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THE NATIONAL CONFERENCE OF LAW REVIEWS MODEL CODE OF ETHICS: FINAL TEXT AND COMMENTS

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In 1987, the authors, at the request of the National Conference of Law Reviews (NCLR), began working on a code of ethics that would guide both law review staffs and law review authors. In 1988, a first draft, dealing with the ethical obligations of law review staffs, was published.¹ In 1989, a second draft, dealing with the ethical obligations of law review authors, was released.² In 1991, following a preliminary review by the NCLR, the two drafts were merged into a third draft and published for comment.³

During the next year, the authors received numerous suggestions on how to improve the proposed code. These suggestions led to the promulgation of a fourth draft. Subsequently, in March 1992, this fourth draft was presented, debated, and approved by the NCLR during its 38th Annual Meeting in Los Angeles.⁴ Known as the NCLR Model Code of Ethics, this standard, as printed on the following pages, is available for adoption by both NCLR-member and non-member law reviews.

Although the work of the authors is now complete, questions as well as comments are still welcome and may be directed to the authors at:

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1. Michael L. Closen, *A Proposed Code of Professional Responsibility for Law Reviews*, 63 NOTRE DAME L. REV. 55 (1988).

2. Robert M. Jarvis, *Law Review Authors and Professional Responsibility: A Proposal for Articulated Standards*, 38 DRAKE L. REV. 899 (1988-89).

3. Michael L. Closen & Robert M. Jarvis, *Draft of the National Conference of Law Reviews Code of Ethics: A Call for Comments*, 1991 DET. C.L. REV. 483.

4. Ken Myers, *Model Code of Ethics Approved For the Editors of Legal Journals*, NAT'L L.J., May 11, 1992, at 4, col. 3.

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NATIONAL CONFERENCE OF LAW REVIEWS MODEL CODE OF ETHICS

CONTENTS

PREAMBLE.....	512
SCOPE	513
TERMINOLOGY	513
I. GENERAL OBLIGATIONS	
RULE 1.1 INTEGRITY.....	514
RULE 1.2 DILIGENCE	514
RULE 1.3 CONFIDENTIALITY	514
RULE 1.4 CONFLICTS OF INTEREST	515
RULE 1.5 REPORTING MISCONDUCT	515
RULE 1.6 REMEDIAL MEASURES	516
II. OBLIGATIONS OF THE LAW REVIEW STAFF	
A. <i>Obligations to Authors</i>	
RULE 2.1 SOLICITATION OF MANUSCRIPTS AND OFFERS TO PUBLISH.....	517
RULE 2.2 PUBLICATION SCHEDULES	517
RULE 2.3 EDITING OF MANUSCRIPTS	518
RULE 2.4 PROGRESS REPORTS AND OTHER COMMUNICATIONS	519
RULE 2.5 COPYRIGHTS, ADAPTATIONS, AND REPUBLICATIONS	519
RULE 2.6 ADVISING AUTHORS ABOUT THE CODE OF ETHICS	519
B. <i>Obligations to the Law School</i>	
RULE 3.1 SELECTION OF THE LAW REVIEW STAFF	520
RULE 3.2 SELECTION OF THE LAW REVIEW EDITORS .	520
RULE 3.3 LAW REVIEW STAFF RELATIONS.....	520
RULE 3.4 RELATIONS WITH THE STUDENT BODY	521
RULE 3.5 RELATIONS WITH THE LAW SCHOOL	521
RULE 3.6 RELATIONS WITH OTHER LAW REVIEWS ...	522
III. OBLIGATIONS OF THE LAW REVIEW AUTHOR	
A. <i>Obligations to the Law Review</i>	
RULE 4.1 ORIGINALITY OF MANUSCRIPTS SUBMITTED FOR PUBLICATION.....	522
RULE 4.2 SOLICITATION AND ACCEPTANCE OF PUBLISHING OFFERS	523

RULE 4.3	WITHDRAWAL OF MANUSCRIPTS OR PROMISED MANUSCRIPTS.....	523
RULE 4.4	DEALINGS WITH THE LAW REVIEW STAFF..	524
RULE 4.5	COPYRIGHTS, ADAPTATIONS, AND REPUBLICATIONS	525
B.	<i>Obligations to Readers</i>	
RULE 5.1	ATTRIBUTION.....	525
RULE 5.2	VERIFICATION OF SOURCES.....	526
RULE 5.3	DISTORTION OF SOURCES.....	527
RULE 5.4	CONTRADICTORY AUTHORITIES	527
RULE 5.5	UNDUE CREDIT.....	528

PREAMBLE

[1] A law review is not published in a vacuum. A law review has the potential to stimulate critical thinking, provoke sharp debate, and through adoption by courts, arbitrators, legislative agencies, and other decision makers, change the course of life and liberty. Hence, law reviews hold a special place of trust and importance in the legal system and in society.

