

A Model Code of Conduct for Student-Edited Law Journal Submissions

Scott Dodson and Jacob Hirsch

Introduction

Unlike most other academic scholarship, legal scholarship typically—though not exclusively—is published in print form by student-run journals.¹ The students elect their own members, set their own governing rules, select articles for publication, edit articles, and publish the volumes as they see fit. Generally speaking, faculty members have little to no involvement or oversight, submissions are nonexclusive, and review is not blind.²

These features make the American law journal a “remarkable institution,”³ and a surprising amount of literature covers its merits and demerits.⁴ This literature has generated an equally surprising amount of basic consensus. In a

Scott Dodson is James Edgar Hervey Chair in Litigation, Associate Dean for Research, and Professor of Law, UC Hastings College of the Law. Professor Dodson also serves as a journal advisor for Hastings Law Journal. **Jacob Hirsch**, J.D., UC Hastings College of the Law, was the Executive Articles Editor from 2017-2018. We are grateful to Barry Friedman, Chad Oldfather, Morris Ratner, and several current law-review editors who wish to remain anonymous for comments on the project.

1. Other obvious sources include peer-edited journals and book chapters.
2. Exceptions exist. Several student-run journals have incorporated some kind of formal or informal peer review in their selection processes. See Alfred L. Brophy, *Law [Review]’s Empire: The Assessment of Law Reviews and Trends in Legal Scholarship*, 39 CONN. L. REV. 101, 107 (2006) (noting a positive “movement towards increased faculty participation in law review decision-making”); Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 408 (1989) (reporting that about half the surveyed journals actively solicited opinions from resident faculty members). Others have formalized at least some anonymized review. And most journals have a faculty advisor, though the level of involvement varies considerably across advisors.
3. *Messages of Greeting to the U.C.L.A. Law Review*, 1 UCLA L. REV. 1, 1 (1953) (quoting Earl Warren’s message of greeting).
4. See Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 629-38 (1996) (reporting that law journals have been criticized in three waves since at least 1905); see generally Roger C. Cramton, “The Most Remarkable Institution”: *The American Law Review*, 36 J. LEGAL EDUC. 1 (1986) (summarizing the criticisms and defenses); Barry Friedman, *Fixing Law Reviews*, 67 DUKE L.J. 1297 (2018) (same).

nutshell, student-edited law journals offer some positive attributes but remain deeply flawed as vehicles for the cultivation of quality legal scholarship.⁵

On the plus side, the proliferation of publication venues,⁶ including specialized journals,⁷ has provided the opportunity to showcase the legal academy's diversity of work at a relatively modest labor cost.⁸ The student editors authenticate the accuracy of footnote support, generate and enforce uniformity norms, copyedit, and offer advice on organization and substance.⁹ As anyone who has served as an editor on a peer-edited journal can attest, these benefits are appreciable.¹⁰

Students also learn a number of skills, such as attention to detail, project management, deeper knowledge of the law, an introduction to creative and critical argumentation, and facility with good writing.¹¹ There is wide agreement that these skills offer valuable training for the practice of law.¹² Perhaps as a result, law journal membership is an important and enduring signal to employers, especially judges. Finally, law journals give students an outlet for publishing their own scholarly writing and developing the skills of persuasive argument, creative thought, and deep research that such writing requires.¹³

5. See, e.g., Leibman & White, *supra* note 2, at 391 (“Although we conclude that law review as a scholarly institution is useful and should be preserved, we find that the law review model, as the principal medium for scholarly expression in law, is deficient in a number of key respects.”).
6. See *Law Journal Rankings Project*, WASHINGTON AND LEE SCHOOL OF LAW, <https://managementtools4.wlu.edu/LawJournals/> (counting 947 journals as of 2016) (last visited Apr. 27, 2018).
7. For discussions of the varied specialized law reviews, see Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813 (1999), and Reinhard Zimmermann, *Law Reviews: A Foray Through a Strange World*, 47 EMORY L.J. 659, 664-69 (1998).
8. See Christian C. Day, *The Case for Professionally-Edited Law Reviews*, 33 OHIO N.U. L. REV. 563, 566-68 (2007); James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261, 1274-76 (1998).
9. See Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383, 383 (1989) (“[W]e gain a source of free labor. Our footnotes wind up checked, rechecked, and polished to a fine gloss . . .”).
10. See Leibman & White, *supra* note 2, at 418 (“[O]ne principal advantage, cheap labor for production and technical work, is the envy of other disciplines . . .”).
11. See Richard S. Harnsberger, *Reflections About Law Reviews and American Legal Scholarship*, 76 NEB. L. REV. 681, 703 (1997); Harold C. Havighurst, *Law Reviews and Legal Education*, 51 NW. U. L. REV. 22 (1956); Scott M. Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093, 1100-01 (1986); Ronald R. Rotunda, *Law Reviews—The Extreme Centrist Position*, 62 IND. L.J. 1, 4 (1986).
12. See Leibman & White, *supra* note 2, at 388 (“Law school faculty members, legal employers, the American Bar Association, and student law review participants—both current and alumni—agree that law review experience is valuable training for the practice of law.”).
13. Harper, *supra* note 8, at 1262-63.

