair)

a. Adjournment

- i. The meeting was adjourned at 6:24pm.

Respectfully submitted,

Dongyeon (Margaret) Lee
Codes and Judicial Committee Clerk



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Minutes

Codes and Judicial Committee

University Assembly

March 28th, 2018

4:30pm - 5:45pm

163 Day Hall

I. Call to Order (Chair)

a. Call to Order

i. M. Battaglia called the meeting to order at 4:45pm.

b. Roll Call

i. *Present:* M. Battaglia, R. Bensel, M. Horvath, K. Karr, R. Lieberwitz, C. Riley, E. Winarto

ii. *Absent:* K. Ashford, D. Barbaria, G. Kaufman, J. Kruser, V. Price, D. Putnam, K. Zoner

iii. *Others Present:* M. Lee

c. There were not enough members to reach a quorum. The Committee moved into an informal discussion on the Working Group, housekeeping amendments to the Code, University Hearing and Review Boards staffing update, selection questions and an outlook on the semester.

II. Approval of Minutes (Chair)

a. March 14, 2018

i. **Tabled** to the next meeting.

b. March 21, 2018

i. **Tabled** to the next meeting.

III. Adjournment (Chair)

a. Adjournment

i. There was no adjournment of the meeting.

Respectfully submitted,

Dongyeon (Margaret) Lee

Codes and Judicial Committee Clerk

Language Comparison from Returned Changes to the Campus Code of Conduct

Proposed language to address to the suspension length, definition, and reporting date for organizations

President's Language/Concern.	Passed Language (Title Three, Art. III, Sec. D.4 (pg. 24, 2017)).
None noted.	<p>4. Limitations Period Any charge of a violation of this Code must be initiated by the filing of charges by the Judicial Administrator within one calendar year of the date of the alleged violation. Exceptions to this policy that extend the period beyond one year are:</p> <ul style="list-style-type: none">a. In cases where the charge involves fraud, the period shall be one calendar year from the alleged fraud or 60 calendar days from the filing of a complaint alleging fraud, whichever is longer, but in any event no more than three calendar years from the alleged fraud.b. In cases where the individual to be charged is absent from the University because of either (1) a leave of absence, (2) a termination of employment, or (3) a withdrawal as a student, a charge may be brought within one calendar year of the alleged violation or within 60 calendar days of his or her return to the jurisdiction of the University judicial system, whichever is later.c. In cases where the individual to be charged is facing public prosecution involving the same matters, a charge may be brought within 60 calendar days of the final disposition of such prosecution. Should it appear that the individual will leave the University before such time, the President

	<p>or his or her designee may cause the individual's degree to be withheld for the period in which the Judicial Administrator may file charges.</p> <p>d. In cases where the Respondent is a University-Registered Organization the period shall be no more than three calendar years from the alleged violation.</p> <p>e.-d. The Judicial Administrator may request a Hearing Board Chair to extend any limitations period by up to an additional six calendar months, without required notice to any other person but upon a showing of special circumstances justifying such an extension, provided that the Judicial Administrator delivers such written request to a Hearing Board Chair prior to the expiration of that period.</p>
None noted.	<p>(Title Three, Art. IV, Sec. A.1.c.6 (pg. 25, 2017).</p> <p>(6) Suspension of all privileges for a stated period not to exceed one year five years.</p>

Proposed language to address to immediate suspension for non-compliance of sanctions

President’s Language/Concern.	Passed Language (Title Three, Art. III, Sec. D.4 (pg. 24, 2017).	Possible Compromise Language/Solution
<p>2. If an offender has not complied with the prescribed penalty or remedy within the specified time, the Judicial Administrator may suspend the offender or issue a lesser penalty. In the event the JA elects to suspend, the JA shall notify the University Registrar, Office of the Dean of Students, and other offices on a need-to-know basis that the individual or organization is suspended, and the suspension shall have immediate effect and continue until the offender has complied. For any violation of the terms of probation committed during the probationary period, the Judicial Administrator may impose on the offender additional penalties, including suspension or dismissal. The offender may request an appearance before the Judicial Administrator in order to show the fact of compliance, to contest the violation of probation, or to argue for a lesser penalty. The offender may petition the University Hearing Board in writing for a review of the penalty imposed by the Judicial Administrator for noncompliance or for violating probation.</p>	<p>2. If an offender has not complied with the prescribed penalty or remedy within the specified time, the Judicial Administrator shall may¹ notify the University Registrar, Office of the Dean of Students, and other offices on a need-to-know basis that the individual or organization is suspended, and the suspension shall have immediate effect and continue until the offender has complied. For any violation of the terms of probation committed during the probationary period, the Judicial Administrator may impose on the offender additional penalties, including suspension or dismissal. The offender may request an appearance before the Judicial Administrator in order to show the fact of compliance, to contest the violation of probation, or to argue for a lesser penalty. The offender may petition the University Hearing Board in writing for a review of the penalty imposed by the Judicial Administrator for noncompliance or for violating probation.</p>	<p>Accept President’s proposed language.</p>
<p>None noted.</p>	<p>(Title Three, Art. II, Sec. A.3 (pg. 18, 2017).</p>	

¹ The term “may” will preserve the rare instances of addressing, for example, serious violations of NCDs.