[2] A law review performs various functions. As a synthesizer of the law, a law review provides an overview of the law. It details growth and change in the law. As a commentator on the law, a law review introduces ideas upon which others may reflect. As a critic of the law, a law review challenges the past and current state of the law in order that changes may be made that will improve the law, thereby securing greater justice in society.

[3] In all actions, the law review staff and the law review author must be competent, prompt, and diligent. The law review staff and the law review author must maintain communications as described by these rules. The law review staff and the law review author must keep in confidence certain information as set out in these rules.

[4] The conduct of the law review staff and the law review author must conform to the requirements of the law. Law reviews may be used only for legitimate purposes. Law review staffs and law review authors must demonstrate respect for the legal system and must seek to uphold legal process. At the same time, law review staffs and law review authors can and should seek to inform and advocate so that the legal system can be changed.

[5] Law reviews play a vital role in the preservation of society. The fulfillment of this role requires an understanding by both law review staffs and law review authors of their relationship to our legal system. These rules, when properly applied, serve to define that relationship.

SCOPE

[1] These rules are rules of reason. They should be interpreted with reference to the purpose of law reviews and of the law itself. Following each rule are one or more comments. These comments are designed to explain the purpose and demonstrate the application of the rules. The comments are meant as illustrations, and are not to be taken as exclusive applications of any given rule.

[2] The rules presuppose a larger legal context shaping the law review's role. That context, whose outside boundaries are society and whose inside boundaries are the law, consists of many factors. These rules do not exhaust the moral and ethical considerations that should inform law review staffs and law review authors of their obligations, since no code or set of proscriptions can ever completely guide or regulate human activity. Thus, these rules are meant to provide a framework on which to build.

[3] Failure to follow these rules is a basis for invoking the rules. Such invocation can take many forms, from mere private disapproval to public reporting of an incident (such as to a regulatory board or a professional society or association). The severity of the punishment depends upon an assessment of all the relevant circumstances, including the willfulness and seriousness of the violation, the existence of extenuating factors, the harm caused, and the past history of violations by the offender. These rules do not in any manner affect the operation of public laws, such as the law of libel and the law of copyright.

TERMINOLOGY

[1] "Author" or "law review author" as used in these rules denotes the author of any manuscript, regardless of whether the individual is a student or a non-student and regardless of whether the individual holds a J.D. degree or its equivalent.

[2] "Law review" denotes a law-related publication, edited either by law students, law faculty, or both, which is sponsored or supported at least in part by a law school, which appears at least once each calendar year in a permanent form, and which as used in these rules has as its main mission the scholarly presentation of legal issues, ideas, or developments on one or more subjects.

[3] "Law review staff" denotes any member of the law review, including the editor in chief, senior editors, junior editors, members of the law review board, candidates for positions with the law review, clerical and printing personnel, and faculty or other advisors while engaged in their roles as advisors.

[4] "Manuscript" denotes any address, article, bibliography, comment, essay, note, speech, survey, or work, regardless of its stage of completion and regardless of its source or authorship, which either appears, or is intended to appear, in whole or in part, in a law review.

I. GENERAL OBLIGATIONS

RULE 1.1 INTEGRITY

LAW REVIEW STAFFS AND AUTHORS SHALL CONDUCT THEMSELVES AT ALL TIMES WITH INTEGRITY.

COMMENT:

[1] It is not easy to define integrity. In its broadest sense it means, at a minimum, to act in an honorable and decent fashion.

[2] What constitutes acting in an honorable and decent fashion will depend in each instance on the particular circumstances then existing.

RULE 1.2 DILIGENCE

LAW REVIEW STAFFS AND AUTHORS SHALL CONDUCT THEIR AFFAIRS IN A DILIGENT MANNER.

COMMENT:

[1] In all human conduct, but particularly in matters of a legal or quasi-legal nature, timeliness often is critical. When matters are put off, promises are left to wither, and obligations are allowed to become stale, relationships become strained, opportunities are lost, and justice may be denied.

[2] Although it is not easy to define diligence, and what may be an appropriate timetable in one case may be wholly unacceptable in another, as used in these rules diligence should be understood as meaning that all activities are carried out with that degree of speed and promptness that the ordinary person in similar circumstances would consider appropriate upon measured consideration of all relevant factors.