On the minus side,¹⁴ suspicion abounds that law students simply do not have the time or experience to make reliable selection decisions based on the merit of the submissions.¹⁵ Journal staff members are usually 2Ls or 3Ls, with all the pressures of law school and their future careers competing for their attention. Editorial boards turn over every year, hindering continuity.¹⁶ And although staff membership has increased,¹⁷ so has the number of submissions, often exceeding 2,000 per year for some journals.

Reports that journal members use proxies during the selection process are therefore understandable.¹⁸ Reported proxies include author credentials, the presence of offers from competitor journals, subject-matter biases or “hot topics,” recommendations from home-school faculty members, and preferences for home-school authors.¹⁹ These proxies are not wholly irrelevant,²⁰ and, of course, the norm is for journals to make an offer only after giving the

14. For seminal critiques, see, e.g., James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527 (1994); E. Joshua Rosenkranz, *Law Review's Empire*, 39 HASTINGS L.J. 859 (1988); Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936). For a defense, see Harper, *supra* note 8.
15. Leibman & White, *supra* note 2, at 416; Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1131-34 (1995). But see Natalie C. Cotton, Comment, *The Competence of Students as Editors of Law Reviews: A Response to Judge Posner*, 154 U. PA. L. REV. 951, 960 (2006) (insisting that evaluation by students “is not too difficult a task”).
16. See Leibman & White, *supra* note 2, at 401-02.
17. See Zimmermann, *supra* note 7, at 672 (reporting that Volume 45 of *Stanford Law Review* listed 151 student editors).
18. Jensen, *supra* note 9, at 383 (“With serious substantive review impossible, authors’ credentials have assumed greater importance than they should in the evaluation process.”).
19. See Ira Mark Ellman, *A Comparison of Law Faculty Production in Leading Law Reviews*, 33 J. LEGAL EDUC. 681, 685 (1983) (documenting home-school-author bias and reporting that during one period, *Virginia Law Review* published more than forty-seven percent of its pages by UVA professors); Brian Galle, *The Law Review Submission Process: A Guide for (and by) the Perplexed* 5 (Aug. 12, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2822501, (reporting the use of expedites to triage submissions); Minna J. Kotkin, *Of Authorship and Audacity: An Empirical Study of Gender Disparity and Privilege in the “Top Ten” Law Reviews*, 31 WOMEN’S RTS. L. REP. 385 (2010) (reporting letterhead bias); Leibman & White, *supra* note 2, at 405 (reporting credential bias); Lindgren, *supra* note 14, at 530 (reporting letterhead bias and recommendation bias); Leo P. Martinez, *Babies, Bathwater, and Law Reviews*, 47 STAN. L. REV. 1139, 1143 (1995) (reporting “hot” topics” preferences); Carl Tobias, *Manuscript Selection Anti-Manifesto*, 80 CORNELL L. REV. 529, 534-35 (1995) (reporting the use of expedites to serve as an initial screen); *id.* at 530 (reporting that student editors prefer “hot, trendy or cute topics”).
20. Galle, *supra* note 19, at 11 (arguing that CV submission can indicate expertise, which can lend reliable credibility to claims of novelty); Jensen, *supra* note 9, at 385 (asserting that “credentials . . . bear some relationship to the quality of authors’ past work”).

submission a thorough read and evaluating its merits.²¹ But the process cannot hold a candle to double-blind peer review.²²

Mass submissions, besides exacerbating the incentives to use proxies, create what is colloquially known as the “expedite game,” whereby an author who receives an offer from one journal then asks other journals to make a decision on the manuscript by the offer’s deadline. Some authors find the practice distasteful and awkward;²³ at the very least, the game forces students to spend time and effort reviewing pieces that they will never publish.²⁴

Students’ relative inexperience affects the editorial stage as well.²⁵ Authors undeniably benefit from some of the edits offered by journals, but many authors complain of overzealous editing and footnoting, leading to wasted time of both author and editor, friction between author and editor, and overlong and colorless articles.²⁶ Admittedly, not all journals exercise such heavy hands.