	(m) To refuse to comply with any valid penalty or remedy dispensed by the Office of the Judicial Administrator and/or University Hearing or Review Board lawful order of a clearly identifiable University official acting in the performance of his or her duties, or with a policy that has been duly promulgated by the University or any college, department, or unit thereof, whether or not the policy has been issued in the standardized University format. ²	
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Proposed language to role of non-matriculated minors

President’s Language/Concern.	Proposed Language (Title Two, Art. I, Sec. B.2 (pg. 10, 2017).	Possible Compromise Language/Solution
<p>1. The term student shall be interpreted to mean any person, whether or not incidentally on the University payroll, who is currently registered with the University as:</p> <ul style="list-style-type: none"> a. a degree candidate in any of Cornell’s undergraduate or graduate divisions; b. a special student in the undergraduate divisions; or c. a non-degree-candidate in the graduate school. <p>2. The term student shall be interpreted to mean also persons not officially registered,</p>	<p>1. The term student shall be interpreted to mean any person, whether or not incidentally on the University payroll, who is currently registered with the University as:</p> <ul style="list-style-type: none"> a. a degree candidate in any of Cornell’s undergraduate or graduate divisions; b. a special student in the undergraduate divisions; or c. a non-degree-candidate in the graduate school. <p>2. The term student shall be interpreted to mean also persons not officially registered,</p>	<p>Accept the proposed additional exclusionary note under subpoint b. Retain the “saving statue” to avoid having individuals in “limbo” should no other policy exist and provide additional explanation to President’s Office.</p>

<p>and not faculty members or other University employees, if they are:</p> <p>a. currently enrolled in or taking classes at the University, with the exclusion of any individual enrolled in or taking classes at the University while still an elementary, middle, high school student, or foreign equivalent;</p> <p>b. currently using University facilities or property, or the property of a University-related residential organization, in connection with academic activities, with the exclusion of any individual enrolled in or taking classes at the University while still an elementary, middle, high school student, or foreign equivalent; or</p> <p>c. currently on leave of absence or under suspension from being a student of the University.</p>	<p>and not faculty members or other University employees, if they are:</p> <p>a. currently enrolled in or taking classes at the University, with the exclusion of any individual enrolled in or taking classes at the University while still an elementary, middle, high school student, or foreign equivalent, so long as such individuals are subject to written behavioral expectations, policies or procedures;</p> <p>b. currently using University facilities or property, or the property of a University-related residential organization, in connection with academic activities; or</p> <p>c. currently on leave of absence or under suspension from being a student of the University.</p>	
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Commented [MB1]: Upon verification with prior records, this “saving statute” was included in the original proposal directly from the Office of Risk Management as first communicated to the Codes & Judicial Committee.

Additionally, four sample policy documents provided by Risk Management have been included with the Agenda. In general, the more significant the involvement with the University, the more detailed the outlined policy. All the attached policies would apply in lieu of the Code should this language be passed.

Proposed language regarding removal of indefinite suspension

President’s Language/Concern.	Proposed Language (Title Three, Art. II, Sec. E.1.c (pg. 24, 2017).
None noted.	Circumstances Requiring Hearing e. The offender may petition in writing for readmission from indefinite suspension.
None noted.	(Title Three, Art. IV, Sec. A.1.a.8 (pg. 34, 2017). (8) Suspension from the University for a stated period not to exceed five years. or indefinitely with the right to petition the University Hearing Board in writing at any time for readmission after the

	<p>academic term following the academic term in which the suspension occurred. Such petition shall be submitted no later than April 1 if the petition is for readmission for the fall semester and by November 1 if the petition is for readmission for the spring semester. If the Judicial Administrator agrees with the petition of the accused, he or she may permit the readmission without the petition being considered by the University Hearing Board, after consulting with appropriate professional colleagues and receiving approval of a Hearing Board Chair. If the University Hearing Board denies the petition, the accused may not petition again until the next semester and, in any event, may not petition for readmission for the same semester denied by the University Hearing Board. While on such suspension, the student may not obtain academic credit at Cornell or elsewhere toward the completion of a Cornell degree.</p>
None noted.	<p>(Title Three, Art. IV, Sec. A.2.b (pg. 34, 2017).</p> <p>b. Ordinarily, the penalty for a third violation by a student within a twelve-month period should be probation or suspension from the University for a stated or indefinite period and denial of academic credit for the term in which the suspension occurs. The penalty may be reduced if a lesser penalty would more appropriately serve the interests of justice and if, in addition, the offender expressly agrees not to engage in misconduct of specified kinds in the next twelve months. In such a case of indefinite suspension, the offender may petition the University Hearing Board in writing for readmission, but no application for readmission for the academic term following the academic term in which the suspension occurred will be permitted</p>