[3] If a law review member or a law review author finds that a matter cannot be attended to promptly, steps must be taken to ameliorate any negative consequences that are likely to occur as a result of the expected delay.

RULE 1.3 CONFIDENTIALITY

LAW REVIEW STAFFS AND AUTHORS SHALL MAINTAIN SUCH CONFIDENCES AS THEY MAY BE GIVEN.

COMMENT:

[1] In the course of carrying out their duties, law review staffs and law review authors may at times become privy to sensitive material, information, or news. When this occurs, the recipient must take all necessary steps to ensure that the confidence is maintained.

[2] Whether a particular item is confidential can only be determined on a case-by-case basis, although close cases should be decided in favor of a finding of confidentiality. Where it is known that the item is considered confidential by one or more persons, the item should be treated as confidential unless it is patently obvious that the item is in the public domain.

[3] Although law review staffs and law review authors have an obligation to maintain inviolate confidential items, they may reveal such items when required to do so by law or in order to defend themselves against charges of misconduct. In the event of a conflict between this Rule and Rule 1.5, the latter Rule shall control.

RULE 1.4 CONFLICTS OF INTEREST

LAW REVIEW STAFFS AND AUTHORS SHALL AVOID CONFLICTS OF INTEREST, AS WELL AS THE APPEARANCE OF SUCH CONFLICTS.

COMMENT:

[1] A conflict of interest is any matter, influence, person, thing, or emotion which tears at the loyalty, impedes the duty, affects the judgment, or interferes with the proper functioning of a law review.

[2] A conflict of interest may be overt or covert. Because many conflicts are subtle in nature and therefore difficult to discern, both law review staffs and authors have a continuing duty to be on guard against conflicts of interest.

[3] Because of the grave threat posed by conflicts of interest, even the slightest appearance of a conflict should be treated as though it were a conflict of interest.

RULE 1.5 REPORTING MISCONDUCT

LAW REVIEW STAFFS AND AUTHORS SHALL REPORT MISCONDUCT IN A TIMELY FASHION TO THE APPROPRIATE AUTHORITIES.

COMMENT:

[1] If the Code of Ethics is to be effective, transgressions against its provisions must be reported in a timely and complete manner. All law review staffs and authors have a continuing and individual duty to report

misconduct as well as perceived misconduct. In the event of a conflict between this Rule and Rule 1.3, this Rule shall control.

[2] Instances of misconduct should not be reported until the reporter has satisfied himself or herself that misconduct appears to have taken place or is about to take place. At the same time, it is unacceptable to delay reporting misconduct in the hope that the problem will cure itself. It is also unacceptable to fail to report misconduct in the belief that it will be reported by another, unless steps are taken to verify that such a report has been made. A failure to report misconduct is itself misconduct.

[3] Who is an "appropriate authority" turns on the facts of each case. By way of example only, the following might be appropriate authorities: senior members of the law review; the law review faculty advisor; the law school faculty or dean; the law school honor court; a bar association; a professional or trade association; an employer.

RULE 1.6 REMEDIAL MEASURES

WHERE A VIOLATION OF THE CODE OF ETHICS HAS OCCURRED, THE LAW REVIEW STAFF OR AUTHOR (AS THE CASE MAY BE) SHALL TAKE ALL NECESSARY REMEDIAL MEASURES.

COMMENT:

[1] Just as there is a duty to report misconduct, so there is an obligation to set matters straight once the misconduct has come to light. A failure to engage in meaningful remedial measures is misconduct in its own right.

[2] Suitable remedial measures are such measures as are likely to undo the harm caused by the misconduct to the greatest extent practicable. Although it is axiomatic that "more could be done," a good faith effort to set things straight normally will suffice.

[3] What constitutes a suitable remedial measure generally should be determined by the underlying misconduct. The greater the initial error, the greater the necessary restitution.

[4] The obligation of the law review staff or the law review author to engage in remedial measures is separate and apart from any efforts that may be engaged in or contemplated by the civil authorities.

II. OBLIGATIONS OF THE LAW REVIEW STAFF

A. Obligations to Authors

RULE 2.1 SOLICITATION OF MANUSCRIPTS AND OFFERS TO PUBLISH

THE LAW REVIEW STAFF SHALL BE DILIGENT, TIMELY, AND HONORABLE IN SOLICITING MANUSCRIPTS AND EXTENDING OFFERS TO PUBLISH MANUSCRIPTS.

