
DEAN OF STUDENTS
STOP 9040
GRAND FORKS, NORTH DAKOTA 58202
701.777.2664
FAX 701.777.4583
UND.edu/student-affairs/dean-of-students/

Attorney Guidelines for Student Representation

September 2011

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

As found in Section 2, Statement of Philosophy and Student Rights, and Section 2-1, Student Rights, of the CODE OF STUDENT LIFE (“Code”):

The primary purpose for the imposition of discipline in the University setting is to protect the campus community. Consistent with that purpose, reasonable efforts will be made to foster the personal and social development of those students who are held accountable for violations of University regulations....

Students are not only members of the academic community, they are members of the larger society. They neither lose the rights nor escape the responsibilities of citizenship.

To assist you in working with a UND Student Conduct Administrator (“SCA”) or the Student Relations Committee (“SRC”), consider the following and refer to the *Code*.

- A. The Code is available at <http://und.edu/student-affairs/code-of-student-life/>. Paper copies of the *Code* are available at the Dean of Students Office (“DOS”).
- B. Housing handbooks/policy documents/contracts are located at UND Housing website at <http://und.edu/student-life/housing/>.
- C. Review the *Code* and related documents and procedures first with the student and discuss the limitations of your involvement in the on-campus proceedings. Please be aware that UND’s process allows you to advise your client but not to represent your client in disciplinary procedures.
- D. You may contact UND’s Office of General Counsel (“OGC”, phone: 701-777-6345) to confirm your understanding of the procedure.
- E. If you are advising a student for a disciplinary issue that is also being heard in municipal or district court, understand that the University’s disciplinary process is separate and distinct. Court dates and other issues do not and will not delay UND’s process.
- F. In most cases, students involved in campus related disciplinary cases have been charged under UND’s *Code* and these may or may not be violations of law.
- G. If you will be present at the hearing or other proceeding, you or the student need to notify UND’s OGC and the Dean of Student’s Office at least five business days before your appearance so that University counsel can be scheduled to attend the hearing or other proceeding. Please note that personnel from

OGC appear at hearings or other proceedings only when students bring their legal counsel to the hearing or proceeding.

OGC's purpose in attending the hearing or other proceeding is (1) to assure the University's processes are followed, and (2) to provide assistance, as needed, to the Chair or Advisor of the SRC, to the SCA, or to other parties or advisors. OGC does not present or assist in the presentation of the case against the accused student.

- H. If the student is involved in a case before the SRC, he or she will be assigned a Process Advisor. This person is an employee of the University who has training in the processes the SRC uses such that the student may know what to expect within its different phases.
- I. Any information your client wishes to present, such as written documentation, etc., must be presented to the DOS Office and the SRC Advisor at least two business days prior to the hearing. The names of witnesses, if any, must be presented to DOS Office and the SRC Advisor at least two business days prior to the hearing. If the student chooses as their Personal Advisor someone other than an attorney, the name of that advisor is also to be provided two business days prior to the hearing. Note that a student involved in a disciplinary matter may have one Personal Advisor or attorney and, if involved in SRC, one Process Advisor.
- J. UND will notice the student and absent extraordinary circumstance, will proceed with the disciplinary matter—with or without the student's presence. It is within the student's discretion to attend the proceeding. Having a student ignore on-campus disciplinary action will not stop the UND disciplinary process.
- K. The attorney does not direct the flow of the hearing but advises the student prior to the hearing and takes notes. During the hearing, you may only consult with the student quietly in a whisper or exchange written notes to assist the student. The attorney does NOT tell the client what to say during the hearing or disrupt UND's process. The attorney may not speak or write to the Committee.

Frequently Asked Questions

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

Students are expected to speak for themselves in all University disciplinary proceedings. Whether or not a student is facing criminal charges for the same behavior that is being addressed by the University, the role of the attorney is limited. During the hearing, you may only consult with the student quietly in a whisper or exchange written notes to assist the student. If you do not comply with this, the hearing advisor will ask you to leave the hearing. Disruption of the UND hearing process will be grounds to excuse the party(ies). The DOS Office will correspond and communicate directly with the student involved. OGC will answer general questions about the process but the DOS Office will communicate about the specifics of the incident only with the student.