Proposed language clarifying UHRB appointment procedures

President's Language/Concern.	Proposed Language (Title Two, Art. IV, Sec. C.3 (pg. 14-15 2017)).	Possible Compromise Language/Solution
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<p>I generally support the proposed change, but request that the UA make clear the process by which a currently serving member may request reappointment. Under the current process, which does not expressly allow for reappointing existing Hearing and Review Board (HB) members, a reappointment to the HB would follow the same process as any initial appointment: for faculty members, nomination by the Dean of the Faculty, and for all other appointments, nomination by the CJC following written solicitation for applicants by the Office of the Assemblies. The proposed reappointment process removes the Dean of the Faculty and the Office of the Assemblies from exercising any oversight over HB members after their initial appointment to the HB. In order to ensure the appropriate levels of transparency and independence for reappointment of HB member, I recommend this provision be further amended to require input from the Dean of the Faculty.</p>	<p>3. Members of the University Hearing Board and University Review Board pool shall serve terms of office as follows:</p> <ul style="list-style-type: none"> a. All members shall be appointed for two-year staggered terms, except for students entering their final year of study, who shall be appointed for one-year terms. b. Terms of office shall begin June 1 of the year appointed. Any appointment to fill a vacancy or to address an emergency shall become effective immediately. Appointments made to fill a vacancy arising mid-term shall be granted the balance remaining of that term. c. Currently serving members may be appointed for additional terms if reconfirmed by the University Assembly after review by the Codes and Judicial Committee. d. The Chair of the Hearing Board or Review Board shall have the authority to remove a member of the pool if the member is not honoring his/her commitment to the university to communicate promptly with the Chair or the Judicial Administrator's office, to participate in hearings, to arrive punctually, and otherwise to participate responsibly in this process. 	<p>Noting that the Office of the Assemblies has no oversight role over this process (per the Code, they solicit written applications) provide clarification to the Office of the President. To address the concern for the Dean of the Faculty we could utilize the following:</p> <ul style="list-style-type: none"> c. Currently serving members may be appointed for additional terms if reconfirmed by the University Assembly after review by the Codes and Judicial Committee. Faculty members seeking renewal will be reviewed by the Codes and Judicial Committee who shall receive input from the Dean of the University Faculty prior to reconfirmation by the University Assembly. <p>Goal is to ameliorate concern and allow for DoF input however as vetting generally does not take place on the UA floor, still enabling the CJC to be involved in the process.</p>
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Commented [MB2]: Addition based off consultation of old records. NEEDS FORMAL APPROVAL

Commented [MB3]: NEW LANGUAGE based off consultation with old records. Needs formal approval

Commented [MB5]: Reaching out to the Dean of the Faculty to ascertain his thoughts on this proposal per the Committee's discussion.

Commented [MB4]: Modified below

Proposed language adding discretion to No Contact Directive procedures

President's Language/Concern.	Proposed Language (Title Three, Art. III, Sec. B.2 (pg. 19, 2017)).	Possible Compromise Language/Solution
<p>I support the UA's proposed change, in part. In addition to the JA and JCC, victim advocates should have the opportunity to comment on a change making all no-contact orders mutually binding. Also, I question the wisdom of creating a new right of appeal to a process that is, by its nature, intended to be interim and would suggest that lines 479 - 489 be eliminated.</p>	<p>a. In cases involving allegations of harassment, abuse, assault, rape, or other menacing activity, the Judicial Administrator, after making a reasonable effort to meet with the accused if appropriate to do so, may issue a No-Contact Directive, binding upon all involved parties.</p> <p>b. The Judicial Administrator shall make available to the accused the exact terms of the No-Contact Directive, as soon as it is issued.</p> <p>c. In the event the Judicial Administrator is notified of a violation of the terms of the No-Contact Directive, the accused shall be provided with an opportunity to review the matter with the Judicial Administrator within two business days. If the Judicial Administrator determines, based upon the information available, that the No-Contact Directive has been violated, he or she may impose additional interim measures or suspend the accused temporarily, pending resolution of the underlying case.</p>	<p>Provide additional time for comment and clarity as to how the Code applies in varying cases and the interaction with Policy 6.4. Provide context as to past issues with interim directives being utilized in long-term manners.</p>
	<p>c. Such directives may be initially issued for a duration of up to 21 calendar days. Should the Judicial Administrator believe a No-Contact Directive remains necessary after that time, he or she may petition a University Hearing Board Chair to renew the directive for up to an additional 21 calendar days. Should the Chair choose to extend the directive, he or she may modify the directive's terms but may not supersede an active court order. Prior to a directive being renewed, the parties to the directive may submit written statements to the Chair for consideration. If additional renewals</p>	

Commented [MB6]: Per the Committee's discussion, these provisions will be included in the packet to UHRB Chairs prior to their attendance at a CJC meeting.