COMMENT:

[1] The law review staff shall act honorably in the processes of soliciting manuscripts and extending offers to publish. Individual staff members who have any degree of self-interest in the solicitation of particular authors or the acceptance of particular manuscripts shall not take part in such processes. For instance, a law review staff member shall not take part in any decisions involving authors who are close personal friends, present or future employers, or family members. The foregoing, however, shall not prevent any law review staff member from providing to other members of the law review the names of persons who might be approached for manuscripts.

[2] The law review staff shall not engage in any decision-making for personal gain in connection with the solicitation of manuscripts or offers to publish manuscripts. Personal gain implicates such matters as the influencing of friendships, sexual relationships, professional references, professional relationships, and financial gain.

[3] The law review staff shall avoid even the possible appearance of impropriety in regard to the solicitation of manuscripts and offers to publish manuscripts.

[4] The law review staff shall avoid misleading authors in regard to the solicitation of manuscripts and offers to publish manuscripts. The law review staff shall clearly set forth the degree of commitment of the law review to the author at each stage of the solicitation and publication process. With regard to the solicitation of manuscripts, for example, the law review staff shall indicate clearly whether there is a promise to give a good faith review of a manuscript or whether there is a firm promise to publish a manuscript or proposed manuscript.

RULE 2.2 PUBLICATION SCHEDULES

THE LAW REVIEW STAFF SHALL SET AND MAINTAIN REASONABLE AND TIMELY PUBLICATION SCHEDULES.

COMMENT:

[1] The law review staff shall inform authors in writing of the proposed publication schedules for their manuscripts and promptly notify authors in writing of any modifications of such schedules, particularly with respect to delays in the process.

[2] The publication schedule is to be one about which both the law review staff and the author are informed at all times and to which both parties have assented.

[3] The law review staff shall establish reasonable schedules for the publication of manuscripts, which schedules shall reflect honest and diligent efforts to approximate the time necessary to accomplish the publication of manuscripts. The law review staff must not announce unreasonable publication schedules in order to attract commitments from authors.

[4] Unreasonable delay by the law review staff in abiding by the established publication schedule constitutes grounds for the withdrawal of the manuscript by the author.

RULE 2.3 EDITING OF MANUSCRIPTS

THE LAW REVIEW STAFF SHALL EDIT MANUSCRIPTS WITH DILIGENCE, FAIRNESS, AND IMPARTIALITY.

COMMENT:

[1] The law review staff's primary substantive function is to ensure the accuracy of the manuscript in terms of its clarity of language, correctness of grammar, and completeness and accuracy of research and analysis.

[2] The law review staff may not censor manuscripts by manipulation in the editing process. This prohibition applies to both the modification of the author's views and the inclusion of the views of the law review staff.

[3] The law review staff must, in fairness to the law review author, advise the author of proposed corrections and changes sufficiently in advance of the deadline for the completed manuscript to permit consideration by the author and further communication between the author and the law review staff. This exchange shall occur at every stage of the editing process.

[4] The law review author is entitled to place reasonable time limits on the steps in the editing process, and the failure of the law review staff to honor such reasonable time limits constitutes grounds for the law review author to withdraw the manuscript.

[5] Where there are differences of view as to editorial changes in the manuscript, the law review author enjoys the ultimate authority about the style and content of the manuscript. If the law review staff and the law

review author cannot agree on matters of sufficient consequence to cause the law review staff to withdraw its offer to publish, such decision must be made and communicated to the author at the earliest practicable time.

RULE 2.4 PROGRESS REPORTS AND OTHER COMMUNICATIONS

THE LAW REVIEW STAFF SHALL KEEP AUTHORS APPRISED OF WHAT PROGRESS HAS BEEN MADE ON THEIR MANUSCRIPTS IN A REASONABLE MANNER AND SHALL ENGAGE IN COMMUNICATION WITH ALL AUTHORS IN A REASONABLE MANNER.

COMMENT:

[1] The law review staff shall periodically advise all authors of what progress has been made in regard to their manuscripts.

[2] The law review staff shall respond in a timely and diligent fashion to all reasonable requests for information from authors. The law review staff must be fair about such communications and should expect authors to respond to inquiries from the law review no more promptly than the law review responds to inquiries from authors.

RULE 2.5 COPYRIGHTS, ADAPTATIONS, AND REPUBLICATIONS

THE LAW REVIEW SHALL HAVE THE RIGHT TO SEEK THE COPYRIGHT ON A MANUSCRIPT, BUT THE LAW REVIEW STAFF SHALL HONOR THE SUBSTANTIAL INTERESTS OF THE AUTHOR IN THE MANUSCRIPT.