21. See Leibman & White, *supra* note 2, at 413-16 (reporting survey results of editors’ attempts to judge articles on merit); *id.* at 405 (“Most interviewees . . . conceded that famous authors are granted a presumption of excellence, but that the presumption is easily rebutted by inferior manuscripts.”).
22. Brophy, *supra* note 2, at 105 (“Peer review has the potential to dramatically improve the quality of legal scholarship.”); Richard A. Posner, *Foreword: The Peer Review Experiment*, 60 S.C. L. REV. 821, 821-22 (2009) (encouraging peer review); Jonathan Gingerich, *A Call for Blind Review: Student Edited Law Reviews and Bias*, 59 J. LEGAL EDUC. 269 (2009) (calling for blind review by students); Wendy J. Gordon, *Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship*, 61 U. CHI. L. REV. 541, 545 (1994) (same). *But see* Leibman & White, *supra* note 2, at 405 (suggesting that student inexperience with reputation might be a safeguard against bias that nonblind peer review engenders); another jr prof, Comment to Cassandra Burke Roberston, *Why Isn’t PRSM More Popular*, PRAWFSBLAWG (Mar 30, 2015 9:13:16 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2015/03/why-isnt-prsm-more-popular.html> (pushing back on peer review because professors “are a territorial lot and tend to dismiss ideas that are not in line with our own . . . or we have a serious need to ‘win’ any argument so we belittle other ideas”), <http://prawfsblawg.blogs.com/prawfsblawg/2015/03/why-isnt-prsm-more-popular.html>. There is some evidence that blind review has other salutary effects, such as reducing gender bias. See generally Kotkin, *supra* note 19; Robert E. Rains, *Andrea’s Adventures in Law Review Land*, 50 J. LEGAL EDUC. 306 (2000); cf. John W. Kronik, *Editor’s Note*, 103 PMLA 733, 733 (1988) (reporting increased author diversity under blind review). It is worth pointing out that nonblind *peer* review can also encourage nepotism and gender bias. See Christine Wennerås & Agnes Wold, *Nepotism and Sexism in Peer-Review*, 387 NATURE 341, 342-43 (1997). And even truly blind peer review can be difficult to achieve. See Galle, *supra* note 19, at 14 (“[I]n practice most readers know the work of their peers well enough to guess (and there’s always ssrn.)”); Gingerich, *supra*, at 269 (acknowledging the administrative costs of blind review, including ensuring anonymity).
23. Dennis J. Callahan & Neal Devins, *Law Review Article Placement: Benefit or Beauty Prize?*, 56 J. LEGAL EDUC. 374, 374 (2006).
24. William C. Whitford, *The Need for an Exclusive Submission Policy for Law Review Articles*, 1994 WIS. L. REV. 231, 231 (1994).
25. See Day, *supra* note 8, at 563 (“Law reviews are too important to be left to the editorial caprice of callow law students.”).
26. Richard A. Epstein, *Faculty-Edited Law Journals*, 70 CHI.-KENT L. REV. 87, 92 (1994); Leibman & White, *supra* note 2, at 389; Zimmermann, *supra* note 7, at 676-79.

These pros and cons cover well-trodden ground. What the literature has tended to ignore, however, is norm development for the conduct of editors and authors during the submission process.²⁷ Yet norms of conduct are important. The conduct of law professors and law students reflects upon the institution of legal education and, to a secondary extent, upon the legal profession.

We aim to fill that void by offering a code for author-editor conduct regarding submissions to student-edited law journals. In doing so, we accept as a given the general structure of law journal submissions, characterized by the defaults of nonblind review, nonexclusive submissions, and expedite requests.²⁸ Although we agree with much of the criticism of these features of law journal submissions,²⁹ law journals have been around for many years,³⁰ and institutional path dependence has made radical change daunting, if not implausible.³¹ Perhaps things will change, but in the meantime, we think we can improve the system now, even within its current confines.³²