Commented [MB7]: Interim measures and concerns over them being unreviewable are discussed at some length in the Minikus Report (issued on June 11, 2015).

	are requested by the Judicial Administrator, a different Hearing Board Chair shall review each additional request. Chairs may evaluate multiple renewal requests on the same case only if all other currently available Chairs have already reviewed an equal number of requests on that case.	
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Proposed language increasing the judicial boards pool size and clarifying the application process:

Existing Language (Title Two, Art. IV, Sec. C.1 (pg. 14-15 2017)).	Proposed Language (Title Two, Art. IV, Sec. C.1 (pg. 14-15 2017)).
<p>C. Pool of Board Members</p> <p>1. The University Hearing Board and University Review Board pool shall comprise 55 members confirmed by the University Assembly: 25 students, 15 faculty members, and 15 nonfaculty employees. Faculty members are nominated by the Dean of the Faculty. For other candidates, the Office of the Assemblies will solicit written applications, and the Codes and Judicial Committee shall nominate candidates to the University Assembly for its confirmation no later than the last regular meeting of the outgoing University Assembly. The University Assembly Executive Committee may make emergency appointments on a temporary basis.</p>	<p>C. Pool of Board Members</p> <p>1. The University Hearing Board and University Review Board pool shall comprise 75 members confirmed by the University Assembly: 35 students, 20 faculty members, and 20 nonfaculty employees.</p> <p>a. Faculty members are nominated by the Dean of the Faculty for review by the Codes and Judicial Committee.</p> <p>b. For students and nonfaculty employees, the Codes and Judicial Committee shall solicit written applications in consultation with the Office of the Assemblies which shall provide logistical support.</p> <p>The Codes and Judicial Committee shall nominate candidates to the University Assembly for its confirmation no later than the last regular meeting of the outgoing University Assembly. The University Assembly Executive Committee may make emergency appointments on a temporary basis.</p>

Commented [MB8]: This provision never stated to where the members are nominated. Further, the UA bylaws delegate authority regarding recruitment to the boards to the CJC. Even if the DoF may nominate directly to the UA, the Code is silent on how the UA will handle that nomination and the bylaws would thus delegate that to the CJC.

Commented [MB9]: Add clarity around the role of the Office of the Assemblies in this process as the CJC writes the questions and handles the entire process aside from some publicity and logistics.

New Proposed Language Clarifying Hearing Board Removal Process

Current Language (Title Two, Art. IV, Sec. C.3.c (pg. 15 2017)).	Proposed Language
<p>c. The Chair of the Hearing Board or Review Board shall have the authority to remove a member of the pool if the member is not honoring his/her commitment to the</p>	<p>c. Any Chair of the Hearing Board(s) or Review Board(s) shall have the authority to begin removal proceedings against a member of the pool if the member</p>

<p>university to communicate promptly with the Chair or the Judicial Administrator's office, to participate in hearings, to arrive punctually, and otherwise to participate responsibly in this process.</p>	<p>is not honoring his/her commitment to the university to communicate promptly with the Chair or the Judicial Administrator's office, to participate in hearings, to arrive punctually, and otherwise to participate responsibly in this process. Upon a Chair beginning removal proceedings, the Chair shall furnish to the Codes & Judicial Committee of the University Assembly the following:</p> <ol style="list-style-type: none"> 1. The name of the board member. 2. A rationale for their removal from the boards. 3. Prior steps taken to attempt to resolve the relevant issue(s). 4. Indication that the board member received at least fourteen days' notice of a Chair's intent to seek removal. <p>Upon receipt of the information, the Codes & Judicial Committee may remove the board member by a two-thirds vote of its seated membership. The Codes & Judicial Committee may request additional information from a Chair or other parties as part of their deliberation. For instances involving faculty members, the Dean of the Faculty shall also be consulted.</p>
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Commented [MB10]: Rewritten in response to discussion at a prior CJC meeting.

New Proposed Language Concerning Hearing Board Oversight

Current Language (Title Two, Art. IV, Sec. C.5 (pg. 15 2017)).	Proposed Language
<p>5. Although the judicial boards decide cases and appeals when sitting in panels, the pool as a group, convened by the Administrative Chair, shall perform the following functions:</p> <ol style="list-style-type: none"> a. The judicial boards shall be responsible for establishing their own internal rules and procedures 	<p>5. Although the judicial boards decide cases and appeals when sitting in panels, the pool as a group, convened by the Administrative Chair, shall perform the following functions:</p> <ol style="list-style-type: none"> a. The judicial boards in consultation with the Codes & Judicial Committee of the University Assembly

not specified elsewhere, and making them available through the Offices of the Judicial Administrator and the Judicial Codes Counselor.