COMMENT:

[1] The law review must accede to the request of an author to have the copyright to his or her own manuscript.

[2] If the law review holds the copyright, the law review shall allow the author to adapt and republish the manuscript.

[3] If the law review holds the copyright, the law review shall not allow adaptation or republication of the manuscript without the prior written consent of the author, which consent shall not be unreasonably withheld.

RULE 2.6 ADVISING AUTHORS OF THE CODE OF ETHICS

THE LAW REVIEW STAFF SHALL UNDERTAKE EFFORTS TO PUBLICIZE THE EXISTENCE OF THIS CODE OF ETHICS TO ALL AUTHORS WHO SUBMIT MANUSCRIPTS OR WHO INDICATE AN INTENTION TO SUBMIT MANUSCRIPTS TO THE LAW REVIEW.

COMMENT:

[1] The fact that the law review abides by this Code shall be noted in its masthead. If the notice also contains a reference as to where the text of the Code can be found, the law review shall be deemed to have fulfilled the requirements of this Rule.

[2] Copies of this Code shall be included as part of the orientation materials of all candidates or newly accepted members of the law review.

*B. Obligations to the Law School***RULE 3.1 SELECTION OF THE LAW REVIEW STAFF**

THE PROCESS OF SELECTING MEMBERS OF THE LAW REVIEW STAFF SHALL BE CONDUCTED IN AN OBJECTIVE AND FAIR MANNER.

COMMENT:

[1] The procedure for selecting members of the law review shall be set forth in writing and published conspicuously for all interested persons to read.

[2] The written procedure must be scrupulously adhered to in order to ensure the fairness and integrity of the process and to minimize the possible effect of improper influences, such as popularity or friendships.

[3] Information about students that is private in nature must be treated with the strictest confidence, as is consistent with Rule 1.3.

RULE 3.2 SELECTION OF THE LAW REVIEW EDITORS

THE PROCESS OF SELECTING EDITORS OF THE LAW REVIEW SHALL BE CONDUCTED IN AN OBJECTIVE AND FAIR MANNER.

COMMENT:

[1] The procedure for selecting the editors of the law review shall be set forth in writing and published conspicuously for all interested persons to read.

[2] The written procedure must be scrupulously adhered to in order to ensure the fairness and integrity of the process and to minimize the possible effect of improper influences, such as popularity or friendships.

[3] Information about students that is private in nature must be treated with the strictest confidence, as is consistent with Rule 1.3.

RULE 3.3 LAW REVIEW STAFF RELATIONS

THE LAW REVIEW STAFF SHALL TREAT EACH OTHER WITH RESPECT, CIVILITY, AND PROFESSIONAL COURTESY.

COMMENT:

[1] Although a law review is a hierarchial entity that must meet deadlines, it is also a living organism inhabited by human beings whose feelings and frailties must be recognized and respected.

[2] In the conduct of the law review's activities, it is unacceptable behavior for one member to purposely attempt to embarrass, harass, humiliate, or otherwise interfere with the rights, duties, obligations, or dignity of another member. What constitutes unacceptable behavior depends upon the particular circumstances. Unacceptable behavior extends to inappropriate sexual suggestions or threats.

[3] The foregoing is not meant to impugn or limit the ability of an editor, staff member, or candidate from carrying out his or her duties by delegating work assignments or ensuring that such assignments are being completed in an appropriate and timely manner.

RULE 3.4 RELATIONS WITH THE STUDENT BODY

THE LAW REVIEW STAFF SHALL SHOW RESPECT FOR AND HONOR THE INTEGRITY OF STUDENTS WHO ARE NOT MEMBERS OF THE LAW REVIEW.

COMMENT:

[1] Consistent with the mandate of Rule 1.3, the law review staff must not improperly disclose the substance of confidential information about any student, including students who are not members of the law review. This limitation extends to information about students who may have been associated with the law review and who are still in law school and about students who have left the law school because of graduation or for other reasons.

[2] The law review staff must refrain from condescending behavior toward or criticizing students not on the law review solely because they are not associated with the law review. This directive also applies to inappropriate conduct aimed at competing associations and activities such as moot court participation and membership on specialty law reviews and journals.

[3] It is particularly inappropriate conduct for a law review staff to attempt to undermine the position of other students in the course of their efforts to obtain employment in the legal profession or otherwise.

RULE 3.5 RELATIONS WITH THE LAW SCHOOL

THE LAW REVIEW STAFF SHALL ASSIST IN FOSTERING THE INTEGRITY AND COMPETENCE OF ITS LAW SCHOOL.