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

The jurisdiction of the *Code* is applied based on an individual's relationship with the University rather than the geographic location of the offense. The University expects students, whether they are on or off campus, to be productive members of the Community. Section 2-3 of the *Code* specifies:

University discipline shall apply to conduct that occurs on University premises, at University-sponsored activities, and to off-campus conduct that adversely affects the University community and/or the pursuit of its objectives.

Section 2-4 of the *Code* specifies:

... if a student is charged with an off-campus violation of federal, state, or local laws, disciplinary action *may* be taken.

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

No. The disciplinary process at UND is not to determine if a student violated the law; it is to determine whether student's behavior was in violation of the University regulations and standards. The goals of the criminal justice system and the University's student disciplinary processes are substantially different. The University will not delay the disciplinary process to accommodate the criminal process. See *Code*, 2-3, #7.

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

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

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

The student disciplinary process will continue to move forward regardless of your client's participation in it. The hearing board will invite the accused student, the complainant, and other witnesses to the hearing to gather as much information as possible and make a decision based on the information provided. Your client is encouraged to fully participate in the process. Failure to do so will not be grounds for an appeal later.

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

Students may withdraw within the established University procedures. While the DOS Office will not deny your client's ability to withdraw from classes with the disciplinary charges pending, the investigations will continue and a campus hearing will occur to resolve the matter.

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

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

8. Why isn't my client given the same due process protection as he or she would receive in the criminal process?

The courts recognize and support the differing goals and interests of higher education communities from those of the criminal justice process. Basic expectations of University disciplinary proceedings have been well established and are met by UND.

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

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

10. Who serves on the Student Relations Committee (SRC)?

The SRC is comprised of faculty members and student members. There is also an advisor to the SRC. All members are trained for their roles. Each committee session is led by a Chair, who receives additional training in managing their role.

11. What is the role of the Process Advisor to the student?

As found in Appendix VII-3 of the *Code*, a Process Advisor is appointed to each student involved in cases before the Student Relations Committee. This person is identified in the DOS letter specifying the date, time, and location of hearing, and in the case of the accused student's letter, the charges of violations of the Code. The Process Advisor is provided to help the student/student organization understand the hearing process.

12. Can my client appeal the decision and sanctions of the hearing committee?

Yes. Within ten business days of the date of the decision letter, students may appeal the decision of the SRC to the VPSA. The appeal must be based on one of the criteria for appeal outlined in Appendix VII-4-I of the *Code*. The appeal must come directly from the student, meaning no one may write an appeal on the student's behalf. The decision of the VPSA is final.

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

The University will attempt to schedule a hearing that is convenient for the accused student, the complainant, the advisors, witnesses, and the Committee members who will hear the information and make a decision. With so many people involved, it is not always possible for all schedules to coincide. In order to resolve complaints in a timely way, attorneys will not be directly consulted about scheduling matters. However, the University will try to make reasonable adjustments to the schedule while communicating directly with the student. If you are unavailable for the scheduled hearing time, your client is welcome to choose another attorney. The student involved in an SRC case will be appointed a Process Advisor.

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

A maximum of two individuals may accompany the accused student. The student is assigned a Process Advisor, and the student may choose to bring one additional support person, who may be an attorney.

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

The following resources for attorneys are recommended:

- The Law of Higher Education (4th ed.) Volumes 1 & 2, William A. Kaplin and Barbara A. Lee, published by Jossey-Bass Publications, (2006).
- The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life? Robert D. Bickel and Peter F. Lake, published by Carolina Academic Press, (1999).
- Navigating Past the "Spirit of Insubordination": A Twenty-First Century Student Conduct Code with a Model Hearing Script, Edward N. Stoner II and John W. Lowery, published by the Journal of College and University Law, Volume 31, Number 1, (2004).

This document was adapted from "Disciplinary Guide for Attorneys" prepared by the Community Rights and Responsibilities Office at Illinois State University.

UND Dean of Students Office, 2007 / last revised September 2011