27. Jensen, *supra* note 9, at 385 (“Law has developed no norms to guide publication behavior.”). In the early 1990s, the National Conference of Law Reviews adopted a Model Code of Ethics, but the code is pitched at the level of proscribing ethical conduct rather than best practices, and it does not delve deeply into the nuances of submission conduct. *See generally* Michael L. Closten & Robert M. Jarvis, *The National Conference of Law Reviews Model Code of Ethics: Final Text and Comments*, 75 MARQ. L. REV. 509 (1992).
28. We do recognize that practice across law journals varies considerably, *see* Leibman & White, *supra* note 2, at 390 (reporting “that editorial practices do vary significantly among the journals . . .”), and so we have crafted conduct rules with the hope that they could apply to *Harvard Law Review* and *Hastings Law Journal* equally.
29. The fault, in our view, lies primarily and irredeemably with the legal academy’s propensity to believe that placement is used as a proxy for merit, though some evidence suggests that both good and bad articles eventually tend to get the recognition they deserve without regard to placement. *See* Callahan & Devins, *supra* note 23, at 375 (concluding, based on a citation-count study, that “meritorious articles will be cited regardless of the prestige of the review in which they appear, and poor articles, even those published in high-tier reviews, will be ignored . . .”).
30. *See* Rosenkranz, *supra* note 14, at 860 (“Except possibly for an increase in membership and proliferation, the law review has remained intact and unchanged for a century.”); Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 769-70 (1985) (detailing the history of law reviews).
31. *See* Mark Fenster, *Reforming Law Reviews (A Non-radical Solution)*, PRAWFSBLAWG (Apr. 27, 2017, 09:46 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2017/04/reforming-law-reviews-a-non-radical-solution.html> (“I am bearish on significant reform, absent an external shock to the legal academic system. And it’s why I am especially bearish on the potential for the kind of radical reform that many if not most comments (especially the anonymous, snarky ones!) want: the single-submission, double-blind peer-review model that pervades most of the rest of the academy.”).
32. For a more skeptical view, *see* YesterdayIKilledAMammoth, Comment to Mark Fenster, *The Eternal Recurrence of Law Review Complaints (Or, Why is Law Review Reform So Hard?)*, PRAWFSBLAWG (Apr. 18, 2017, 2:00 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2017/04/the-eternal-recurrence-of-law-review-complaints-or-why-is-law-review-reform-so-hard.html> (“Legal academia is controlled by a system so crony-istic [sic], unethical, and incestuous that I’m surprised Jared Kushner’s not running it. Until it gets reformed, perhaps legal academics should stop talking about ethics. They are terrible leaders. No use being hypocrites, too.”).

Our Model Code is grounded in three major principles: honesty, professionalism, and transparency. These principles mirror those of other codes of conduct for the legal profession and the university academy, including the Model Code of Professional Conduct, the AALS Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities, the American Association of University Professors, and the NALP Principles and Standards for Law Placement and Recruitment Activities—and, frankly, they ought to be unassailable. Combining these principles with our own personal experiences, we aim to articulate bipartisan norms about how professors and students should relate to one another in specific circumstances involving journal submissions.

We have opted to set out these norms in a model code, with explanatory statements and, where useful, illustrations. We have chosen this format because while the principles ought to be uncontroversial in the abstract, the devil is in the details, and a fair debate demands those details.

Our primary aims are to bring the conversation about submissions conduct, which primarily has been held through anonymous posts on blogs, into the open for public debate, and to focus attention on our shared responsibility for reform. Our secondary hope is that the code format facilitates wholesale or partial adoption, perhaps with modifications, by both journals and faculties.³³ We have reason to be hopeful. Students seem receptive to improving their stewardship of law journals,³⁴ and authors genuinely seem to want change and standardization.³⁵

We focus here on the inculcation of conduct norms rather than prescribing enforcement mechanisms. We are aware that, for certain markets, enforcement mechanisms are critical to conduct control.³⁶ Enforcement in this context, however, presents difficult and often context-sensitive regulatory problems that we are not prepared to address here in a comprehensive way.

We believe, in line with most other codes of conduct regulating legal education, that self-governance can be effective at an individual level and at an institutional level. Our primary aim is to inculcate norms to channel individual behavior. Secondary controls may be imposed by journals upon

33. Or even the AALS. See Jensen, *supra* note 9, at 385 (“Suppose, however, that the Association of American Law Schools were to establish voluntary guidelines and request (politely but firmly) that faculty members of constituent institutions adhere to them.”).

34. Leibman & White, *supra* note 2, at 425 (“[Student editors] understood that their journals played a role in advancing legal scholarship, and they all wanted to improve their stewardship. Only a few of the interviewees, however, stated that they had ever received any instruction or training in the importance of legal scholarship or in how the academic research mission works in the United States.”).

35. See comments to Matt Bodie, *Submission Angsting Spring 2017*, PRAWFSBLAWG (Feb. 9, 2017, 12:15 PM), prawfsblawg.blogs.com/prawfsblawg/2017/02/submission-angsting-spring-2017.html.

36. See, e.g., *Federal Law Clerk Hiring Plan is ‘Discontinued,’* <http://www.uscourts.gov/news/2014/01/13/federal-law-clerk-hiring-plan-discontinued> (describing the discontinuation of the voluntary Federal Law Clerk Hiring Plan because of an unsustainable number of opt-outs by judges).

their members and authors submitting to them, and at the institutional level by deans and other school administrators upon both faculties and journals subject to institutional control. We believe the details of what enforcement is necessary and appropriate under context-sensitive circumstances should develop after conduct norms have been established.

With the hope that our code offers a step toward establishing those conduct norms, we turn to its provisions.

Preamble

1. Both law students and law professors, as members of the legal academic community, have a responsibility to develop and abide by community norms to enhance the quality and efficacy of the legal academy.

2. Law professors, as educators preparing law students for the legal profession and as representatives of the legal academy, should, in dealing with law students, wherever located, strive to model behavior appropriate to the legal academic community and behavior to be expected of law students when they enter the legal profession.