COMMENT:

[1] Although the primary mission of the law review staff is the production of the law review in a timely and competent fashion, the law review staff also has a duty to support its law school.

[2] In carrying out the foregoing, the law review staff shall be mindful of the directives contained in Rule 3.4 and the comments to that rule.

RULE 3.6 RELATIONS WITH OTHER LAW REVIEWS

THE LAW REVIEW STAFF SHALL RESPECT THE RIGHTS OF THE STAFFS OF OTHER LAW REVIEWS AND ACT WITH FAIRNESS IN THE SOLICITATION AND ACCEPTANCE OF MANUSCRIPTS.

COMMENT:

[1] A spirit of friendly and professional competition between law reviews for manuscripts and for the prestige that may correspond to success in connection therewith is appropriate and will improve the performance of the various law reviews.

[2] Such competition, to the extent that it exists and improves the quality of law reviews generally, shall be conducted in an absolutely honorable fashion as is consistent with other specific provisions of this Code.

III. OBLIGATIONS OF THE LAW REVIEW AUTHOR*A. Obligations to the Law Review***RULE 4.1 ORIGINALITY OF MANUSCRIPTS SUBMITTED FOR PUBLICATION**

A LAW REVIEW AUTHOR SHALL SUBMIT ONLY ORIGINAL MANUSCRIPTS FOR PUBLICATION.

COMMENT:

[1] The most basic obligation of a law review author is to produce manuscripts through the use of the law review author's own talents, skills, knowledge, creativity, mental processes, research, and time. Thus, a manuscript that is not the product of the law review author's own efforts is not an original manuscript.

[2] Consistent with the Code of Ethics, the limited use of other sources, if proper credit is given, does not make an otherwise original manuscript into one that is not original.

RULE 4.2 SOLICITATION AND ACCEPTANCE OF PUBLISHING OFFERS

A LAW REVIEW AUTHOR SHALL BE DILIGENT, TIMELY, AND HONORABLE IN SOLICITING AND ACCEPTING PUBLISHING OFFERS.

COMMENT:

[1] The solicitation and acceptance of publishing offers by law review authors has been the subject of much abuse over the years. In particular, instances of a law review author using an offer by one law review staff as a "bargaining chip" with another law review staff are rampant. Similarly, instances exist in which a law review author has withdrawn a manuscript from one law review when another has made an offer to publish. Such "trading up," as these practices are commonly called, are both reprehensible and unacceptable.

[2] As an adjunct to the phenomenon of trading up, it has become fashionable for law review authors to send out copies of the same manuscript simultaneously to numerous law reviews. While this practice is lamentable, it is not a breach of these rules for an author to do so if: (a) the author makes it clear that he or she is engaging in the practice; and, (b) the author does not as a result of such simultaneous distribution engage in trading up practices.

RULE 4.3 WITHDRAWAL OF MANUSCRIPTS OR PROMISED MANUSCRIPTS

A LAW REVIEW AUTHOR SHALL NOT WITHDRAW AN ACCEPTED MANUSCRIPT, NOR FAIL TO DELIVER A PROMISED MANUSCRIPT, UNLESS GOOD CAUSE EXISTS TO JUSTIFY SUCH ACTION.

COMMENT:

[1] A law review author who has accepted a publishing offer from a law review, or who has agreed to deliver a manuscript to a law review, is under a duty not to breach his or her promise. This is true for at least two reasons. First, the law review enterprise is one that is uniquely built on trust. Just as the readers of a law review trust that the manuscripts that appear in the law review are original, complete, and accurate, so the law review staff trusts that its authors will live up to their commitments. Where the trust is broken, the law review begins to crumble. Second, the nature of the law review enterprise requires the timely delivery and publication of manuscripts. Where this fails to occur the law review is unable, except by luck or happenstance, to fulfill its role in society. When this occurs, the ability of the law review to guide the law along the proper path is upended.

[2] At certain times, however, it is both appropriate and desirable for a law review author to withdraw a completed manuscript or decline to deliver a promised manuscript. By way of illustration only, these times include: when the author has been misled by the law review as to the expected date of publication; when an impasse has occurred between the law review staff and the author that cannot be resolved despite the good faith efforts of both sides; or when the author has come to the honest conclusion that the promised manuscript either cannot or should not be completed or delivered.

[3] As noted in the comments accompanying Rule 4.2, it is never acceptable for an author to withdraw an accepted manuscript, or fail to deliver a promised manuscript, if the author's sole motive is to be able to accept a publishing offer from a competing law review.