(1) Such rules and procedures must be published in the Cornell Chronicle before going into effect.

(2) Any changes in rules and procedures must be published in the Cornell Chronicle at least 30 calendar days before taking effect.

b. Upon request, the judicial boards shall report on their operations to the Codes and Judicial Committee of the University Assembly.

shall be responsible for establishing their own internal rules and procedures not specified elsewhere, and making them available through the Offices of the Judicial Administrator and the Judicial Codes Counselor.

(1) Such rules and procedures must not conflict or contradict provisions in this Code.

(2) Such rules and procedures must be published in the Cornell Chronicle before going into effect.

(3) Any changes in rules and procedures must be published in the Cornell Chronicle at least 30 calendar days before taking effect.

b. All changes to the judicial board's rules and procedures must be provided to the Codes & Judicial Committee of the University Assembly at least 14 calendar days prior to approval by the boards. The Codes and Judicial Committee may reject any proposed change by a majority vote of its seated membership.

c. The Codes & Judicial Committee of the University Assembly may choose to modify the judicial board's rules and procedures by a majority vote of its seated membership. Changes made by the Codes & Judicial Committee follow the same public notice procedures as apply to the judicial boards.

d. Upon request, the judicial boards shall report on their operations to the Codes and Judicial Committee of the University Assembly. When a report is requested, the boards shall provide it in the manner requested within thirty days of receipt.

Commented [MB11]: Points B & C rewritten to increase clarity after discussion in prior CJC meetings.

New Proposed Language Addressing Public Hearing Notice Timeframe

Current Language (Title Three, Art. III, Sec. E.3.b (pg. 28 2017).

Proposed Language

<p>(7) All hearings shall be private unless (a) the accused notifies the Judicial Administrator, no later than two business days before the hearing, that he or she wishes a public hearing and (b) the Hearing Board Chair determines that a public hearing would not result in undue intimidation of the complainant, the victim, or the witnesses.</p>	<p>(7) All hearings shall be private unless (a) the accused notifies the Judicial Administrator, no later than two three business days before after the scheduling of the hearing, that he or she wishes a public hearing and (b) the Hearing Board Chair determines that a public hearing would not result in undue intimidation of the complainant, the victim, or the witnesses.</p>
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NB: Other provisions discussed but not included here:

- **Judicial Administrator re-appointment process (being worked on under separate cover)**
- **Clause(s) regarding breeches of confidentiality**

DRAFT



Policy 6.4 - Resolution of Reports Against Students: Hearing Panel - Questionnaire for Pool Applicants

Name of Individual Completing Form:

Date Submitted:

*The Policy 6.4 procedures for student respondents, which became effective August 1, 2016, include a hearing with a three-member hearing panel of faculty and staff members as well as a non-voting hearing chair. Individuals who are willing to serve on hearing panels are asked to complete a brief application, which is set forth below. We appreciate your candor and time in completing the application, and your willingness to consider this appointment. If you have any questions or need additional information about either the application process or hearing panel responsibilities, please contact Sarah Affel, Cornell University Title IX Coordinator, at sba49@cornell.edu or 607-255-2242. **Please return your completed questionnaire to the Office of the Title IX Coordinator at titleix@cornell.edu.***

With respect to the nature of the commitment, panel members are asked to serve two-year terms, with a possibility of renewal; there is no term limit. Typically, panel members are asked to serve on two or three cases a year, and will not be asked to serve on more than four cases. However, we understand that hearings involve a substantial commitment of time and often involve difficult content and, thus, panel members may limit their involvement to just one case per year. Panel members may also decline panel requests on a case-by-case basis based upon their schedule or the facts of a given case, with the expectation that panel members will seek to accept panel assignments where feasible and within the number of assignments to which they have committed.

For any given case, panel members may be required to spend ten to fifteen hours preparing for the hearing by reading written materials, such as investigative interview statements, and meeting with the other hearing panel members and the hearing chair to determine witnesses for the hearing and draft examination questions for those witnesses and the parties. Hearing panel members needn't have any expertise; the chair provides guidance. The hearings themselves might take four to six hours, and the deliberations might take several hours. Some hearings will be conducted during business hours and some in early evening hours.

Under the new procedures, there is a three-member appeal panel that includes two ex officio members and a hearing panel member. Thus, hearing panel members will also be asked to sit on appeal panels, excluding cases for which they sat on the hearing panel. Appeal panel assignments are counted in the maximum of four panel assignments per year.