3. In the context of submissions to student-edited law journals, both law students and law professors should strive to conduct themselves with honesty, professionalism, and transparency.

Notes to Preamble:

The first section of the Preamble situates law students and law professors as members of a particular community with norms and expectations generated by both groups. Cf. Model Code of Professional Conduct, Preamble [1] (“A lawyer, as a member of the legal profession, is . . . an officer of the legal system . . . having special responsibility for the quality of justice.”). Norm development is a responsibility because the legal academy is largely autonomous and self-regulating. Cf. id., Preamble [11]-[12] (“The legal profession’s relative autonomy carries with it special responsibilities of self-government.”).

The second section of the Preamble establishes the relevant relationship between law professors and law students. The relationship is generalized and thus applies to law professors and law students from different schools. Law professors are in positions of authority and expertise superior to that of law students, and professors have taken on responsibility for preparing students for the practice of law. Law professors should therefore model appropriate behavior when dealing with law students. Cf. ABA Commission on Professionalism, “. . . In the Spirit of Public Service”: A Blueprint for the Rekindling of Lawyer Professionalism 19 (1986) (“[Since] the law school experience provides the student’s first exposure to the profession and . . . professors inevitably serve as important role models for students, . . . the highest standards of ethics and professionalism should be adhered to within law schools.”); AALS Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities, Sec. 1 (“As teachers, scholars, counselors, mentors, and friends, law professors can profoundly influence students’ attitudes concerning professional competence and responsibility. . . . Because of their inevitable function as role models, professors should be guided by the most sensitive ethical and professional standards.”), Sec. 5 (“A law professor occupies a unique role as a bridge between the bar and students preparing to become members of the bar. It is important that professors accept the responsibilities of professional status. At a minimum, a law professor should adhere to the Code or Rules of Professional Conduct of the state bars to which the law professor may belong.”); American Association of University Professors Statement on Professional Ethics, Sec. 2 (“As teachers, professors . . . hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. . . . They avoid any exploitation, harassment, or

discriminatory treatment of students.”), available at <https://www.aaup.org/report/statement-professional-ethics>.

The three guiding principles—honesty, professionalism, and transparency—derive from related professional guidelines modified for the submission process. See *Model Code of Professional Conduct*, Preamble [4] (“In all professional functions a lawyer should be competent, prompt and diligent.”); *id.*, Preamble [9] (providing that lawyers should “maintain[] a professional, courteous and civil attitude toward all persons involved in the legal system”); *id.*, Rule 1.4 (directing lawyers to engage in communications with clients that are prompt and informed); *id.*, Rule 4.1 (providing that, in representing a client, a lawyer “shall not knowingly . . . make a false statement of material fact or law to a third person”); *id.*, Rule 8.4(c) (defining professional misconduct for a lawyer to include “engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation”); *NALP Principles and Standards for Law Placement and Recruitment Activities, Part I* (“[P]articipants are urged to carry out all obligations in good faith.”). Specific applications of these principles to the journal-submissions context and their justifications are discussed in the Code.

The Preamble does not set out an enforcement mechanism. Its use of the word “should” is meant to be aspirational and inculcating. The hope is that voluntary compliance and mutual agreement will accomplish much of the compliance work, with peer approbation and self-help remedies serving secondary functions. Cf. *Model Code of Professional Conduct*, Preamble [16] (“Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings.”); *id.*, Preamble [4] (“[A] lawyer is also guided by personal conscience and the approbation of professional peers.”); *AALS Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities* (“Although the norms of conduct set forth in this Statement may be relevant when questions concerning propriety of conduct arise in a particular institutional context, the statement is not promulgated as a disciplinary code. Rather, the primary purpose of the Statement—couched for the most part in general aspirational terms—is to provide guidance to law professors concerning their responsibilities. . . .”); *NALP Principles and Standards for Law Placement and Recruitment Activities, Preamble* (“These Principles and Standards are designed to empower law schools, legal employers, and law student candidates . . . to self govern based on the concepts set forth below.”).

Rules

1. Scope and Authority

1.01. These rules set out a default model code for conduct representing best practices. They must be adopted to be effective. They do not attempt to impose legal or ethical obligations.

1.02. These rules cover submissions conduct related to unsolicited law professor submissions to student-run law journals.

1.03. These rules may be modified by adopters. Modifications should be accomplished through clear and accessible disclosures.

Notes to Rule 1:

Rule 1.01 affirms that the Model Code is not self-executing. Nor does it take positions on the applicability of law, such as breach of contract law, to submissions conduct. Nor is the Model Code an ethics code; rather, it articulates generalized best practices for purposes of improvement and transparency.