[4] Because of the serious nature of a decision to withdraw or refuse to deliver a manuscript, the law review author must make and communicate all such decisions to the law review staff in a timely manner, as set forth in Rule 1.2.

RULE 4.4 DEALINGS WITH THE LAW REVIEW STAFF

A LAW REVIEW AUTHOR SHALL ACT FAIRLY IN ALL DEALINGS WITH MEMBERS OF THE LAW REVIEW STAFF. AN AUTHOR SHALL NOT TAKE ADVANTAGE OF ANY OFFICIAL OR UNOFFICIAL POSITION THAT THE AUTHOR MAY HOLD.

COMMENT:

[1] In the relationship between a law review author and a law review member, there may be times when the law review author is in a position to take advantage of the law review member by misleading the member or exerting undue influence. This is particularly true where the law review author is on the faculty of the law school of which the law review member is a student.

[2] Instances in which a law review author may come to have the opportunity to mislead or exert undue influence on a law review member are so numerous that it is impossible to catalogue all of them. The most blatant example, however, is where the law review author conditions the awarding of a grade or the giving of a recommendation on the law review's acceptance of a manuscript for publication. Another example is a law review author's premeditated decision to have law review staff members extensively revise a manuscript due to the law review author's knowing failure to properly prepare the manuscript prior to its submission to the law review. A third example is a law review author's use of threats against the law review member, especially where such threats imply that the member's law school

record will be damaged. In certain circumstances, sexual liaisons with a staff member may also provide opportunities for a law review author to violate this Rule.

[3] Yet another example of a law review author acting in bad faith is the author who fails to meet reasonable deadlines, particularly when asked to inspect page proofs. Excessive delay by the law review author shall constitute grounds for the law review staff to either publish the manuscript "as is" or to drop the manuscript from production.

RULE 4.5 COPYRIGHTS, ADAPTATIONS, AND REPUBLICATIONS

A LAW REVIEW AUTHOR SHOULD PERMIT THE LAW REVIEW TO HOLD THE COPYRIGHT ON THE MANUSCRIPT. WHERE THE AUTHOR ELECTS TO HOLD THE COPYRIGHT, THE AUTHOR SHALL PERMIT THE LAW REVIEW REASONABLE ACCESS TO THE MANUSCRIPT FOR PURPOSES OF ADAPTATIONS AND REPUBLICATIONS.

COMMENT:

[1] Consistent with Rule 2.5, a law review author should, except in unusual instances, permit the law review to take out and hold the copyright on any manuscript published by the law review. One acceptable reason for the author rather than the law review to hold the copyright is where the author plans to incorporate the manuscript into a larger work, such as a book. In the final analysis, however, it is up to the author to decide whether to grant the copyright to the law review.

[2] Where the author elects to hold the copyright, he or she should consent freely to all reasonable requests by the law review to adapt or republish the work, particularly where the request is for republication in an electronic data base. The failure of an author to respond to such requests in a timely fashion shall constitute the unreasonable withholding of permission.

B. Obligations to Readers

RULE 5.1 ATTRIBUTION

A LAW REVIEW AUTHOR SHALL ATTRIBUTE ALL MATERIAL THAT IS NOT ORIGINAL.

COMMENT:

[1] A law review author will often rely on ideas that are the creation of someone else. In the abstract, such reliance is not only proper but actually necessary, since the law is a set of building blocks that is constantly being

used to fashion new ideas. Thus, reliance on the ideas of others is to be encouraged, because such reliance is nothing more than the affirmance of the natural order of life.

[2] With the decision to rely on the writings of others, however, comes the responsibility of informing the reader that certain ideas have been borrowed. A reader can be informed in one of two ways. At the start of the manuscript, the author can advise the reader of the principal writings that have been relied on. This means of information is particularly suitable where general thoughts rather than specific ideas have been borrowed. Alternatively, a reader can be informed that borrowing has taken place by means of a footnote or parenthetical reference at the point in the manuscript where the borrowing has occurred. This means of informing the reader is to be preferred when a specific idea has been borrowed.

[3] How much of another's efforts can be borrowed without the manuscript becoming a mere paraphrase of the original writing, or, in extreme cases, an instance of plagiarism, is difficult to say. On the one hand, it may be argued with some sincerity that there are no original ideas. On the other hand, it may be argued that all ideas are original to a given individual, regardless of how many times the idea has been proposed by others. In the final analysis, whether a manuscript constitutes impermissible borrowing can be determined only on a case-by-case basis and by considering such matters as syntax, style, grammar, punctuation, and the like.