Hearing Panel - Questionnaire for Pool Applicants

Last Updated: **04/10/2018**



With respect to the educational expectations, panel members are required to attend approximately six hours of introductory educational sessions before serving on a panel. Ongoing education will be offered throughout the year.

Before answering the below questions, please take time to review:

- "Procedures for Resolution of Reports Against Students Under Cornell University Policy 6.4," available at <http://titleix.cornell.edu/procedure/>.
- Cornell University Policy 6.4, "Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct," available at https://www.dfa.cornell.edu/sites/default/files/vol6_4.pdf.

1. What is your job title and departmental affiliation?

[Insert Text]

2. Why are you interested in serving (in at least 100 words)?

[Insert Text]

3. Do you have any reservations about your ability to follow the policy and procedures? How would you respond if you personally disagree with a part of the policy or procedures? ~~especially if you do not agree with them?~~ Would you recuse yourself from the panel, potentially penalize and individual through a process with which you disagree, or take a different course of action? Please explain your reasoning.

[Insert Text]

4. For this question, assume the Policy requires that an accused individual be notified at least one week before a hearing. Further assume, at least three days before a hearing, the accused must be provided a list of witnesses and exhibits that will be presented at the hearing.

Suppose you are on a panel hearing a case in which you believe the accused

Commented [MB1]: There was discussion about modifying the questions generally to revolve around a specific situation "what if" or "how do you feel about X"



individual violated the Policy. However, the accused was provided notice five days prior to the hearing, and the list of witnesses one day in advance. The advisor representing the accused individual has not raised these procedural flaws as problematic. What would you do?

[Insert Text]

-
5. Do you have any reservations about your ability to remain impartial and make decisions in any given case based solely upon the evidence presented in the case, rather than upon preconceived notions, prior experience, or any other factors external to the record of the case? **Please explain why or why not.**

[Insert Text]

-
6. Cases may involve students using drugs and alcohol, having multiple sexual partners, and engaging in a range of sexual activities. Do you have personal opinions about student use of drugs and alcohol, gender roles, gender identity, sexual orientation, or sexual mores that could interfere with your ability to be impartial, dispassionate, and make decisions based solely upon the evidence presented in a case? **Please explain why or why not.**

[Insert Text]

-
7. **What, if any, portions of ~~Do you think that~~ explicit testimony about sex acts or use of drugs or alcohol ~~do you anticipate might~~ bothering you to the point where you are unable to serve as an effective panel member?**

[Insert Text]

-
8. **How much weight in a case, if any, do you place upon initial charges being filed against an individual? How does this relate to your understanding of the presumption of innocence and what does being presumed innocent mean to you?**



[Insert Text]

9. Which factors, in your estimation, would warrant suspension or expulsion of an individual? Additionally, what would you see as mitigating factors and what do you see as aggravating factors?

[Insert Text]

10. Cases frequently depend on the credibility of witness statement and the amount of weight assigned to various pieces of evidence. How would you approach evaluating the credibility of witnesses and deciding how much weight to place on a piece of evidence?

[Insert Text]

11. As a member of the Hearing Pool, you would be expected to recuse yourself from a particular panel if you doubt your ability to assess the case fairly. If asked to serve on a hearing panel, under which potential cases, if any, would you recuse yourself and why?
- a. a case involving an alleged infraction that you had witnessed?
 - b. a case involving an acquaintance of yours?
 - c. a case which you had read or heard a fair amount?

[Insert Text]

12. When discussing contentious matters, how do you approach interacting with others and advocating for your point of view? Further, generally, how open are you with your opinions even when they might not be shared by others present?

[Insert Text]



13. How do you believe Policy 6.4 and its procedures should be applied when an ambiguity arises?

[Insert Text]

14. If when serving you observe that the policy or procedures are not being followed fully how would you respond? How, if at all, would this procedural flaw effect your judgment in the case? How, if at all, would the timing and magnitude of the flaw play into your thought process?

[Insert Text]

15. Are there any specific things that you believe a panel must focus on above others when examining a case? Please explain why or why not.

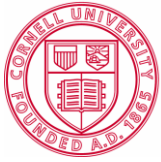
[Insert Text]

16. How, if at all, do you believe bias, your own bias and the biases of others, effect this process? If seated how would you work to counteract those biases? For example, biases concerning sexual orientation, gender, race, guilt by association, etc.