Rule 1.02 sets scope limits. Because the basic principles animating these rules are founded on the relationship between law students and law professors, applying these rules to other actors requires additional justification. Justification for extending the application of these rules to all authors may exist, but this Model Code does not address that possibility. Nor do these rules apply to nonsubmission processes, such as editorial or other journal or author processes, which implicate very different circumstances. Similarly, these rules do not apply to faculty-run journals, whose submission processes differ from the process contemplated by these rules.

Rule 1.03 recognizes the reality that even within the insular world of student-run law journals, journal practices and preferences differ. These rules are designed to operate as a whole, but some modifications to accommodate journal-specific practices are likely to be acceptable. Journals and authors can supersede specific rules by clear disclosure or agreement. Rule 1.03 applies to attempts to modify Rule 1.02 to expand the applicability of the rules; thus, journals wishing to impose these rules on all authors, and noncovered authors or journals wishing to adopt these rules, can do so by express disclosure.

2. Pre-Submission Journal Disclosures

2.01. A journal should publicly disclose and promptly update its submission policies, including, at a minimum, the following:

- (a) the date it begins reviewing submissions;
- (b) the expected style, length, and format of submissions;
- (c) the preferred medium for submission and any alternatives;
- (d) the typical stages of review of submissions, including any peer review;
- (e) the policies for expedite requests;
- (f) the policies and terms of offers, including typical deadlines;
- (g) the policies and terms for requests for deadline extensions;
- (h) the terms of a journal's standard publication and copyright agreements;
- (i) the journal's general production schedule and editorial style; and
- (j) the date the journal stops reviewing submissions.

2.02. A journal should disclose the information specified in Rule 2.01 on its website and on any submission platform through which it accepts submissions. A journal's staff members should be familiar with the journal's disclosures and be able to convey them accurately to inquiring authors.

2.03. An author's submission to a journal is a representation that the author has reviewed and understood the journal disclosures made as of the date of submission.

Notes to Rule 2:

Rule 2.01 specifies the information needed for authors to make an informed judgment about whether and when to submit to a particular journal. Many submissions, for example, cost money, and an author who submits to a journal that is no longer reviewing submissions but that did not update its information to announce the close of submissions may be understandably irritated at the journal. Rule 2.01 also encourages the frontloading of information, such as publication and editorial policies, to reduce the risk of post-acceptance disagreements over those policies.

Journals whose processes are more generalized, flexible, or ad hoc should disclose the general policies and indicate that specifics may depend upon case-by-case circumstances. For example, a

journal may disclose that it typically gives authors seven days to consider an offer but that the journal retains sole discretion to offer more or less time.

Rule 2.03 obliges authors to review journal submissions disclosures so that journals may rely upon an expectation of author understanding and compliance. Rule 2.03 does not, however, oblige authors to keep abreast of post-submission changes to a journal's policies. If a journal makes post-submission changes to its policies that it intends to apply to an author's submission, the journal should notify the author through direct communication.

3. Submissions

3.01. An author's submission to a journal is a good-faith representation that the author would be willing, based on information knowable to the author at the time of submission, to publish the submitted manuscript in that journal.

3.02. An author's submission to a journal is a good-faith representation that the author believes the manuscript as submitted will be publishable upon the conclusion of the expected editorial process and will not require fundamental changes.

3.03. An author should not submit to a journal housed at the author's home school or visiting school unless the author commits to accepting an offer from that journal if one is made.

Notes to Rule 3:

Rule 3.01 conditions an author's submission to a journal on the author's good-faith willingness to publish with that journal. Rule 3.01 does not require an author to accept an offer from that journal. The author may receive multiple offers and reasonably prefer a later offer over an earlier offer. Nor does Rule 3.01 require an author to accept an offer if material information not knowable at the time of submission leads an author to conclude that the journal is not an appropriate journal to publish the manuscript, such as if the journal makes an offer for a specific issue or volume that is likely to be published at an unexpectedly late date. Rather, Rule 3.01 addresses the author who submits to a journal with no intent to publish with that journal. Student editors expend considerable time and effort to review manuscripts under the expectation that the offers they make will be taken seriously. An author who submits to a journal only for leverage takes unfair advantage of that expectation and imposes undue costs on that journal. Those costs also affect other authors whose submissions' review may be delayed. Rule 3.01 attempts to curtail these costs by imposing a good-faith requirement on authors.

Rule 3.01 works in tandem with Rule 2.01. Information is deemed knowable by the author when the journal clearly discloses specific and accurate information before submission. Neither deviations from journal disclosures under Rule 2.01 nor unspecified case-by-case policies qualify as information knowable to the author at the time of submission.