RULE 5.2 VERIFICATION OF SOURCES

A LAW REVIEW AUTHOR SHALL TAKE SUCH STEPS AS ARE NECESSARY TO PERMIT THE MANUSCRIPT'S SOURCES TO BE VERIFIED.

COMMENT:

[1] All sources cited by a law review author must be indicated in such a fashion as to make their retrieval as speedy and easy as possible. This is so for two reasons. First, it allows the reader to more critically evaluate the law review author's arguments and come to a more informed decision regarding the validity of the manuscript. Second, it facilitates the reader's use of the manuscript.

[2] In most instances, reliance on one of the commonly-used systems of citation, such as those published by the *Harvard Law Review* (the Blue Book) or the *University of Chicago Law Review* (the Maroon Book), will satisfy this Rule.

[3] If, despite following the instructions set forth in one of the commonly-used systems of publication, the origin and location of a source are

unlikely to be readily located, the law review author must add sufficient additional information so as to comply with this Rule.

RULE 5.3 DISTORTION OF SOURCES

A LAW REVIEW AUTHOR SHALL NOT DISTORT ANY SOURCES CITED IN THE MANUSCRIPT.

COMMENT:

[1] At times, a law review author will find that a source only partially supports the law review author's point of view. In such instances, the law review author may not use the source in any manner that would be misleading or untruthful.

[2] Thus, for example, a law review author may not quote only part of a writing where to do so would be misleading. Similarly, a law review author may not quote an earlier edition of a writing when a later edition contradicts the earlier writing. Similarly, a law review author may not piece together portions of a writing in order to distill from it a meaning that is inconsistent with the writing when taken as a whole.

[3] While observing the foregoing, a law review author may suggest that a writing is correct in so far as it supports the law review author's own views but is wrong in so far as it differs from the law review author's views.

RULE 5.4 CONTRADICTORY AUTHORITIES

A LAW REVIEW AUTHOR SHOULD CANVASS AND DISCUSS CONTRADICTORY AUTHORITIES.

COMMENT:

[1] One of the greatest strengths of law reviews is that they are able to present a balanced view of legal issues. In doing so, they rise above partisan and petty politics and assist in the law's growth through informed analysis that considers all aspects of a matter. The maintenance of this unique characteristic is of vital importance.

[2] In order to ensure that law reviews are able to continue fulfilling their unique role in society, law review authors should respond to or otherwise deal with those authorities that are relevant to the subject of their manuscript, including those that challenge or contradict the law review author's own deeply-held beliefs and views. A full and fair airing of such authorities helps the reader to evaluate and judge the worth and validity of the law review author's own manuscript.

[3] The foregoing should not be taken, however, to limit the law review's ability to publish manuscripts that do not strictly comply with this

Rule. Such manuscripts often are among the most provocative and thoughtful pieces in a law review issue. It may be useful, however, when publishing such a manuscript to label it as "opinion" or "commentary" for the benefit of the law review's readers.

RULE 5.5 UNDUE CREDIT

A LAW REVIEW AUTHOR SHALL NOT TAKE UNDUE CREDIT FOR ANY MANUSCRIPT.

COMMENT:

[1] It is the exceptional law review author who can produce a manuscript without the assistance of others. In the course of production a law review author may depend, at one time or another, on partners, associates, law professors, librarians, student research assistants, members of the bar, government officials, private persons, and relatives and other loved ones. A feeling of gratitude may lead the law review author to privately thank some or all of these persons.

[2] In addition to whatever private appreciation the law review author chooses to display, the law review author may be obligated to note the identities of such persons in the manuscript itself.

[3] In deciding which contributions must be acknowledged, the test to be employed is not one of common courtesy. Rather, the test is whether given individuals have made such significant contributions, or have performed their jobs in a manner so far beyond the normal requirements of those jobs, that to deny them public acknowledgment would constitute an unfair use of their efforts, talents, or time. In close cases, the law review author should opt for acknowledgement.

[4] Although a general acknowledgment is proper, a law review author may, where the circumstances warrant, indicate the exact role played by the individual in the production of the manuscript.

[5] Quite apart from the foregoing, a law review author may not take credit for a manuscript with which the law review author had only minimal involvement. Similarly, a law review author may not allow the law review author's name to be added to a manuscript simply because doing so increases the stature of the manuscript. Thus, for example, law professors may not add their names to manuscripts prepared by their students, even if the law student wishes to have the law professor do so in order to increase the likelihood of publication. In such circumstances, law professors may add their names to the manuscript only if they make a substantial material addition to the manuscript, such as by adding new portions or ideas to the manuscript or revising the text or footnotes in a meaningful manner.