[Insert Text]

17. If you wish to explain any of your answers further, please do so in the below space.

[Insert Text]



Cornell University
University Assembly

UHRB Application Questions - 2018 Cycle:

1. For Students, please provide the expected semester and year of your graduation.
2. There are only a few hearings each year, but when they occur they often happen at night and can go late or span across multiple dates. Are you able to commit to complete a hearing once you start?
3. Hearings often, but do not always, occur after 5:30 PM on Tuesdays and after 3:00 PM on Fridays. What is your general availability on those days/times?
4. If selected to be a member of the University Hearing and Review Boards, you would be expected to undergo a couple of hours of training at the start of the academic year. Can you commit to undergo that training?
5. Please describe in your own words what the University Hearing and Review Boards are and the role they play in Cornell's judicial system.
6. Hearing panels must occasionally convene in the summer months. Although you are not expected to be available in the summer it is helpful for us to know. Do you anticipate being available in the summer months?
7. How often do you check email and how long does it take you to respond on average?
8. If you were subject to discipline either at Cornell or elsewhere, please explain how this experience will serve to make you a more conscientious board member. We expect you to

share all instances of discipline, but having been disciplined does not automatically exclude you from service on the boards. Such disclosures will be treated confidentially.

9. For this question, assume the Code requires the Judicial Administrator's office (JAO) to provide notice of a hearing to the accused individual at least one week before a hearing. Further, at least three days before a hearing, the JAO must provide a list of witnesses and exhibits that will be presented at the hearing.

Suppose you are on a panel hearing a case in which you believe the accused individual violated the Code. However, the JAO provided notice to the accused five days prior to the hearing, and the list of witnesses one day in advance. The advisor representing the accused individual has not raised these procedural flaws as problematic. What would you do?

10. Assume that you are asked to serve on a hearing panel concerning a provision of the Code with which you personally disagree. How would you respond? Would you recuse yourself from the hearing panel, potentially penalize an individual for a violation of the Code with which you disagree, or take a different course of action? Please explain your reasoning.
11. Discuss which violations of the Campus Code of Conduct, if any, you believe to potentially warrant suspension, expulsion, and/or transcript annotation as penalties. Please explain your reasoning.
12. How do you believe the Campus Code of Conduct should be applied when an ambiguity arises?
13. As a member of the University Hearing and Review Boards, you would be expected to recuse yourself from a particular panel if you doubt your ability to assess the case fairly. If asked to serve on a hearing panel, under which potential cases, if any, would you recuse yourself and why?
 - a. a case involving an alleged Code infraction that you had witnessed?
 - b. a case involving an acquaintance of yours?
 - c. a case which you had read or heard a fair amount?

14. If there is anything else you wish to discuss, please do so below (250-word limit).

1 **UA Bylaws Appendix A: UHRB Staffing Procedure**
2

3 Per the Campus Code of Conduct, the University Assembly is charged with confirming members
4 of the University Hearing and Review Boards. As the Assembly has an interest in ensuring the
5 integrity and clarity of the confirmation process, the Assembly shall confirm members in
6 accordance with the following procedures. If conflicts arise between this document and the
7 Campus Code of Conduct, the Campus Code of Conduct shall supersede.
8

9 Nothing herein shall be construed to constrain or modify the authority of the University
10 Assembly's Executive Committee to make temporary, emergency appointments when required.
11

12 A. The Codes and Judicial Committee of the University Assembly (the Committee)

- 13 a. The Committee is charged with nominating candidates to the University
14 Assembly before the last regular meeting of the outgoing Assembly for the
15 Assembly's confirmation.
16 b. The Assembly interprets the Committee's nomination responsibility in the
17 Campus Code of Conduct to include its independent ability to determine and
18 enforce its own procedure for carrying out its nomination responsibility. This
19 discretion includes, but is not limited to, whether or not and how to:
20 i. Set the criteria by which the candidates are to be assessed
21 ii. Decide the eligibility qualifications of students, staff, and faculty to apply,
22 subject to the requirements of the Campus Code of Conduct
23 iii. Enter executive session to discuss the applications
24 iv. Interview the applicants
25 v. Redact the names of the applicants¹
26 vi. Create and amend the content and format of all application materials
27 c. Any discretionary decisions taken by the Committee may be suspended and
28 reversed by a majority vote of the Assembly.
29 d. The Committee is empowered to designate a subsection of its voting membership
30 as a primary selection committee.
31

32 A. Timeline and Procedure

- 33 a. The Chair of the Committee is responsible for determining the total number of
34 appointments to be made by the Committee through reconciling the current roster
35 on file with the Office of the Assemblies, Office of the Judicial Administrator, or
36 successor entity. The expected number of appointments to be made is equal to the
37 number of expiring seats. The Chair will report this number, the number of

¹ To ensure the integrity of the process, if names are redacted, the Chair of the Committee and Chair of the Assembly shall maintain the un-redacted master list specifying which names correspond to which applications, delivered simultaneously with the anonymized applications.

38 returning members indicating their desire to continue service, and the number of
39 new appointments in writing to the Committee and the Assembly by the
40 Assembly's first regularly scheduled meeting in March.