Rule 3.02 imposes a requirement on an author to submit only a manuscript that the author believes will be ready for publication at the conclusion of the ordinary student-run editorial process. This requirement does not mean that the author believes the manuscript is perfect or fully complete. An author may reasonably submit a manuscript, and a journal may appreciate the opportunity to consider a manuscript, even if the manuscript will require substantial editing or changes. The expected editing must, however, be within the norms of what a student-edited journal can provide. An author should not submit a manuscript that the author believes will require fundamental changes, such that the altered manuscript is effectively a different paper from what was submitted. If post-submission developments lead an author to conclude that the manuscript will require fundamental changes, the author should either fully disclose that conclusion to all journals then considering the manuscript or withdraw the manuscript and resubmit after making those changes.

Rule 3.03 derives from the special relationship professors have with their own school's students, students whom the professors may know personally quite well. Professors may try to use that relationship to obtain an offer that they then use as leverage to obtain an offer from a different journal. At the least, that perception exists. At the same time, journals should not be disabled from considering submissions from home-school authors. This rule allows for such submissions but encourages authors to pre-commit to an offer to avoid the possibility and perception of using the offer as leverage. As with all of these rules, and as confirmed by Rule 1.03, journals can depart from this rule through clear disclosure.

4. Pre-Offer Communications

4.01. Both authors and journals should disclose information about the status of a submission as necessary to facilitate an honest and efficient review process. Such disclosures are not limited to those specified in Rules 4.02 and 4.03. At all times, communications should be conveyed in a professional manner, and all communicated information should be made in good faith and true to the communicator's understanding.

4.02. A journal should make best efforts to communicate promptly the following information to each submitting author:

- (a) when the journal begins its review of the author's submission;
- (b) when the submission has passed to any intermediate stage of review, including peer review, if any;
- (c) when the submission has passed to the final stage of review and the expected time frame for the communication of any offer resulting from that final stage of review;
- (d) when the journal has rejected the submission; and
- (e) any material information not specified in, or that deviates from, the journal's publicly disclosed policies under Rule 2.01.

4.03. An author should communicate promptly the following information to each journal to which the author has submitted and not withdrawn a manuscript:

- (a) if the author expects to deviate from or request exception to the journal's communicated policies;
- (b) if information obtained by the author after submission leads the author to conclude that the representations made under Rule 3 no longer apply; and
- (c) a withdrawal of the manuscript from a particular journal's consideration if, at any point, the author can no longer reasonably foresee a set of circumstances under which the author would accept an offer from that journal.

Notes to Rule 4:

Pre-offer communications regarding the status or terms of a submission are appropriate when they convey information useful to a journal's review or to an author's decision-making. Rule 4.01 instructs both authors and journals to make such communications with honesty and professionalism. For example, an author should not commit to exclusive review if the author has submitted or intends to submit to other journals before the established period of exclusivity

has expired. Nor should an author convey information about the status of the submission that the author does not reasonably understand to be true. Rule 4.01 also obligates authors to take appropriate measures to ensure that their communications are made in good faith; for example, a promise or commitment to accept an offer if made can be consistent with multiple submissions if the author takes care to avoid situations that would make fulfilling that promise or commitment impossible. All communications from journals or authors should reflect an understanding of and appreciation for the other's pressures, time commitments, and role in the submission process.

Rule 4.02 sets out the standard information a journal should convey to each author in the normal course of manuscript review. This information is important both to the author's decision-making process and to the author's good-faith communications with other journals. Communicating rejections is particularly important and should always be made. Modern submission-management platforms make communicating the information specified in Rule 4.02 effectively and promptly relatively easy, but it is not realistic to expect student editors to be able to comply in every case. Accordingly, Rule 4.02 asks for journals' "best efforts" to make the specified communications.

Rule 4.03 obligates authors to communicate to a reviewing journal certain information necessarily important to that journal's review. In particular, if new information leads an author to conclude that the author would not accept an offer from a particular journal under any reasonably foreseeable circumstances, the author should withdraw the manuscript immediately from further consideration by that journal.

5. Offers

5.01. A journal should communicate its decision to extend a publication offer to the author as promptly as practical. The communication should clearly indicate all material terms of the offer, including when the offer expires. The author should confirm receipt of the offer as promptly as practical.

5.02. If a journal provides a deadline for accepting the offer that is not specified in the journal's disclosures under Rule 2.01 or other pre-offer communications with the author under Rule 4.02(e), the deadline normally should be no fewer than five business days unless unusual circumstances require a shorter deadline. If the offer is made after the author's request for expedited review, this Rule 5.02 does not apply; instead, Rule 5.03 applies.

5.03. An offer made by a journal that has granted an expedite request pursuant to Rule 6.01 should come with a deadline that exactly matches the first offer's deadline date and time, as specified in the expedite request. Journals may, but are encouraged not to, deviate from this rule through specified disclosures under Rule 2.01 or 4.02(e).

5.04. An author's decision to seek an extension of a deadline, or a journal's decision to grant an extension, is within the discretion of each, respectively. In either case, all communications should be professional, and information supporting the author's request or the journal's decision should be true and made in good faith.

