

**IN THE HONOR COURT OF THE SCHOOL OF LAW
THE UNIVERSITY OF MISSOURI-KANSAS CITY**

UMKC SCHOOL OF LAW,)	
Plaintiff,)	
vs.)	Case No. 2006-01
)	
UMKC LAW STUDENT)	
Defendant.)	

DEAN'S DECISION ON REVIEW

The above-captioned matter is before me for review of a determination by the Honor Court that Defendant violated the UMKC Honor Code. Specifically, the Court found Defendant violated § 3.01 of the Code in that s/he attempted to obtain an unfair advantage in an academic matter by presenting a misleading note with a late paper for Intro Plus, and that Defendant violated §§ 3.01 and 3.02(1) in that s/he attempted to impede the fair operation of the Code and failed to use best efforts in performance of duties under the Code by providing e-mail responses to the Director of the Intro Program. While I agree with the Court's finding on Count 1, I am unable to agree with the finding as to Count 2. Accordingly, I reverse the decision with regard to Count 2 but affirm the decision with regard to Count 1.

Findings of Facts

After having reviewed the record and listened to the recording of the proceedings, I adopt the following findings of fact contained in the Honor Court Report:

1. That the defendant is a first-year student at UMKC School of Law.
2. That the defendant was provided with a videotape of the Honor Code convocation and signed the Honor Code Affirmation.
3. That the defendant is currently enrolled in what is known as the "Intro-Plus" legal writing program and was so enrolled on February 3rd, 2006.
4. That, as a component of Intro-Plus, defendant was enrolled in a legal writing workshop that meets every Friday from 8:00 AM until 8:50 AM.
5. That defendant had a written assignment due at 9:00 AM, Friday, February 3, 2006.

6. That defendant was fully aware of the due date and time for the written assignment and that, if the assignment was late, it would not be accepted or graded.
7. That defendant overslept on the morning of February 3, 2006 and did not awaken until 9:00 AM.
8. That defendant did not attend the scheduled Friday morning workshop.
9. That defendant did not arrive on campus until some time after 9:00 AM.
10. That defendant attempted to turn the paper into a UMKC staff person at some point between 9:15 AM and 9:20 AM, but the staff person advised she could not accept the assignment because it was untimely.
11. That defendant was provided with a "post-it" note and wrote "I had workshop at 8am. Did not know Marcia was downstairs before 8am," then gave the assignment to the staff person, who accepted it on the contingency that it may ultimately be rejected.
12. That the Director of the Legal Writing program contacted the defendant via email at 11:13 on February 3rd, 2006 and advised that a) the assignment would not be accepted, b) the Director had learned the defendant had not attended the 8:00 AM workshop, and c) the Director believed this to be a potential Honor Code violation, but did not intend to prosecute it.
13. That the defendant, in response to this and a subsequent email from the Director, responded with two emails, the first of which was at February 4th, 2006 at 11:26 PM and stated, "I did not say that is why I was late."

Discussion on Review

After review of the record, I agree that there is clear and convincing evidence that Defendant knowingly or recklessly violated § 3.01 of the UMKC School of Law Honor Code by attempting to gain an unfair advantage in an academic matter when the defendant submitted the note attached to the late assignment. Although it was disputed whether the note was submitted to explain why the paper was late in an attempt to obtain special accommodation (to allow the paper to be accepted late), or whether the note was submitted only to explore if any special

accommodations were available for students in the 8:00 AM workshop, in either case, given that Defendant had not in fact attended the 8:00 a.m. workshop and that was not the cause of the lateness of the paper, it appears clear that s/he was attempting to obtain some form of dispensation to which s/he was not fairly entitled. In doing so, s/he was at least recklessly attempting to gain an unfair advantage. As the Court noted, had Defendant been granted such dispensation, "this would have potentially placed defendant on an equal grade footing with every other student who did indeed attend the workshop and may have actually needed it." Moreover, it is likely that, given the declarative nature of the statement in the note, the Court is correct in believing that "it at least recklessly implies the student had attended the workshop and that was the cause of the assignment being late, which is simply not the case." Therefore, regardless of which version of the facts is accepted, I believe the Court was correct in finding that the violation has been established by clear and convincing evidence.

As to Count 2, however, I am not able to agree with the Court's finding. Even though I agree with the Court that the e-mails to the Director were misleading or potentially misleading and might well contribute to the finding of mens rea on Count 1, I disagree that, at the time the e-mails were sent, they constituted an attempt to impede the fair operation of the Code or a failure to use best efforts in performance of duties under the Code. While, as the Court concluded, Defendant's actions may well have been taken to divert attention from the note, the initial e-mail from the Director to Defendant states: "That is a potential honor code violation *I do not intend to prosecute the violation.*" (emphasis added). Thus, at the time Defendant sent e-mails to the Director, s/he had no reason to believe an Honor Code proceeding would occur. In fact, based on the Director's e-mail, it was most reasonable for the Defendant to believe that such a proceeding was not anticipated. I therefore cannot agree that there is clear and convincing evidence that the e-mails were part of an attempt to impede the fair operation of the Code or that Defendant failed to use best efforts in performance of duties under the Code.

Recommendations

The Court recommended that, pursuant to 8.02(e), Defendant receive a verbal reprimand and that this violation be called to the attention of appropriate parties, such as the Bar. This recommendation was based on the existence of mitigating circumstances. The Court found:

The defendant appears to us to be a first-year student who, on a day comprised of an early morning deadline and a quiz in another class, studied late into the night, subsequently failed to wake on time and then, exhausted and overwhelmed, used tragically poor judgment in attempting to get a late assignment accepted by scribbling a misleading note. Later, the defendant's responding to a series of emails in a futile attempt to repair the damage served to compound the initial incident of poor judgment. The defendant did not plan these events, but became consumed by them.

The Court found that, in light of these mitigating circumstances, coupled with the need for the student to report this matter to the Bar and the difficulties already experienced by the student as a result of these proceedings, "a verbal reprimand seems an adequate sanction. . . . It's an error that this defendant is not likely to make again." While I agree that a reprimand is the appropriate sanction, I believe that a written reprimand is more appropriate. Accordingly, I accept the proposed sanction with that modification.

In a concurring opinion joined by a majority of the Court, concern was expressed that this violation was not originally reported when first discovered. The concurring justices noted the absence of a provision requiring faculty and staff to report violations despite a clear requirement for students to so report. See UMKC Honor Code § 3.02(i). The justices expressed their belief that "the spirit of the Honor Code implies that any suspected violation should be reported by anyone affiliated with the law school and that report ought be based upon a calm review of the facts known to the reporter, not how the reporter might feel about the facts. [The absence of such a requirement] can only serve to cloud what are otherwise supposed to be clear and consistent expectations of student behavior." I share the concern that the Code does not appear to require reporting by other than students, and I would encourage faculty and staff to act as if such a requirement did exist. I also recommend that the student body explore how such a requirement could be created and implemented.

Defendant is hereby officially reprimanded and this opinion is to be included in the student's permanent file.

It is so ordered this 27th day of April, 2006.

Ellen Y. Suni
Dean