41 b. Returning Member Appointments:

42 i. The Chair of the Committee will work with the Administrative Chair of
43 the UHRB to contact, in writing, the members of the University Hearing
44 and Review Boards currently holding expiring seats by the second
45 Tuesday in February to offer to submit their name to Committee for
46 reappointment to serve another term or part thereof, provided the member
47 remains in good standing.

48 ii. Returning members must indicate their desire to continue their service by
49 the Friday before the last business day of February.

50 iii. Upon hearing from those members who wish to continue, the Chair of the
51 Committee will contact the Hearing and Review Board Chairs, the Judicial
52 Administrator's Office, and the Office of the Judicial Codes Counselor
53 with the list of members seeking to renew their terms to determine if any
54 reasons exist that an individual's term should not be renewed.

55 iv. The Chair of the Committee will also forward the list of all faculty
56 members seeking renewal to the Dean of the University Faculty to receive
57 input if any reasons exist that an individual's term should not be renewed.

58 v. Upon receipt of a statement that a particular individual's term should not
59 be renewed, the statement will be forwarded to the full Codes and Judicial
60 Committee for review.

61 1. The Committee will then vote to determine if the individual should
62 be recommended for a term renewal.

63 2. The Committee is empowered to request information relevant to
64 determining the merit of any concern raised by either the Hearing
65 Board Chair's, the Judicial Administrator's Office, the Office of
66 the Judicial Codes Counselors, or a member of the Cornell
67 Community.

68 vi. All individuals who are recommended for additional terms will be listed
69 alongside the new members recommended by the Committee to the full
70 Assembly.

71 c. New Member Appointments:

72 i. The number of new member appointments is defined as the total number
73 of expiring seats less the number of continuing members.

74 d. Faculty Member Appointments:

75 i. Consistent with the Code, faculty candidates for the Boards shall be
76 nominated by the Dean of the Faculty. Upon receipt of a faculty

77 nomination, the Committee shall review it alongside and in a manner
78 similar to applicants from other constituents.

- 79 ii. The Committee is empowered to request additional information in their
80 evaluation of faculty nominees and may request they fill out an application
81 of the same or similar nature as other constituencies to aid the Committee
82 in evaluation.

83 e. Application Period:

- 84 i. All amendments to the application materials, including but not limited to
85 the content and format of the application questions, must be approved by
86 an affirmative vote of the Committee no fewer than seven calendar days
87 before the application materials is published prior to the beginning of the
88 application period.

- 89 ii. By the last Monday of the last full week of February, the Office of the
90 Assemblies will publish the application utilizing the questions approved
91 by the Codes and Judicial Committee. The Chair of the Committee will
92 inspect the application, may modify its appearance and ancillary text,
93 correct errors with the questions after consulting with the Committee, and
94 must approve it prior to it being made publicly accessible. The Office of
95 the Assemblies will advertise the application alongside and in consultation
96 the Committee.

- 97 iii. Application materials will be made publicly accessible by the Office of the
98 Assemblies no later than the last Wednesday of the last full week in
99 February.

- 100 iv. The application materials should be accessible for no less than 10 calendar
101 days, at the discretion of the Committee.

- 102 v. During the application process, the Office of the Assemblies will provide
103 an update on the number of applicants, their constituency, and other
104 information related to the applications upon request of the Chair of the
105 Committee or majority vote of the Assembly. The Office of the
106 Assemblies shall also provide an update on the number of applicants and
107 their constituency when the application time has half elapsed.

- 108 vi. The Office of the Assemblies will transmit the received applications to the
109 Committee in the manner of the Committee's choosing no later than 3
110 business days after the application period has concluded.

111 f. Selection

- 112 i. The Committee shall strive to fill all anticipated vacancies on the boards
113 but is not required to do so should insufficient qualified candidates apply
114 or be nominated.

- 115 ii. The Committee may designate or rank an appropriate number of alternate
116 candidates sufficient to fill anticipated vacancies during the year at the

117 Committee's discretion. Such alternates will be approved by the
118 Committee and given to the Chair and Executive Vice Chair of the
119 Assembly and will be confirmed by additional resolution or emergency
120 authority should the need arise. Such alternate list will be treated
121 confidentially.

122 iii. At the start of each semester, the Chair of the Committee will reconcile the
123 UHRB membership roster on file with the Office of the Assemblies,
124 Office of the Judicial Administrator, or successor entity. Should a need
125 arise to seat additional members, the Chair of the Committee shall contact
126 individuals in order of their appearance on the previously approved list
127 verifying their continued interest in serving. Upon verification, the Chair
128 of the Committee shall consult with the Executive Committee of the
129 Assembly to determine if emergency appointment is necessary prior to a
130 formal resolution being presented. Should the Executive Committee
131 exercise its emergency authority, the full Assembly must be notified at its
132 next regularly scheduled meeting and a resolution for formal confirmation
133 must follow within a reasonable timeframe.

DRAFT