Notes to Rule 5:

Rule 5.01 directs the journal to communicate offers promptly and complete with all material terms because this information is crucial to the author's decision-making process. Similarly, the author should confirm receipt so that the journal knows that the author has received and is considering the offer. This information may be relevant to the start of any deadline given by the journal. Receipt confirmation may be immediate, if the offer is made over the phone, but often will be via email or a submissions-management platform.

Rule 5.02 directs a journal to either give prior notice of any offer deadline or make such deadline a set period of five business days. Five business days is a reasonable period of time for an author to gather any additional information about the offering journal, weigh options, and make an informed decision about the offer. Rule 5.02 does recognize that unusual circumstances may warrant a shorter deadline, such as an offer made by an outgoing journal board fewer than five days before the incoming board takes over, but such circumstances should be a product of matters relating to the journal and should be independent of the particular author or particular submission. Rule 5.02 does not apply to offers made after a request for expedited review; Rule 5.03 governs such offers.

Rule 5.03 applies to offers made after an author has requested expedited review and is designed to promote consistency in deadlines. If an author has requested expedited review from multiple journals based on a single offer's deadline, then the author should not need more time to consider any other offer the author receives. By the same token, journals should not make offers that shorten the deadline, thereby prejudicing other journals operating under the terms of the

first deadline. This rule gives the author one chance to expedite based on a particular deadline and ensures that all requested journals will conduct expedited review under the same deadline. To illustrate, if Journal A makes an offer to Author with a deadline expiring at noon on March 1, and Author requests expedited review of the submission from Journals B, C, and D, then any offers made by Journals B, C, and D should come with a deadline of noon on March 1, no matter when made. Deviations from this rule are permitted but discouraged to avoid the systemic disruption that evolving deadlines cause.

Rule 5.04 lodges discretion for negotiating deadlines with the author and the journal but insists that any communications be undertaken with professionalism and based in honesty and transparency. An author should not, for example, justify a request for an extension as pretext for simply wanting more time to use the offer as leverage with other journals.

6. *Expedites*

6.01. An author who receives an offer of publication with a set deadline for acceptance may request expedited review of the submission by other journals. An expedite request to a particular journal is a good-faith representation that the author prefers or, if material terms are unknown, is reasonably likely to prefer an offer from that journal over the author's existing offer. The expedite request should disclose the identity of the journal making the offer and the material terms of the offer, including the offer's deadline.

6.02. A journal receiving an expedite request should promptly respond with the following information:

- (a) confirmation of receipt of the request;
- (b) whether the journal will grant the request; and
- (c) the terms any grant is conditioned upon.

6.03. An author's decision to seek expedited review, or a journal's decision to grant expedited review, is within the discretion of each, respectively. In either case, all communications should be professional, and information supporting the author's request or the journal's decision should be true and made in good faith.

Notes to Rule 6:

Rule 6.01 recognizes that information about offers—especially their deadlines—can be useful for a journal's decision-making process. At the same time, Rule 6.01 makes clear that an author should request expedited review only if the author genuinely prefers or, if the author lacks material information for orienting preferences, is reasonably likely to prefer an offer from the requested journal. Otherwise, the author's request wastes the journal's time and generates false expectations.

Rule 6.02 fosters useful communication between journal and author. A journal may condition the grant of expedited review on specified terms, such as a commitment to decline the first offer if the requested journal makes an offer after expedited review. A journal that grants expedited review should use best efforts to reach a decision on the submission by the specified deadline.

Rule 6.03 lodges discretion for requesting or granting expedited review with the author and the journal but insists that any communications be undertaken with professionalism and based in honesty and transparency. An author should not, for example, request expedited review based on an offer not received or based on terms not reflected in the offer.

7. *Acceptances and Rejections*

7.01. An author should notify a journal immediately upon deciding to accept or reject the journal's offer.

7.02. A journal should notify an author immediately upon deciding to reject the author's submission.

Note to Rule 7:

Rules 7.01 and 7.02 obligate prompt and actual communication between author and journal when an offer is accepted, an offer is rejected, or a submission is rejected.

8. Post-Acceptance Conduct

8.01. When an author accepts an offer, the author should withdraw the submission from all other journals immediately.

8.02. If an author receives a post-acceptance offer from a different journal, the author remains committed to the accepted offer.

Notes to Rule 8:

Rule 8.01 helps protect against the waste of journal time reviewing a submission that has already been committed elsewhere.

Rule 8.02 recognizes that, although compliance with Rule 8.01 should normally preclude post-acceptance offers from other journals, additional offers occasionally are made before withdrawal communications are received. In such a circumstance, however, the author remains committed to the accepted offer and may not unilaterally retract that acceptance.